



CASE DIGESTS ON LOCAL BUDGETING AND RELATED MATTERS

(COVERING SELECTED SUPREME COURT DECISIONS)

2020 Edition



**A PROJECT FOR THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM)
BY ATTY. JANET B. ABUEL, Undersecretary, DBM**

(with gratitude to the DBM and the Australia Awards and Alumni Engagement Program – Philippines)

FOREWORD

Budgeting is at the heart of local public financial management (PFM). Having a sound PFM means that the organization will be able to efficiently and effectively manage its finances which, eventually, will translate to better public services.

In the exercise of its oversight functions over local government units (LGUs) particularly on budgetary concerns, the Department of Budget and Management (DBM) has been issuing circulars, including manuals, to guide the LGUs on local budget operations.

It also renders technical assistance to LGUs through trainings and by providing guidance or responding to queries and concerns on local budgeting and related matters, to include compensation and position classification. This is in addition to the mandate of the DBM to review the budgets of Provinces, highly urbanized cities, independent component cities, and municipalities within Metro Manila pursuant to Section 326 of the Local Government Code of 1991 (Republic Act No. 7160).

Consequently, LGU officials and personnel, including other stakeholders, refer to the DBM when they are confronted with issues, concerns and questions on local budgeting and related matters. In this regard, apart from the issuances of the DBM and other oversight agencies, much reliance is given on relevant decisions of the Supreme Court. However, there is no easy and accessible reference which covers relevant Supreme Court decisions that can be used for practical guidance. While copies of Supreme Court decisions are available online, a rigorous and time-consuming search is necessary before one can find an applicable case law on a particular budgeting or related concern.

This compilation of case digests on local budgeting and other related matters, covering selected Supreme Court decisions, could serve as a ready focused reference for the DBM, the LGUs, and other users. Citations of the digested cases¹ are provided in each digest and it is emphasized that eventual reference to the full texts is very important and highly encouraged, for proper and complete guidance. Nevertheless, it is understood that, ultimately, it is the courts that will decide in case of actual suits filed before them.

This compilation has been developed for the DBM as a re-entry action project of Undersecretary Janet B. Abuel from her scholarship study of Master of Laws in the University of Sydney in Australia under the auspices of the Australia Awards Scholarships – Philippines (now, Australia Awards and Alumni Engagement Program – Philippines).

¹ For simplicity in presentation of the case digests, in-text citations are omitted, and should be derived from the full texts of the Supreme Court decisions.

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**LAWYERS AGAINST MONOPOLY AND POVERTY (LAMP)
VS. SECRETARY OF BUDGET AND MANAGEMENT²
(G.R. No. 164987, April 24, 2012, En Banc)**

- FISCAL YEAR 2004 PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) PRESUMED VALID UNLESS THERE IS PROOF OF CLEAR AND UNEQUIVOCAL BREACH OF THE CONSTITUTION. - x x x *the Court now goes to the crucial question: In allowing the direct allocation and release of PDAF funds to the Members of Congress based on their own list of proposed projects, did the implementation of the PDAF provision under the GAA of 2004 violate the Constitution or the laws? x x x The Court rules in the negative. In determining whether or not a statute is unconstitutional, the Court does not lose sight of the presumption of validity accorded to statutory acts of Congress. In Fariñas v. The Executive Secretary, the Court held that: Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. Every presumption should be indulged in favor of the constitutionality and the burden of proof is on the party alleging that there is a clear and unequivocal breach of the Constitution. x x x The petition is miserably wanting in this regard. x x x No convincing proof was presented showing that, indeed, there were direct releases of funds to the Members of Congress, who actually spend them according to their sole discretion. x x x Devoid 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 Court cannot indulge the petitioner's request for rejection of a law which is outwardly legal and capable of lawful enforcement. x x x*

x x x

x x x. Moreover, the authority granted the Members of Congress to propose and select projects was already upheld in Philconsa. This remains as valid case law. The Court sees no need to review or reverse the standing pronouncements in the said case. x x x

NOTE: In the case of Belgica vs. Ochoa (G.R. No. 208566, November 19, 2013, En Banc), the Supreme Court declared as UNCONSTITUTIONAL the entire FY 2013 PDAF Article and 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.

² Lawyers Against Monopoly and Poverty (LAMP), Represented by its Chairman and Counsel, Ceferino Padua, Members, Alberto Abeleda, Jr., Eleazar Angeles, Gregely Fulton Acosta, Victor Avecilla, Galileo Brion, Anatalia Buenaventura, Efren Carag, Pedro Castillo, Napoleon Coronado, Romeo Echauz, Alfredo De Guzman, Rogelio Karagdag, Jr., Maria Luz Arzaga-Mendoza, Leo Luis Mendoza, Antonio P. Paredes, Aquilino Pimentel III, Mario Reyes, Emmanuel Santos, Teresita Santos, Rudegelio Tacorda, Secretary Gen. Rolando Arzaga, Board of Consultants, Justice Abraham Sarmiento, Sen. Aquilino Pimentel, Jr., and Bartolome Fernandez, Jr., Petitioners, vs. The Secretary of Budget and Management, the Treasurer of the Philippines, the Commission on Audit, and the President of the Senate and the Speaker of the House of Representatives in Representation of the Members of the Congress, Respondents; G.R. No. 164987, April 24, 2012, En Banc.

Facts:

The case emanated from an original action for certiorari assailing the constitutionality and legality of the Priority Development Assistance Fund (PDAF) under the Fiscal Year (FY) 2004 General Appropriations Act, Republic Act (RA) No. 9206.

The FY 2004 GAA included the provision for the PDAF, as follows:

PRIORITY DEVELOPMENT ASSISTANCE FUND

For fund requirements of priority development programs and projects, as indicated hereunder – ₱8,327,000,000.00 x x x x x 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 Petitioners (LAMP) posited that the said provision of PDAF, unlike in the previous GAAs, was silent in the “automatic or direct allocation of lump sums to individual senators and congressmen for the funding of projects.” The FY 2004 GAA did not “empower individual Members of Congress to propose, select and identify programs and projects to be funded out of PDAF” which are the main characteristics of a pork barrel system. Hence, the same is prohibited.

In this regard, LAMP alleged that there were violations in the implementation of the PDAF provision when “the DBM illegally made and directly released budgetary allocations out of PDAF in favor of individual Members of Congress” even when the latter did not have the “power to propose, select and identify which projects are to be actually funded by PDAF.

LAMP raised the following arguments:

- a. That the system (PDAF) violates the principle of separation of powers “because in receiving and, thereafter, spending funds for their chosen projects, the Members of Congress in effect intrude into an executive function. In other words, they cannot directly spend the funds, the appropriation for which was made by them. In their individual capacities, the Members of Congress cannot

‘virtually tell or dictate upon the Executive Department how to spend taxpayer’s money.’”

- b. That proposing and selecting projects are not part of legislation or legislative function and without constitutional authority, thus, a malfeasance. “The proposal and identification of the projects do not involve the making of laws or the repeal and amendment thereof, which is the only function given to the Congress by the Constitution.”
- c. That “the power of appropriation granted to Congress as a collegial body, does not include the power of the Members thereof to individually propose, select and identify which projects are to be actually implemented and funded - a function which essentially and exclusively pertains to the Executive Department.”
- d. That to allow the individual Members of Congress to propose and identify projects to be funded from PDAF and to receive direct allotment from the fund is “legally infirm and constitutionally repugnant.”

On the other hand, the Respondents contended that the petition was not supported by factual and legal grounds. There were no proofs offered to support the petition and that the same was just based on reports from media, and mere conjectures and assumptions which have no probative value. The Respondents further invoked *Philconsa v. Enriquez* where the Supreme Court (SC), on the question pertaining to the Countrywide Development Fund (CDF), which is similar to PDAF, described the procedure of proposing and identifying by members of Congress of particular projects or activities under Article XLI of the GAA of 1994 is imaginative as it is innovative.

In said case, the SC upheld the validity of the authority of individual Members of Congress to propose and identify priority projects because this was merely recommendatory in nature. It was also recognized that individual members of Congress far more than the President and their congressional colleagues were likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project.

Issue/s:

Whether or not the implementation of the PDAF by the Members of Congress is unconstitutional and illegal.

Held:

The SC dismissed the petition and upheld the presumption of validity of the implementation of the PDAF in the absence of a direct proof clearly showing that the funds were directly released to and spent by the Members of Congress. The SC pronounced, among others, as follows:

x x x the Court now goes to the crucial question: In allowing the direct allocation and release of PDAF funds to the Members of Congress based on their own list of proposed projects, did the implementation of the PDAF provision under the GAA of 2004 violate the Constitution or the laws? x x x The Court rules in the negative. In determining whether or not a statute is unconstitutional, the Court does not lose sight of the presumption of validity accorded to statutory acts of Congress. In *Fariñas v. The Executive Secretary*, the Court held that: Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. Every presumption should be indulged in favor of the constitutionality and the burden of proof is on the party alleging that there is a clear and unequivocal breach of the Constitution. To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because 'to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.' This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down. The petition is miserably wanting in this regard. LAMP would have the Court declare the unconstitutionality of the PDAF's enforcement based on the absence of express provision in the GAA allocating PDAF funds to the Members of Congress and the latter's encroachment on executive power in proposing and selecting projects to be funded by PDAF. Regrettably, these allegations lack substantiation. No convincing proof was presented showing that, indeed, there were direct releases of funds to the Members of Congress, who actually spend them according to their sole discretion. Not even a documentation of the disbursement of funds by the DBM in favor of the Members of Congress was presented by the petitioner to convince the Court to probe into the truth of their claims. Devoid 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 Court cannot indulge the

petitioner's request for rejection of a law which is outwardly legal and capable of lawful enforcement. x x x

x x x

Hence, absent a clear showing that an offense to the principle of separation of powers was committed, much less tolerated by both the Legislative and Executive, the Court is constrained to hold that a lawful and regular government budgeting and appropriation process ensued during the enactment and all throughout the implementation of the GAA of 2004. x x x 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. 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. 'The DBM lays down the guidelines for the disbursement of the fund. The Members of Congress are then requested by the President to recommend projects and programs which may be funded from the PDAF. The list submitted by the Members of Congress is endorsed by the Speaker of the House of Representatives to the DBM, which reviews and determines whether such list of projects submitted are consistent with the guidelines and the priorities set by the Executive.' This demonstrates the power given to the President to execute appropriation laws and therefore, to exercise the spending per se of the budget.

x x x

As applied to this case, the petition is seriously wanting in establishing that individual Members of Congress receive and thereafter spend funds out of PDAF. Although the possibility of this unscrupulous practice cannot be entirely discounted, surmises and conjectures are not sufficient bases for the Court to strike down the practice for being offensive to the Constitution. Moreover, the authority granted the Members of Congress to propose and select projects was already upheld in *Philconsa*. This remains as valid case law. The Court sees no need to review or reverse the standing

pronouncements in the said case. So long as there is no showing of a direct participation of legislators in the actual spending of the budget, the constitutional boundaries between the Executive and the Legislative in the budgetary process remain intact. While the Court is not unaware of the yoke caused by graft and corruption, the evils propagated by a piece of valid legislation cannot be used as a tool to overstep constitutional limits and arbitrarily annul acts of Congress. Again, “all presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted.”

NOTE: In the case of *Belgica vs. Ochoa* (G.R. No. 208566, November 19, 2013, En Banc), the SC declared as UNCONSTITUTIONAL the entire FY 2013 PDAF Article and 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.

BELGICA VS. OCHOA³
(G.R. No. 208566,⁴ November 19, 2013, En Banc)

- PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) ALLOWING POST-ENACTMENT PARTICIPATION OF LEGISLATOR BEYOND OVERSIGHT VIOLATES THE PRINCIPLE OF SEPARATION OF POWERS, THUS, UNCONSTITUTIONAL. - *The foregoing cardinal postulates were definitively enunciated in Abakada Guro Party List v. Purisima where the Court held that "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." 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.*

X X X

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. At its core, legislators – may it be through project lists, prior consultations or program menus – have been consistently accorded post-enactment authority to identify the projects they desire to be funded through various Congressional Pork Barrel allocations.

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.

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.

³ 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. 208566, November 19, 2013, En Banc.

⁴ Consolidated with the following cases: 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. 208493); and 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 (G.R. No. 209251).

- FISCAL YEAR (FY) 2013 PDAF WHICH ALLOWS LEGISLATORS TO DETERMINE SPECIFIC PROJECT, BENEFICIARY AND AMOUNT IS TANTAMOUNT TO AUTHORIZING INDIVIDUAL LEGISLATORS TO LEGISLATE, WHICH VIOLATES THE PRINCIPLE OF NON-DELEGABILITY OF LEGISLATIVE POWER, THUS, UNCONSTITUTIONAL. - *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 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.

- FY 2013 PDAF PROVISION ALLOWS INTERMEDIATE APPROPRIATIONS BY LEGISLATORS AFTER THE GENERAL APPROPRIATIONS ACT IS PASSED, WHICH IMPAIRS THE PRESIDENT'S POWER OF ITEM VETO; THE LUMP-SUM PDAF TREATED AS A MERE FUNDING SOURCE ALLOTTED FOR MULTIPLE PURPOSES OF SPENDING IS A PROHIBITED FORM OF LUMP-SUM APPROPRIATION, WHICH IMPAIRS THE PRESIDENT'S POWER OF ITEM VETO. - *Under the 2013 PDAF Article, the amount of P24.79 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 P24.79 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 above-characterized. In particular, the lump-sum amount of P24.79 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.

- 2013 PDAF ALLOWING LEGISLATORS TO INTERVENE IN PROJECT IMPLEMENTATION IMPAIRS PUBLIC ACCOUNTABILITY, THUS, UNCONSTITUTIONAL. - *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 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.

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.

- PDAF WHICH ALLOWS INDIVIDUAL LEGISLATORS TO INTERVENE IN PURELY LOCAL MATTERS SUBVERTS GENUINE LOCAL AUTONOMY, THUS, IS DEEMED UNCONSTITUTIONAL. *Philconsa described the 1994 CDF as an attempt "to make equal the unequal" and that "it 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. 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.*

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.

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." x x x 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:

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."

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.

Facts:

Petitioners questioned the constitutionality of the 2013 Priority Development Assistance Fund (PDAF) and all other similar Congressional Pork Barrel Laws alleging that they are violative of the principles of (a) separation of powers; (b) non-delegability of legislative power; (c) checks and balances; (d) accountability; (e) political dynasties; and (f) local autonomy.

In its decision, the Supreme Court (SC) defined the terms "Pork Barrel System," "Congressional Pork Barrel," and "Presidential Pork Barrel" as follows:

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.

As summarized by the SC:

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. 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" 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 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 "all 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 which explicitly states, among others, that "any 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 Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry x x x to approve realignment from one project/scope to another within the allotment received from this Fund, subject to among others (iii) the request is with the concurrence of the legislator concerned."

Issue/s:

Whether or not the 2013 PDAF and all other similar Congressional Pork Barrel Laws are unconstitutional for being violative of the principles of (a) separation of powers; (b) non-delegability of legislative power; (c) checks and balances; (d) accountability; (e) political dynasties; and (f) local autonomy.

Held:

The SC held, among others, as follows:

A. Separation of Powers.

1. 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, "each 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."
2. Broadly speaking, there is a violation of the separation of powers principle when one branch of government unduly encroaches on the domain of another.
3. 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*, 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.

4. 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."

5. The foregoing cardinal postulates were definitively enunciated in *Abakada Guro Party List v. Purisima* where the Court held that "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." 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*:

Any 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. 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.

6. 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. At its core, legislators – may it be through project lists, prior consultations or program menus – have been consistently accorded post-enactment authority to identify the projects they desire to be funded through various Congressional Pork Barrel allocations.
7. 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.
8. 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.
9. Towards this end, the Court must therefore abandon its ruling in *Philconsa v. Enriquez* 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.

B. Non-delegability of Legislative Power.

1. 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.
2. 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* 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.
3. 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.

C. Checks and Balances.

1. The fact that the three great powers of government are intended to be kept separate and distinct does not mean that they are 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.
2. 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 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.

3. 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.
4. 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 *Bengzon*, the US SC 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.

5. 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.
6. 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 2 5(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."

7. Under the 2013 PDAF Article, the amount of P24.79 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.
8. 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 P24.79 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.
9. 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 above-characterized. In particular, the lump-sum amount of P24.79 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.

D. Public Accountability.

1. 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, hence, the various mechanisms in the Constitution which are designed to exact accountability from public officers.

2. 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*, 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; or (b) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.

3. 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 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)

4. 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.

5. 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.

E. Local Autonomy.

1. 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, 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.

X X X X

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with 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*:

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. (*Emphases and underscoring supplied*)

2. 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. The Court agrees with petitioners.

Philconsa described the 1994 CDF as an attempt "to make equal the unequal" and that "it 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. 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.

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.

3. 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. 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:

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."

4. 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.

F. Conclusion

1. 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.
2. Insofar as it has allowed 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.
3. 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.

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.

DADOLE VS. COMMISSION ON AUDIT⁵
(G.R. No. 125350, December 3, 2002, En Banc)

- LOCAL BUDGET CIRCULAR (LBC) NO. 55 WENT BEYOND THE LAW IT SOUGHT TO IMPLEMENT, THUS, VOID. - *LBC 55 provides that the additional monthly allowances to be given by a local government unit should not exceed P1,000 in provinces and cities and P700 in municipalities. Section 458, par. (a)(1)(xi), of RA 7160, the law that supposedly serves as the legal basis of LBC 55, allows the grant of additional allowances to judges when the finances of the city government allow. The said provision does not authorize setting a definite maximum limit to the additional allowances granted to judges. Thus, we need not belabor the point that the finances of a city government may allow the grant of additional allowances higher than P1,000 if the revenues of the said city government exceed its annual expenditures. x x x*

Setting a uniform amount for the grant of additional allowances is an inappropriate way of enforcing the criterion found in Section 458, par. (a)(1)(xi), of RA 7160. The DBM overstepped its power of supervision over local government units by imposing a prohibition that did not correspond with the law it sought to implement. In other words, the prohibitory nature of the circular had no legal basis.

- LBC NO. 55 IS VOID FOR LACK OF PUBLICATION. - *Respondent COA claims that publication is not required for LBC 55 inasmuch as it is merely an interpretative regulation applicable to the personnel of an LGU. We disagree. In De Jesus vs. Commission on Audit where we dealt with the same issue, this Court declared void, for lack of publication, a DBM circular that disallowed payment of allowances and other additional compensation to government officials and employees.*
- FAILURE TO REVIEW AN APPROPRIATION ORDINANCE. - *Moreover, the DBM neither conducted a formal review nor ordered a disapproval of Mandaue City's appropriation ordinances, in accordance with the procedure outlined by Sections 326 and 327 of RA 7160 x x x.*

x x x

Within 90 days from receipt of the copies of the appropriation ordinance, the DBM should have taken positive action. Otherwise, such ordinance was deemed to have been properly reviewed and deemed to have taken effect. Inasmuch as, in the instant case, the DBM did not follow the appropriate procedure for reviewing the subject ordinance of Mandaue City and allowed the 90-day period to lapse, it can no longer question the legality of the provisions in the said ordinance granting additional allowances to judges stationed in the said city.

⁵ Hon. RTC Judges Mercedes G. Dadole (Executive Judge, Branch 28), Ulric R. Caete (Presiding Judge, Branch 25), Augustine R. Vestil (Presiding Judge, Branch 56), Hon. MTC Judges Temistocles M. Boholst (Presiding Judge, Branch 1), Vicente C. Fanilag (Judge Designate, Branch 2), and Wilfredo A. Dagatan (Presiding Judge, Branch 3), all of Mandaue City, Petitioners vs. Commission on Audit, Respondent; G.R. No. 125350, December 3, 2002, En Banc.

Facts:

In 1986, the Regional Trial Court (RTC) and Municipal Trial Court (MTC) judges of the City were granted monthly allowances of ₱1,260 each as authorized in the appropriation ordinance enacted by the Sangguniang Panlungsod. In 1991, the said allowance was increased ₱1,500 for each judge.

In 1994, the Department of Budget and Management (DBM) issued Local Budget Circular (LBC) No. 55 prescribing, among others, that the additional allowances to be provided by local government units (LGUs) to national government officials and employees assigned in their respective localities, are in the form of honorarium at rates not exceeding P1,000.00 in provinces and cities, and P700.00 in municipalities, and further subject to specified conditions.

Consequently, the Auditor of the City government issued notices of disallowance (NDs) to the judges concerned (the Petitioners) covering the allowances in excess of the amount authorized under LBC No. 55. Starting October, 1994, the additional monthly allowances of the Petitioner judges were reduced to ₱1,000 each and they were required to reimburse the amount they received in excess of ₱1,000 from April to September, 1994.

The judges sought remedies on the NDs through channels within COA, but ultimately, the COA upheld the NDs issued by the Auditor by recognizing the application of LBC No. 55. Among others, the COA posited that appropriation ordinances of LGUs are subject to the organizational, budgetary and compensation policies of budgetary authorities.

The Motion for Reconsideration filed by the judges was denied by COA. Hence, a Petition for Certiorari was filed before the Supreme Court (SC).

Issue/s:

1. Whether or not the City has legal basis in providing additional allowances and other benefits to the judges stationed in and assigned to the City.
2. Whether or not an administrative guideline, such as LBC No. 55, can render the legislative prerogative of the Sanggunian inoperative by prescribing a limit to its exercise.
3. Whether or not LBC No. 55 is valid and enforceable inasmuch as it was not published in accordance with law.

Held:

The SC declared that LBC No. 55 is null and void, and ruled, among others, as follows:

In *Pimentel vs. Aguirre*, we defined the supervisory power of the President and distinguished it from the power of control exercised by Congress. Thus:

This provision (Section 4 of Article X of the 1987 Philippine Constitution) has been interpreted to exclude the power of control. In *Mondano v. Silvosa*, the Court contrasted the President's power of supervision over local government officials with that of his power of control over executive officials of the national government. It was emphasized that the two terms -- supervision and control -- differed in meaning and extent. The Court distinguished them as follows:

"x x x In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter."

x x x

Under our present system of government, executive power is vested in the President. The members of the Cabinet and other executive officials are merely alter egos. As such, they are subject to the power of control of the President, at whose will and behest they can be removed from office; or their actions and decisions changed, suspended or reversed. In contrast, the heads of political subdivisions are elected by the people. Their sovereign powers emanate from the electorate, to whom they are directly accountable. By constitutional fiat, they are subject to the Presidents supervision only, not control, so long as their acts are exercised within the sphere of their legitimate powers. By the same token, the President may not withhold or alter any authority or power given them by the Constitution and the law.

Clearly then, the President can only interfere in the affairs and activities of a local government unit if he or she finds that the latter has acted contrary to law. This is the scope of the Presidents supervisory powers over local government units. Hence, the President or any of his or her *alter egos* cannot interfere in local affairs as long as the concerned local government unit acts within the parameters of the law and the Constitution. Any directive therefore by the President or any of his or her *alter egos* seeking to alter the wisdom of a law-conforming judgment on local affairs of a local government unit is a patent nullity because it violates the principle of local autonomy and separation of powers of the executive and legislative departments in governing municipal corporations.

Does LBC 55 go beyond the law it seeks to implement? Yes.

LBC 55 provides that the additional monthly allowances to be given by a local government unit should not exceed P1,000 in provinces and cities and P700 in municipalities. Section 458, par. (a)(1)(xi), of RA 7160, the law that supposedly serves as the legal basis of LBC 55, allows the grant of additional allowances to judges when the finances of the city government allow. The said provision does not authorize setting a definite maximum limit to the additional allowances granted to judges. Thus, we need not belabor the point that the finances of a city government may allow the grant of additional allowances higher than P1,000 if the revenues of the said city government exceed its annual expenditures. Thus, to illustrate, a city government with locally generated annual revenues of P40 million and expenditures of P35 million can afford to grant additional allowances of more than P1,000 each to, say, ten judges inasmuch as the finances of the city can afford it.

Setting a uniform amount for the grant of additional allowances is an inappropriate way of enforcing the criterion found in Section 458, par. (a)(1)(xi), of RA 7160. The DBM over-stepped its power of supervision over local government units by imposing a prohibition that did not correspond with the law it sought to implement. In other words, the prohibitory nature of the circular had no legal basis.

Furthermore, LBC 55 is void on account of its lack of publication, in violation of our ruling in *Tanada vs. Tuvera* where we held that:

xxx. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation.

Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of an administrative agency and the public, need not be published. Neither is publication required of the so-called letters of instruction issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.

Respondent COA claims that publication is not required for LBC 55 inasmuch as it is merely an interpretative regulation applicable to the personnel of an LGU. We disagree. In *De Jesus vs. Commission on Audit* where we dealt with the same issue, this Court declared void, for lack of publication, a DBM circular that disallowed payment of allowances and other additional compensation to government officials and employees. In refuting respondent COAs argument that said circular was merely an internal regulation, we ruled that:

On the need for publication of subject DBM-CCC No. 10, we rule in the affirmative. Following the doctrine enunciated in *Tanada v. Tuvera*, publication in the Official Gazette or in a newspaper of general circulation in the Philippines is required since **DBM-CCC No. 10 is in the nature of an administrative circular the purpose of which is to enforce or implement an existing law.** Stated differently, to be effective and enforceable, DBM-CCC No. 10 must go through the requisite publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

In the present case under scrutiny, it is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees, starting November 1, 1989, is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowance and additional compensation sorely needed to keep body and soul together. **At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in a newspaper of general circulation in the Philippines to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with**

democratic precepts and rudiments of fairness and transparency. (emphasis supplied)

x x x

We now resolve the second issue of whether the yearly appropriation ordinance enacted by Mandaue City providing for fixed allowances for judges contravenes any law and should therefore be struck down as null and void.

x x x

Respondent COA failed to prove that Mandaue City used the IRA to spend for the additional allowances of the judges. There was no evidence submitted by COA showing the breakdown of the expenses of the city government and the funds used for said expenses. All the COA presented were the amounts expended, the locally generated revenues, the deficit, the surplus and the IRA received each year. Aside from these items, no data or figures were presented to show that Mandaue City deducted the subject allowances from the IRA. In other words, just because Mandaue City's locally generated revenues were not enough to cover its expenditures, this did not mean that the additional allowances of petitioner judges were taken from the IRA and not from the city's own revenues.

Moreover, the DBM neither conducted a formal review nor ordered a disapproval of Mandaue City's appropriation ordinances, in accordance with the procedure outlined by Sections 326 and 327 of RA 7160 x x x.

x x x

Within 90 days from receipt of the copies of the appropriation ordinance, the DBM should have taken positive action. Otherwise, such ordinance was deemed to have been properly reviewed and deemed to have taken effect. Inasmuch as, in the instant case, the DBM did not follow the appropriate procedure for reviewing the subject ordinance of Mandaue City and allowed the 90-day period to lapse, it can no longer question the legality of the provisions in the said ordinance granting additional allowances to judges stationed in the said city.

VILLAFUERTE VS. ROBREDO⁶
(G.R. No. 195390, December 10, 2014, En Banc)

- DILG ISSUANCES REITERATING EXISTING PROVISIONS OF LAW ARE VALID EXERCISE OF POWER OF SUPERVISION AS ALTER EGO OF THE PRESIDENT. - *A reading of MC No. 2010-138 shows that it is a mere reiteration of an existing provision in the LGC. It was plainly intended to remind LGUs to faithfully observe the directive stated in Section 287 of the LGC to utilize the 20% portion of the IRA for development projects. It was, at best, an advisory to LGUs to examine themselves if they have been complying with the law. It must be recalled that the assailed circular was issued in response to the report of the COA that a substantial portion of the 20% development fund of some LGUs was not actually utilized for development projects but was diverted to expenses more properly categorized as MOOE, in violation of Section 287 of the LGC. x x x*

x x x

The same clarification may be said of the enumeration of expenses in MC No. 2010-138. To begin with, it is erroneous to call them exclusions because such a term signifies compulsory disallowance of a particular item or activity. This is not the contemplation of the enumeration. Again, it is helpful to retrace the very reason for the issuance of the assailed circular for a better understanding. The petitioners should be reminded that the issuance of MC No. 2010-138 was brought about by the report of the COA that the development fund was not being utilized accordingly. To curb the alleged misuse of the development fund, the respondent deemed it proper to remind LGUs of the nature and purpose of the provision for the IRA through MC No. 2010-138. To illustrate his point, he included the contested enumeration of the items for which the development fund must generally not be used. The enumerated items comprised the expenses which the COA perceived to have been improperly earmarked or charged against the development fund based on the audit it conducted.

x x x

Significantly, the issuance itself did not provide for sanctions. It did not particularly establish a new set of acts or omissions which are deemed violations and provide the corresponding penalties therefor. It simply stated a reminder to LGUs that there are existing rules to consider in the disbursement of the 20% development fund and that non-compliance therewith may render them liable to sanctions which are provided in the LGC and other applicable laws. x x x

As in MC No. 2010-138, the Court finds nothing in two other questioned issuances of the respondent, i.e., MC Nos. 2010-83 and 2011-08, that can be construed as infringing on the fiscal autonomy of LGUs. The petitioners claim that the requirement to post other documents in the mentioned issuances went beyond the letter and spirit of Section 352 of the LGC and R.A. No. 9184, otherwise known as the Government Procurement Reform Act, by requiring that budgets, expenditures, contracts and loans, and procurement plans of LGUs be publicly posted as well.

x x x

In the instant case, the assailed issuances were issued pursuant to the policy of promoting good governance through transparency, accountability and participation. The action of the respondent is certainly within the constitutional bounds of his power as alter ego of the President.

⁶ Gov. Luis Raymund F. Villafuerte, Jr., and the Province of Camarines Sur, Petitioners, vs. Hon. Jesse M. Robredo, in His Capacity as Secretary of the Department of the Interior and Local Government, Respondent; G.R. No. 195390, December 10, 2014, En Banc.

Facts:

Former Governor Luis Raymund F. Villafuerte, Jr. and the Province of Camarines Sur sought to annul and set aside particular issuances of the Department of the Interior and Local Government (DILG) as issued by then Secretary Jesse M. Robredo, on the ground of unconstitutionality and for being issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The questioned issuances are as follows:

1. Memorandum Circular (MC) No. 2010-83 dated August 31, 2010 re full disclosure of local budget and finances, and bids and public offerings;
2. MC No. 2010-138 dated December 2, 2010 re use of the 20% component of the annual internal revenue allotment (IRA) shares; and
3. MC No. 2011-08 dated January 13, 2011 re strict adherence to Section 90 of Republic Act (RA) No. 10147 or the Fiscal Year (FY) 2011 General Appropriations Act (GAA)

In 1995, an audit of the utilization of the Internal Revenue Allotment (IRA) by the local government units (LGUs) for calendar years 1993-1994 was conducted by the COA and the same yielded that “a substantial portion of the 20% development fund of some LGUs was not actually utilized for development projects but was diverted to expenses properly chargeable against the Maintenance and Other Operating Expenses (MOOE) in stark violation of Section 287 of R.A. No. 7160, otherwise known as the Local Government Code of 1991 (LGC).”

Consequently, the DILG issued MC No. 95-216 prescribing the policies and guidelines on the utilization of the 20% development fund and reminded the LGUs of the “strict mandate to ensure that public funds, like the 20% development fund, ‘shall be spent judiciously and only for the very purpose or purposes for which such funds are intended.’”

In 2005, then DILG Secretary Angelo T. Reyes and Department of Budget and Management Secretary Romulo L. Neri issued Joint MC No. 1, series of 2005, prescribing the guidelines on the appropriation and utilization of the 20% of the IRA for development projects, aimed at enhancing the accountability of the LGUs in undertaking development projects. The MC provided that the 20% development fund should be utilized for social development, economic development and environmental management.

On August 31, 2010, Respondent DILG Secretary Robredo issued MC No. 2010-83 entitled "Full Disclosure of Local Budget and Finances, and Bids and Public Offerings," which aims to promote good governance through enhanced transparency and accountability of LGUs. The legal and administrative authority cited by the MC are

Section 352 of the LGC; RA No. 9184, known as the Government Procurement Reform Act; and the President's directive in his first State of the Nation Address for "all government agencies and entities to bring to an end luxurious spending and misappropriation of public funds and to expunge mendacious and erroneous projects, and adhere to the zero-based approach budgetary principle." Non-compliance with the MC shall be dealt with in accordance with pertinent laws, rules and regulations.

On December 2, 2010, Secretary Robredo issued DILG MC No. 2010-138 reiterating that the 20% development fund shall be utilized for desirable social, economic and environmental outcomes essential to the attainment of the constitutional objective of a quality of life for all. It also enumerated the expenses that may not be charged against said fund.

DILG MC No. 2011-08 was thereafter issued to require strict adherence to Section 90 of RA No. 10147 (FY 2011 GAA). The MC was anchored on Section 90 of the FY 2011 GAA which in turn cited Sections 17 (g), 287, 288, 352 and 354 of the LGC, and DILG MC No. 2010-83. It also provided that non-compliance shall be dealt with in accordance with pertinent laws, rules and regulations, particularly underscoring Section 60 of the LGC providing for the grounds for disciplinary actions.

Issue/s:

Whether or not the questioned MCs are violative of the principles of local autonomy and fiscal autonomy guaranteed under the 1987 Constitution and the LGC.

Held:

The Supreme Court (SC) dismissed the petition for lack of merit. In summary, the Court ruled, among others, as follows:

The assailed memorandum circulars do not transgress the local and fiscal autonomy granted to LGUs.

The petitioners argue that the assailed issuances of the respondent interfere with the local and fiscal autonomy of LGUs embodied in the Constitution and the LGC. In particular, they claim that MC No. 2010-138 transgressed these constitutionally-protected liberties when it restricted the meaning of "development" and enumerated activities which the local government must finance from the 20% development fund component of the IRA and provided sanctions for local authorities who shall use the said component of the fund for the excluded purposes stated therein. They

argue that the respondent cannot substitute his own discretion with that of the local legislative council in enacting its annual budget and specifying the development projects that the 20% component of its IRA should fund.

The argument fails to persuade.

The Constitution has expressly adopted the policy of ensuring the autonomy of LGUs. To highlight its significance, the entire Article X of the Constitution was devoted to laying down the bedrock upon which this policy is anchored.

x x x

A reading of MC No. 2010-138 shows that it is a mere reiteration of an existing provision in the LGC. It was plainly intended to remind LGUs to faithfully observe the directive stated in Section 287 of the LGC to utilize the 20% portion of the IRA for development projects. It was, at best, an advisory to LGUs to examine themselves if they have been complying with the law. It must be recalled that the assailed circular was issued in response to the report of the COA that a substantial portion of the 20% development fund of some LGUs was not actually utilized for development projects but was diverted to expenses more properly categorized as MOOE, in violation of Section 287 of the LGC. x x x

Section 287 of the Local Government Code mandates every local government to appropriate in its annual budget no less than 20% of its annual revenue allotment for development projects. In common understanding, development means the realization of desirable social, economic and environmental outcomes essential in the attainment of the constitutional objective of a desired quality of life for all. (Underscoring in the original)

That the term development was characterized as the "realization of desirable social, economic and environmental outcome" does not operate as a restriction of the term so as to exclude some other activities that may bring about the same result. The definition was a plain characterization of the concept of development as it is commonly understood. The statement of a general definition was only necessary to illustrate among LGUs the nature of expenses that are properly chargeable against the development fund component of the IRA. It is expected to guide them and aid them in rethinking their ways so that they may be able to rectify lapses in judgment, should there be any, or it may simply stand as a reaffirmation of an already proper administration of expenses.

The same clarification may be said of the enumeration of expenses in MC No. 2010-138. To begin with, it is erroneous to call them exclusions because such a term signifies compulsory disallowance of a particular item or activity. This is not the contemplation of the enumeration. Again, it is helpful to retrace the very reason for the issuance of the assailed circular for a better understanding. The petitioners should be reminded that the issuance of MC No. 2010-138 was brought about by the report of the COA that the development fund was not being utilized accordingly. To curb the alleged misuse of the development fund, the respondent deemed it proper to remind LGUs of the nature and purpose of the provision for the IRA through MC No. 2010-138. To illustrate his point, he included the contested enumeration of the items for which the development fund must generally not be used. The enumerated items comprised the expenses which the COA perceived to have been improperly earmarked or charged against the development fund based on the audit it conducted.

Contrary to the petitioners' posturing, however, the enumeration was not meant to restrict the discretion of the LGUs in the utilization of their funds. It was meant to enlighten LGUs as to the nature of the development fund by delineating it from other types of expenses. It was incorporated in the assailed circular in order to guide them in the proper disposition of the IRA and avert further misuse of the fund by citing current practices which seemed to be incompatible with the purpose of the fund. Even then, LGUs remain at liberty to map out their respective development plans solely on the basis of their own judgment and utilize their IRAs accordingly, with the only restriction that 20% thereof be expended for development projects. They may even spend their IRAs for some of the enumerated items should they partake of indirect costs of undertaking development projects. In such case, however, the concerned LGU must ascertain that applicable rules and regulations on budgetary allocation have been observed lest it be inviting an administrative probe.

The petitioners likewise misread the issuance by claiming that the provision of sanctions therein is a clear indication of the President's interference in the fiscal autonomy of LGUs. The relevant portion of the assailed issuance reads, thus:

All local authorities are further reminded that utilizing the 20% component of the Internal Revenue Allotment, whether willfully or through negligence, for any purpose beyond those expressly prescribed by law or public policy shall be subject to the sanctions provided under the Local Government Code and under such other applicable laws.

Significantly, the issuance itself did not provide for sanctions. It did not particularly establish a new set of acts or omissions which are deemed violations and provide the corresponding penalties therefor. It simply stated a reminder to LGUs that there are existing rules to consider in the disbursement of the 20% development fund and that non-compliance therewith may render them liable to sanctions which are provided in the LGC and other applicable laws. Nonetheless, this warning for possible imposition of sanctions did not alter the advisory nature of the issuance. At any rate, LGUs must be reminded that the local autonomy granted to them does not completely sever them from the national government or turn them into impenetrable states. Autonomy does not make local governments sovereign within the state. x x x

x x x

Thus, notwithstanding the local fiscal autonomy being enjoyed by LGUs, they are still under the supervision of the President and may be held accountable for malfeasance or violations of existing laws. "Supervision is not incompatible with discipline. And the power to discipline and ensure that the laws be faithfully executed must be construed to authorize the President to order an investigation of the act or conduct of local officials when in his opinion the good of the public service so requires."

x x x

As in MC No. 2010-138, the Court finds nothing in two other questioned issuances of the respondent, i.e., MC Nos. 2010-83 and 2011-08, that can be construed as infringing on the fiscal autonomy of LGUs. The petitioners claim that the requirement to post other documents in the mentioned issuances went beyond the letter and spirit of Section 352 of the LGC and R.A. No. 9184, otherwise known as the Government Procurement Reform Act, by requiring that budgets, expenditures, contracts and loans, and procurement plans of LGUs be publicly posted as well.

x x x

In the instant case, the assailed issuances were issued pursuant to the policy of promoting good governance through transparency, accountability and participation. The action of the respondent is certainly within the constitutional bounds of his power as alter ego of the President.

PIMENTEL VS. AGUIRRE⁷
(G.R. No. 132988, July 19, 2000, En Banc)

- WHEN THE PRESIDENT MAY ORDER THE ADJUSTMENT IN THE INTERNAL REVENUE ALLOTMENT (IRA); PRESIDENT HAS NO AUTHORITY TO UNILATERALLY ADJUST THE IRA. - *There are therefore several requisites before the President may interfere in local fiscal matters: (1) an unmanaged public sector deficit of the national government; (2) consultations with the presiding officers of the Senate and the House of Representatives and the presidents of the various local leagues; and (3) the corresponding recommendation of the secretaries of the Department of Finance, Interior and Local Government, and Budget and Management. Furthermore, [in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year].*

Petitioner points out that respondents failed to comply with these requisites before the issuance and the implementation of AO 372. At the very least, they did not even try to show that the national government was suffering from an unmanageable public sector deficit. Neither did they claim having conducted consultations with the different leagues of local governments. Without these requisites, the President has no authority to adjust, much less to reduce, unilaterally the LGU's internal revenue allotment.

x x x

Section 4 of AO 372, however, orders the withholding, effective January 1, 1998, of 10 percent of the LGUs' IRA "pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation" in the country. Such withholding clearly contravenes the Constitution and the law. Although temporary, it is equivalent to a holdback, which means "something held back or withheld, often temporarily." Hence, the "temporary" nature of the retention by the national government does not matter. Any retention is prohibited.

⁷ Aquilino Q. Pimentel, Jr., Petitioner, vs. Hon. Alexander Aguirre in His Capacity as Executive Secretary, Hon. Emilia Boncodin in Her Capacity as Secretary of the Department of Budget and Management, Respondents. Roberto Pagdanganan, Intervenor; G.R. No. 132988, July 19, 2000, En Banc.

- PRESIDENT'S ORDER TO REDUCE LOCAL EXPENDITURES, IF MERELY ADVISORY AND PROVIDES NO LEGAL SANCTION, IS NOT VIOLATIVE OF LOCAL FISCAL AUTONOMY. - *While the wordings of Section 1 of AO 372 have a rather commanding tone, and while we agree with petitioner that the requirements of Section 284 of the Local Government Code have not been satisfied, we are prepared to accept the solicitor general's assurance that the directive to "identify and implement measures x x x that will reduce total expenditures x x x by at least 25% of authorized regular appropriation" is merely advisory in character, and does not constitute a mandatory or binding order that interferes with local autonomy. The language used, while authoritative, does not amount to a command that emanates from a boss to a subaltern.*

Rather, the provision is merely an advisory to prevail upon local executives to recognize the need for fiscal restraint in a period of economic difficulty. Indeed, all concerned would do well to heed the President's call to unity, solidarity and teamwork to help alleviate the crisis. It is understood, however, that no legal sanction may be imposed upon LGUs and their officials who do not follow such advice. It is in this light that we sustain the solicitor general's contention in regard to Section 1.

Facts:

Then President Fidel V. Ramos issued Administrative Order (AO) No. 372 dated December 27, 1997, entitled, "Adoption of Economy Measures In Government for FY 1998".

The AO cited that "the current economic difficulties brought about by the peso depreciation requires continued prudence in government fiscal management to maintain economic stability and sustain the country's growth momentum", thus, "it is imperative that all government agencies adopt cash management measures to match expenditures with available resources".

Accordingly, the AO ordered and directed, among others, as follows:

SECTION 1. All government departments and agencies, including state universities and colleges, government-owned and controlled corporations and **local governments units will identify and implement measures in FY 1998 that will reduce total expenditures for the year by at least 25% of authorized regular appropriations for non-personal services items**, along the following suggested areas: x x x

X X X

SECTION 4. Pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation, **the amount equivalent to 10% of the internal revenue allotment to local government units shall be withheld.** (emphasis supplied)

Eventually on December 10, 1998, President Joseph E. Estrada issued AO No. 43 which amended Section 4 of AO No. 372 by reducing from ten percent (10%) to five percent (5%) the amount of internal revenue allotment (IRA) to be withheld from the local government units (LGUs).

Consequently, Pimentel filed a Petition for Certiorari and Prohibition before the Supreme Court (SC) seeking to (1) annul Section 1 of AO No. 372 requiring LGUs to reduce their expenditures by 25 percent of their authorized regular appropriations for non-personal services; and (2) enjoin the respondents from implementing Section 4 of the same AO which withholds a portion of the IRA of LGUs. Governor Roberto Pagdanganan of Bulacan filed a Motion for Intervention/Motion to Admit Petition for Intervention, joining Pimentel in the reliefs sought. Governor Pagdanganan was then also the national president of the League of Provinces of the Philippines and chairman of the League of Leagues of Local Governments.

Pimentel contended that in issuing AO No. 372, the President was in effect exercising the power of control over LGUs, while the Constitution merely vests upon the President the power of general supervision over LGUs consistent with the principle of local autonomy.

He further argued that the directive to withhold 10% of the IRA violates Section 286 of the Local Government Code of 1991, and Section 6, Article X of the 1987 Constitution which requires the automatic release of the shares of the LGUs in the national internal revenue.

On behalf of the respondents, the Solicitor General contended that AO No. 372 constituted as an exercise of the President's power of supervision over LGUs in order to alleviate the "economic difficulties brought about by the peso devaluation." It was averred that the AO does not violate local autonomy as it merely directed LGUs to identify measures that will reduce their total expenditures for non-personal services (non-PS) by at least 25%. Further, the withholding of 10% of the IRA is "temporary in nature pending the assessment and evaluation by the Development Coordination Committee of the emerging fiscal situation," thus, it does not violate the statutory prohibition on the imposition of any lien or holdback on the revenue shares of LGUs.

Issue/s:

Whether or not Section 1 of AO No. 372 directing the LGUs to reduce their expenditures by 25% of their non-PS appropriations, and Section 4 of the same AO ordering the withholding of 10% of the IRA of LGUs for 2018 are valid exercises of the President's power of general supervision over local governments.

Held:

The SC granted the petition and ordered the respondents and their successors to be permanently prohibited from implementing AO Nos. 372 and 43 insofar as LGUs are concerned.

The SC ruled, among others, as follows:

The Constitution vests the President with the power of supervision, not control, over local government units (LGUs). Such power enables him to see to it that LGUs and their officials execute their tasks in accordance with law. While he may issue advisories and seek their cooperation in solving economic difficulties, he cannot prevent them from performing their tasks and using available resources to achieve their goals. He may not withhold or alter any authority or power given them by the law. Thus, the withholding of a portion of internal revenue allotments legally due them cannot be directed by administrative fiat.

X X X

Scope of President's Power of Supervision Over LGUs

Section 4 of Article X of the Constitution confines the President's power over local governments to one of general supervision x x x:

X X X

This provision has been interpreted to exclude the power of control. In *Mondano v. Silvosa*, the Court contrasted the President's power of supervision over local government officials with that of his power of control over executive officials of the national government. It was emphasized that the two terms -- supervision and control -- differed in meaning and extent. The Court distinguished them as follows:

"x x x In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill

them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter."

In *Taule v. Santos*, we further stated that the Chief Executive wielded no more authority than that of checking whether local governments or their officials were performing their duties as provided by the fundamental law and by statutes. He cannot interfere with local governments, so long as they act within the scope of their authority. "Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body," we said.

In a more recent case, *Drilon v. Lim*, the difference between control and supervision was further delineated. Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.

xxx

The Nature of AO 372

Consistent with the foregoing jurisprudential precepts, let us now look into the nature of AO 372. As its preambular clauses declare, the Order was a "cash management measure" adopted by the government "to match expenditures with available resources," which were presumably depleted at the time due to "economic difficulties brought about by the peso depreciation." Because of a looming financial crisis, the President deemed it necessary to "direct all government agencies, state universities and colleges, government-owned and controlled corporations as well as local governments to reduce their total expenditures by at least 25 percent along suggested areas mentioned in AO 372.

Under existing law, local government units, in addition to having administrative autonomy in the exercise of their functions, enjoy fiscal autonomy as well. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not. Hence, the necessity of a balancing of viewpoints and the harmonization of proposals from both local and national officials, who in any case are partners in the attainment of national goals.

Local fiscal autonomy does not however rule out any manner of national government intervention by way of supervision, in order to ensure that local programs, fiscal and otherwise, are consistent with national goals. Significantly, the President, by constitutional fiat, is the head of the economic and planning agency of the government, primarily responsible for formulating and implementing continuing, coordinated and integrated social and economic policies, plans and programs for the entire country. However, under the Constitution, the formulation and the implementation of such policies and programs are subject to "consultations with the appropriate public agencies, various private sectors, and local government units." The President cannot do so unilaterally.

Consequently, the Local Government Code provides:

"x x x [I]n the event the national government incurs an unmanaged public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of [the] Secretary of Finance, Secretary of the Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the liga, to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year x x x."

There are therefore several requisites before the President may interfere in local fiscal matters: (1) an unmanaged public sector deficit of the national government; (2) consultations with the presiding officers of the Senate and the House of Representatives *and the presidents of the various local leagues*; and (3) the corresponding recommendation of the secretaries of the Department of Finance, Interior and Local Government, and Budget and Management. Furthermore, [in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year].

Petitioner points out that respondents failed to comply with these requisites before the issuance and the implementation of AO 372. At the very least, they did not even try to show that the national government was suffering from an unmanageable public sector deficit. Neither did they claim having conducted consultations with the different leagues of local governments. Without these requisites, the President has no authority to adjust, much less to reduce, unilaterally the LGU's internal revenue allotment.

The solicitor general insists, however, that AO 372 is merely directory and has been issued by the President consistent with his power of supervision over local governments. It is intended only to *advise* all government agencies and instrumentalities to undertake cost-reduction measures that will help maintain economic stability in the country, which is facing economic difficulties. Besides, it does not contain any sanction in case of noncompliance. Being merely an advisory, therefore, Section 1 of AO 372 is well within the powers of the President. Since it is not a mandatory imposition, the directive cannot be characterized as an exercise of the power of control.

While the wordings of Section 1 of AO 372 have a rather commanding tone, and while we agree with petitioner that the requirements of Section 284 of the Local Government Code have not been satisfied, we are prepared to accept the solicitor general's assurance that the directive to "identify and implement measures x x x that will reduce total expenditures x x x by at least 25% of authorized regular appropriation" is merely advisory in character, and does not constitute a mandatory or binding order that interferes with local autonomy. The language used, while authoritative, does not amount to a command that emanates from a boss to a subaltern.

Rather, the provision is merely an advisory to prevail upon local executives to recognize the need for fiscal restraint in a period of economic difficulty. Indeed, all concerned would do well to heed the President's call to unity, solidarity and teamwork to help alleviate the crisis. It is understood, however, that no legal sanction may be imposed upon LGUs and their officials who do not follow such advice. It is in this light that we sustain the solicitor general's contention in regard to Section 1.

Withholding a Part of LGUs' IRA

Section 4 of AO 372 cannot, however, be upheld. A basic feature of local fiscal autonomy is the *automatic* release of the shares of LGUs in the national internal revenue. This is mandated by no less than the Constitution. The Local Government Code specifies further that the release shall be made directly to the LGU concerned within five (5) days after every quarter of the year and "*shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.*" As a rule, the term "shall" is a word of command that must be given a compulsory meaning. The provision is, therefore, imperative.

Section 4 of AO 372, however, orders the withholding, effective January 1, 1998, of 10 percent of the LGUs' IRA "pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation" in the country. Such withholding clearly contravenes the Constitution and the law. Although temporary, it is equivalent to a holdback, which means "something held back or withheld, often temporarily." Hence, the "temporary" nature of the retention by the national government does not matter. Any retention is prohibited.

In sum, while Section 1 of AO 372 may be upheld as an advisory effected in times of national crisis, Section 4 thereof has no color of validity at all. The latter provision effectively encroaches on the fiscal autonomy of local governments. Concededly, the President was well-intentioned in issuing his Order to withhold the LGUs IRA, but the rule of law requires that even the best intentions must be carried out within the parameters of the Constitution and the law. Verily, laudable purposes must be carried out by legal methods. (emphasis supplied)

PROVINCE OF BATANGAS VS. ROMULO⁸
(G.R. No. 152774, May 27, 2004, En Banc)

- AUTOMATIC RELEASE OF JUST SHARE OF LOCAL GOVERNMENT UNITS (LGUs) IN THE NATIONAL TAXES. - *To the Courts mind, the entire process involving the distribution and release of the LGSEF is constitutionally impermissible. The LGSEF is part of the IRA or just share of the LGUs in the national taxes. To subject its distribution and release to the vagaries of the implementing rules and regulations, including the guidelines and mechanisms unilaterally prescribed by the Oversight Committee from time to time, as sanctioned by the assailed provisos in the GAAs of 1999, 2000 and 2001 and the OCD resolutions, makes the release not automatic, a flagrant violation of the constitutional and statutory mandate that the just share of the LGUs shall be automatically released to them. The LGUs are, thus, placed at the mercy of the Oversight Committee.*
- WITHHOLDING OF A PORTION OF THE INTERNAL REVENUE ALLOTMENT ENCROACHES ON FISCAL AUTONOMY OF LGUs. - *In like manner, the assailed provisos in the GAAs of 1999, 2000 and 2001, and the OCD resolutions constitute a withholding of a portion of the IRA. They put on hold the distribution and release of the five billion pesos LGSEF and subject the same to the implementing rules and regulations, including the guidelines and mechanisms prescribed by the Oversight Committee from time to time. Like Section 4 of A.O. 372, the assailed provisos in the GAAs of 1999, 2000 and 2001 and the OCD resolutions effectively encroach on the fiscal autonomy enjoyed by the LGUs and must be struck down. They cannot, therefore, be upheld.*
- AMENDMENT OF THE PERCENTAGE SHARING OF THE INTERNAL REVENUE ALLOTMENT REQUIRES AMENDMENT OF THE LOCAL GOVERNMENT CODE OF 1991. - *Increasing or decreasing the IRA of the LGUs or modifying their percentage sharing therein, which are fixed in the Local Government Code of 1991, are matters of general and substantive law. To permit Congress to undertake these amendments through the GAAs, as the respondents contend, would be to give Congress the unbridled authority to unduly infringe the fiscal autonomy of the LGUs, and thus put the same in jeopardy every year. This, the Court cannot sanction.*

⁸ The Province of Batangas, Represented by its Governor, Hermilando I. Mandanas, Petitioner, vs. Hon. Alberto G. Romulo, Executive Secretary and Chairman of the Oversight Committee on Devolution; Hon. Emilia Boncodin, Secretary, Department of Budget and Management; Hon. Jose D. Lina, Jr., Secretary, Department of [the] Interior and Local Government, Respondents; G.R. No. 152774, May 27, 2004, En Banc.

Facts:

The Fiscal Years (FYs) 1999, 2000 and 2001 General Appropriations Acts (GAAs) each earmarked P5 Billion of the Internal Revenue Allotment (IRA) for the Local Government Service Equalization Fund (LGSEF) intended for the funding requirements of projects and activities arising from the full and efficient implementation of devolved functions and services of local government units (LGUs) pursuant to Republic Act (RA) No. 7160, the Local Government Code of 1991 (LGC). The corresponding Special Provisions in the said GAAs prescribed that the amounts to be released to the LGUs from the LGSEF shall be subject to the implementing rules and regulations (IRR), including the mechanisms and guidelines for the equitable allocation and distribution thereof, that may be prescribed by the Oversight Committee on Devolution (OCD) constituted pursuant to Section 533 (b), Title III, Book IV of the LGC. Accordingly, the OCD issued Resolutions adopting the allocation scheme, conditions for release, and other guidelines for the LGSEF as appropriated under the FYs 1999, 2000 and 2001 GAAs.

Consequently, the Province of Batangas, represented by its Governor, Hermilando I. Mandanas, filed a petition for *certiorari*, prohibition and mandamus seeking the declaration of the provisions in the FYs 1999, 2000 and 2001 GAAs pertaining to the earmarking of a portion of the IRA for the LGSEF, as well as the corresponding OCD Resolutions, as unconstitutional and void for being violative of the Constitution and the LGC.

The petitioner invoked Section 6, Article X of the Constitution which mandates that the just share of the LGUs shall be automatically released to them. It was also contended that Sections 18 and 286 of the LGC enjoin that the just share of the LGUs shall be automatically and directly released to them without need of further action.

The petitioner argued that subjecting the distribution and release of the P5 Billion portion of the IRA, classified as the LGSEF, to compliance by the LGUs with the IRR, mechanisms and guidelines prescribed by the OCD is in contravention of the explicit directive of the Constitution that the LGUs share in the national taxes shall be automatically released to them.

Further, petitioner averred that the authority vested upon the OCD to determine the distribution and release of the LGSEF, which is a part of the IRA of the LGUs, is an anathema to the principle of local autonomy as embodied in the Constitution and the LGC.

Likewise, the OCD Resolutions were challenged as improper amendment of Section 285 of the LGC on the sharing of the IRA among the LGUs. Said Section allocates the IRA as follows: Provinces 23%; Cities 23%; Municipalities 34%; and Barangays 20%. As alleged, this formula has been improperly amended or modified by the assailed OCD Resolutions as they provided a different sharing scheme for the P5 Billion portion of the IRA allotted for the LGSEF. This was cited as an illegal amendment of a substantive law by the executive branch.

On the other hand, the respondents contended that the assailed provisos in the FYs 1999, 2000 and 2001 GAAs, as well as the OCD Resolutions, are not constitutionally infirm.

The respondents argued that Section 6, Article X of the Constitution does not specify that the just share of the LGUs shall be determined solely by the LGC, and that the phrase “as determined by law” in the constitutional provision means that there is no limitation on the power of Congress to determine what is the just share of the LGUs in the national taxes. Otherwise stated, Congress is the arbiter of what the just share of the LGUs in the national taxes should be.

The respondents further averred that Section 285 of the LGC, which prescribes the sharing of the IRA among the LGUs, was not intended to be a fixed determination of their just share in the national taxes. Respondents maintained that Congress may enact other laws, including appropriations laws, such as the FYs 1999, 2000 and 2001 GAAs, providing for a different sharing scheme, and this is not prohibited by the Constitution.

Issue/s:

Whether or not the earmarking of a portion of the IRA for the LGSEF in the FYs 1999, 2000 and 2001 GAAs, including the corresponding OCD Resolutions, is unconstitutional and void for being violative of the Constitution and the LGC.

Held:

At the outset, the Supreme Court (SC) decided to resolve the case despite the contention of the respondents that the case has already been rendered moot and academic since it has been overtaken by supervening events considering that the IRA, including the LGSEF, for 1999, 2000 and 2001, had already been released, and that the government is already operating under a new appropriations law.

The SC pronounced that there is still a compelling reason to resolve the substantive issue raised in the petition, to wit:

Supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. Even in cases where supervening events had made the cases moot, the Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar and public.

Another reason justifying the resolution by this Court of the substantive issue now before it is the rule that courts will decide a question otherwise moot and academic if it is capable of repetition, yet evading review. For the GAAs in the coming years may contain provisos similar to those now being sought to be invalidated, and yet, the question may not be decided before another GAA is enacted. It, thus, behooves this Court to make a categorical ruling on the substantive issue now.

As to the substantive issue, the SC declared that the assailed provisos in the FYs 1999, 2000 and 2001 GAAs, and the questioned OCD Resolutions, are unconstitutional. The SC ruled, among others, as follows:

The assailed provisos in the GAAs of 1999, 2000 and 2001 and the OCD resolutions violate the constitutional precept on local autonomy

Section 6, Article X of the Constitution reads:

Sec. 6. Local government units shall have a **just share**, as **determined by law**, in the national taxes which shall be **automatically** released to them.

When parsed, it would be readily seen that this provision mandates that (1) the LGUs shall have a just share in the national taxes; (2) the just share shall be determined by law; and (3) the just share shall be automatically released to the LGUs.

The Local Government Code of 1991, among its salient provisions, underscores the automatic release of the LGUs just share in this wise:

Sec. 18. *Power to Generate and Apply Resources.* Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own

sources of revenue and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of further action;

...

Sec. 286. Automatic Release of Shares. (a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.

(b) Nothing in this Chapter shall be understood to diminish the share of local government units under existing laws.

Webster's Third New International Dictionary defines automatic as involuntary either wholly or to a major extent so that any activity of the will is largely negligible; of a reflex nature; without volition; mechanical; like or suggestive of an automaton. Further, the word automatically is defined as in an automatic manner: without thought or conscious intention. Being automatic, thus, connotes something mechanical, spontaneous and perfunctory. As such, the LGUs are not required to perform any act to receive the just share accruing to them from the national coffers. As emphasized by the Local Government Code of 1991, the just share of the LGUs shall be released to them without need of further action. x x x

x x x

To the Courts mind, the entire process involving the distribution and release of the LGSEF is constitutionally impermissible. The LGSEF is part of the IRA or just share of the LGUs in the national taxes. To subject its distribution and release to the vagaries of the implementing rules and regulations, including the guidelines and mechanisms unilaterally prescribed by the Oversight Committee from time to time, as sanctioned by the assailed provisos in the GAAs of 1999, 2000 and 2001 and the OCD resolutions, makes the release **not** automatic, a flagrant violation of the constitutional and statutory mandate that the just share of the LGUs shall be automatically released to them. The LGUs are, thus, placed at the mercy of the Oversight Committee.

Where the law, the Constitution in this case, is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed. Moreover, as correctly posited by the petitioner, the use of the word shall connotes a mandatory order. Its use in a statute denotes an imperative obligation and is inconsistent with the idea of discretion.

Indeed, the Oversight Committee exercising discretion, even control, over the distribution and release of a portion of the IRA, the LGSEF, is an anathema to and subversive of the principle of local autonomy as embodied in the Constitution. Moreover, it finds no statutory basis at all as the Oversight Committee was created merely to formulate the rules and regulations for the efficient and effective implementation of the Local Government Code of 1991 to ensure compliance with the principles of local autonomy as defined under the Constitution. In fact, its creation was placed under the title of Transitory Provisions, signifying its *ad hoc* character. According to Senator Aquilino Q. Pimentel, the principal author and sponsor of the bill that eventually became Rep. Act No. 7160, the Committees work was supposed to be done a year from the approval of the Code, or on October 10, 1992. The Oversight Committees authority is undoubtedly limited to the implementation of the Local Government Code of 1991, not to supplant or subvert the same. Neither can it exercise control over the IRA, or even a portion thereof, of the LGUs.

X X X

In like manner, the assailed provisos in the GAAs of 1999, 2000 and 2001, and the OCD resolutions constitute a withholding of a portion of the IRA. They put on hold the distribution and release of the five billion pesos LGSEF and subject the same to the implementing rules and regulations, including the guidelines and mechanisms prescribed by the Oversight Committee from time to time. Like Section 4 of A.O. 372, the assailed provisos in the GAAs of 1999, 2000 and 2001 and the OCD resolutions effectively encroach on the fiscal autonomy enjoyed by the LGUs and must be struck down. They cannot, therefore, be upheld.

The assailed provisos in the GAAs of 1999, 2000 and 2001 and the OCD resolutions cannot amend Section 285 of the Local Government Code of 1991

X X X

Section 284 of the Local Government Code provides that, beginning the third year of its effectivity, the LGUs share in the national internal revenue taxes shall be 40%. This percentage is fixed and may not be reduced except in the event the national government incurs an unmanageable public sector deficit" and only upon compliance with stringent requirements set forth in the same section:

Sec. 284. ...

Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the liga, to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of the national internal revenue taxes of the third fiscal year preceding the current fiscal year; *Provided, further* That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personnel services.

Thus, from the above provision, the only possible exception to the mandatory automatic release of the LGUs IRA is if the national internal revenue collections for the current fiscal year is less than 40 percent of the collections of the preceding third fiscal year, in which case what should be automatically released shall be a proportionate amount of the collections for the current fiscal year. The adjustment may even be made on a quarterly basis depending on the actual collections of national internal revenue taxes for the quarter of the current fiscal year. In the instant case, however, there is no allegation that the national internal revenue tax collections for the fiscal years 1999, 2000 and 2001 have fallen compared to the preceding three fiscal years.

X X X

Section 285 then specifies how the IRA shall be allocated among the LGUs: x x x

However, this percentage sharing is not followed with respect to the five billion pesos LGSEF as the assailed OCD resolutions, implementing the assailed provisos in the GAAs of 1999, 2000 and 2001, provided for a different sharing scheme. For example, for 1999, ₱2 billion of the LGSEF was allocated as follows: Provinces 40%; Cities 20%; Municipalities 40%. For 2000, ₱3.5 billion of the LGSEF was allocated in this manner: Provinces 26%; Cities 23%; Municipalities 35%; Barangays 26%. For 2001, ₱3 billion of the LGSEF was allocated, thus: Provinces 25%; Cities 25%; Municipalities 35%; Barangays 15%.

The respondents argue that this modification is allowed since the Constitution does not specify that the just share of the LGUs shall only be determined by the Local Government Code of 1991. That it is within the power of Congress to enact other laws, including the GAAs, to increase or decrease the just share of the LGUs. This contention is untenable. The Local Government Code of 1991 is a substantive law. And while it is conceded that Congress may amend any of the provisions therein, it may not do so through appropriations laws or GAAs. Any amendment to the Local Government Code of 1991 should be done in a separate law, not in the appropriations law, because Congress cannot include in a general appropriation bill matters that should be more properly enacted in a separate legislation.

A general appropriations bill is a special type of legislation, whose content is limited to specified sums of money dedicated to a specific purpose or a separate fiscal unit. Any provision therein which is intended to amend another law is considered an inappropriate provision. The category of inappropriate provisions includes unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kinds of laws have no place in an appropriations bill.

Increasing or decreasing the IRA of the LGUs or modifying their percentage sharing therein, which are fixed in the Local Government Code of 1991, are matters of general and substantive law. To permit Congress to undertake these amendments through the GAAs, as the respondents contend, would be to give Congress the unbridled authority to unduly infringe the fiscal autonomy of the LGUs, and thus put the same in jeopardy every year. This, the Court cannot sanction.

MANDANAS VS. OCHOA⁹
(G.R. No. 199802, July 3, 2018, En Banc)

- SECTION 284 OF THE LOCAL GOVERNMENT CODE DEVIATES FROM THE PLAIN LANGUAGE OF SECTION 6 OF ARTICLE X OF THE 1987 CONSTITUTION. - *Congress has exceeded its constitutional boundary by limiting to the NIRTs the base from which to compute the just share of the LGUs.*

Although the power of Congress to make laws is plenary in nature, congressional lawmaking remains subject to the limitations stated in the 1987 Constitution. The phrase national internal revenue taxes engrafted in Section 284 is undoubtedly more restrictive than the term national taxes written in Section 6. As such, Congress has actually departed from the letter of the 1987 Constitution stating that national taxes should be the base from which the just share of the LGU comes. Such departure is impermissible. x x x

It is clear from the foregoing clarification that the exclusion of other national taxes like customs duties from the base for determining the just share of the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution.

- DOCTRINE OF OPERATIVE ACT WAS APPLIED RENDERING THE DECISION AS PROSPECTIVE. - *The petitioners' prayer for the payment of the arrears of the LGUs' just share on the theory that the computation of the base amount had been unconstitutional all along **cannot be granted.** x x x*

x x x

The doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect. But its use must be subjected to great scrutiny and circumspection, and it cannot be invoked to validate an unconstitutional law or executive act, but is resorted to only as a matter of equity and fair play. It applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application.

⁹ Congressman Hermilando I. Mandanas; Mayor Efren B. Diona; Mayor Antonino A. Aurelio; Kagawad Marioilagan; Barangay Chair Perlito Manalo; Baranga Y Chair Medel Medrano; Barangay Kagawad Cris Ramos; Barangay Kagawad Elisa D. Balbago, and Atty. Jose Malvar Villegas, Petitioners, vs. Executive Secretary Paquito N. Ochoa, Jr.; Secretary Cesar Purisima, Department of Finance; Secretary Florencio H. Abad, Department of Budget and Management; Commissioner Kim Jacinto-Henares, Bureau of Internal Revenue; and National Treasurer Roberto Tan, Bureau of the Treasury, Respondents. Consolidated with G.R. No. 208488 - Honorable Enrique T. Garcia, Jr., in his Personal and Official Capacity as Representative of the 2nd District of the Province of Bataan, Petitioner, vs. Honorable Paquito N. Ochoa, Jr., Executive Secretary; Honorable Cesar V. Purisima, Secretary, Department of Finance; Honorable Florencio H. Abad, Secretary, Department of Budget and Management; Honorable Kim S. Jacinto-Henares, Commissioner, Bureau of Internal Revenue; and Honorable Rozzano Rufino B. Biazon, Commissioner, Bureau of Customs, Respondents; G.R. Nos. 199802 and 208488, July 3, 2018; See also Supreme Court Resolution dated October 8, 2019 on the Motion for Clarification filed by the Office of the Solicitor General on the subject SC decision (G.R. Nos. 199802 and 208488).

Conformably with the foregoing pronouncements in *Araullo v. Aquino III*, **the effect of our declaration through this decision of the unconstitutionality of Section 284 of the LGC and its related laws as far as they limited the source of the just share of the LGUs to the NIRTs is prospective.** It cannot be otherwise.

- JUST SHARE OF LGUs IN NATIONAL TAXES SHOULD BE AUTOMATICALLY RELEASED TO THEM. - *Automatic release of the LGUs' just share in the National Taxes Section 6, Article X of the 1987 Constitution commands that the just share of the LGUs in national taxes shall be automatically released to them. The term automatic connotes something mechanical, spontaneous and perfunctory; and, in the context of this case, the LGUs are not required to perform any act or thing in order to receive their just share in the national taxes. (emphasis supplied)*¹

X X X

The 1987 Constitution is forthright and unequivocal in ordering that the just share of the LGUs in the national taxes shall be automatically released to them. With Congress having established the just share through the LGC, it seems to be beyond debate that the inclusion of the just share of the LGUs in the annual GAAs is unnecessary, if not superfluous. Hence, the just share of the LGUs in the national taxes shall be released to them without need of yearly appropriation.

NOTE: The Supreme Court (SC), per En Banc Resolution dated October 8, 2019, denied the motion for clarification filed by the Office of the Solicitor General on the subject SC decision (G.R. Nos. 199802 and 208488) for lack of merit. However, the SC made the following pronouncements in the Resolution:

Inevitably, the 2019 Budget can no longer include the changes brought about by Our July 3, 2018 decision. While the amounts and the national taxes during the third fiscal year preceding or in 2016 can already be determined as of this time, it would be too late to include the same in the 2019 budget since Congress had already approved the 2019 General Appropriations Act (GAA), and we are already in the last quarter of the year.

Neither can the same amounts be considered in drawing up the 2020 and 2021 budget because their budget cycles have already commenced. Notable that for the 2020 budget, Congress is already in the process of conducting budget hearings to finalize the GAA. Adding the amounts based on our ruling in the 2020 budget would only disrupt the proceedings and impede the passing of the GAA. It would also be imprudent for the Court to compel the Executive to start from scratch and jettison all existing plans and allotments to the detriment of the 2020 and 2021 GAA.

Facts:

The subject of the petition is the computation of the just share in the national taxes of the local government units (LGUs), particularly in the determination of the Internal Revenue Allotment (IRA).

As discussed by the Supreme Court (SC), “[o]ne of the key features of the 1987 Constitution is its push towards decentralization of government and local autonomy. Local autonomy has two facets, the administrative and the fiscal. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the National Government, as well as the power to allocate their resources in accordance with their own priorities. Such autonomy is as indispensable to the viability of the policy of decentralization as the other.”

Section 6 of Article X of the 1987 Constitution provides that “[l]ocal government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.”

Implementing the constitutional mandate for decentralization and local autonomy, Congress enacted Republic Act (RA) No. 7160, the Local Government Code of 1991 (LGC) was enacted to implement the constitutional mandate of decentralization and local autonomy. Section 284 thereof provides:

SECTION 284. Allotment of Internal Revenue Taxes. - Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows: (a) On the first year of the effectivity of this Code, thirty percent (30%); (b) On the second year, thirty-five percent (35%); and (c) On the third year and thereafter, forty percent (40%). Provided, That in the event that the National Government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved

functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services. (Emphasis supplied)

In accordance with the implementing rules and regulations (IRR) of the LGC, the IRA is computed based on the actual collections of the National Internal Revenue Taxes (NIRTs) as certified by the Bureau of Internal Revenue (BIR).

The Petitioners alleged that certain collections by the Bureau of Customs (BOC), specifically excise taxes, value added taxes (VATs) and documentary stamp taxes (DSTs) are considered NIRTs even if collected by the BOC, thus, should form part of the base amount of the IRA computation. Accordingly, the similar claim in both Petitions is that the supposed additional amounts should be released to the LGUs pertaining to the deficiencies in the IRA released to them since 1992 (the effectivity of the LGC), representing their just share from the NIRTs collected by the BOC.

Issue/s:

1. Whether or not Section 284 of the LGC is violative of Section 6 of Article X of the 1987 Constitution when it restricted the allocation to the LGUs of the “just share” in the “national taxes” to only “national internal revenue taxes” collected by the BIR.
2. Whether or not the shares being given to the LGUs under the General Appropriations Act (GAA) is consistent with the “just share” in the national taxes as mandated under Section 6, Article X of the 1987 Constitution.

Held:

The petitions were partially granted by the SC, with the following rulings as summarized:

1. That the phrase "internal revenue" in Section 284 of the LGC is unconstitutional and to be deleted from Section 284. Accordingly Section 284, as modified, shall read “Section 284. Allotment of Taxes. - Local government units shall have a share in the **national taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows: x x x”
2. That, likewise, the phrase "internal revenue" is deleted¹⁰ from the Sections 285, 287 and 290 of the LGC, as follows:

¹⁰ The deletion of the phrase is illustrated in the Sections quoted to readily show the effect of the deletion.

SECTION 285. Allocation to Local Government Units. – The share of local government units in the ~~(internal revenue)~~ allotment shall be allocated in the following manner: x x x

x x x

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (P80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the ~~(internal revenue)~~ allotment, and the balance to be allocated on the basis of the following formula:

x x x

SECTION 287. Local Development Projects. – Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual ~~(internal revenue)~~ allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of the Interior and Local Government.

x x x

SECTION 290. Amount of Share of Local Government Units. – Local government units shall, in addition to the ~~(internal revenue)~~ allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

3. That the Secretaries of the Department of Finance (DOF) and Department of Budget and Management (DBM), the Commissioner of Internal Revenue, the Commissioner of Customs, and the National Treasurer shall include all collections of national taxes in the computation of the base of the just share of the LGUs according to the modified Section 284 of the LGC, except those accruing to special purpose funds and special allotments for the utilization and development of national wealth.

For the purpose, the collections of national taxes to be included in the base of the just share of the LGUs shall include, but shall not be limited to, the following:

- a. The national internal revenue taxes enumerated in Section 21 of the National Internal Revenue Code (NIRC), as amended, collected by the BIR and the BOC;
- b. Tariff and customs duties collected by the BOC;
- c. 50% of the value-added taxes collected in the Autonomous Region in Muslim Mindanao, and 30% of all other national tax collected in the Autonomous Region in Muslim Mindanao (ARMM).

The remaining 50% of the collections of value-added taxes and 70% of the collections of the other national taxes in the ARMM shall be the exclusive share of the ARMM pursuant to Section 9 and Section 15 of RA No. 9054.

- d. 60% of the national taxes collected from the exploitation and development of the national wealth.

The remaining 401% of the national taxes collected from the exploitation and development of the national wealth shall exclusively accrue to the host LGUs pursuant to Section 290 of the LGC;

- e. 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products.

The remaining 15% shall accrue to the special purpose funds created by RA No. 7171 and RA No. 7227;

- f. The entire 50% of the national taxes collected under Sections 106, 108 and 116 of the NIRC as provided under Section 283 of the NIRC; and
- g. 5% of the 25% franchise taxes given to the National Government under Section 6 of RA No. 6631 and Section 8 of RA No. 6632.

4. That the following are valid:

- a. Apportionment of the 25% of the franchise taxes collected from the Manila Jockey Club and Philippine Racing Club, Inc., i.e., five percent (5%) to the National Government; five percent (5%) to the host municipality or city; seven percent (7%) to the Philippine Charity Sweepstakes Office; six percent (6%) to the Anti-Tuberculosis Society; and two percent (2%) to the White Cross pursuant to Section 6 of RA No. 6631 and Section 8 of RA No. 6632;

- b. Sections 8 and 12 of RA No. 7227. Accordingly, the proceeds from the sale of the former military bases converted to alienable lands thereunder are excluded from the computation of the national tax allocations of the LGUs; and
 - c. Section 24 (3) of Presidential Decree No. 1445, in relation to Section 284 of the NIRC, apportioning one-half of one percent (1/2 of 1%) of national tax collections as the auditing fee of the Commission on Audit;
5. That the BIR and BOC and their deputized collecting agents shall certify all national tax collections pursuant to Article 378 of the IRR of RA No. 7160;
 6. That the claims of the LGUs for the settlement by the National Government of arrears in the just share on the ground that this decision shall have prospective application is dismissed; and
 7. That the just shares of LGUs in the national taxes shall be automatically released without need for further action, through their respective provincial, city, municipal, or barangay treasurers, as the case may be, on a quarterly basis but not beyond five (5) days from the end of each quarter, as directed in Section 6, Article X of the 1987 Constitution and Section 286 of the LGC and Article 383 of its IRR.

As to the correct basis of the computation of the just share of LGUs from national taxes, the SC analyzed the relevant provisions of the 1987 Constitution and the LGC.

Section 6 of Article X of the 1987 Constitution mandates the allocation of a just share of LGUs in the national taxes, to wit:

Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

According to the SC, such Section prescribes three requirements: (1) the LGUs shall have a just share in the national taxes; (2) the just share shall be determined by law; and (3) the just share shall be automatically released to the LGUs.

In this regard, Congress complied with the second mandate with the enactment of Section 284 of the LCG, *viz*:

Section 284. Allotment of Internal Revenue Taxes. - Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows: x x x

Considering the foregoing, the question of what constitutes the LGUs' just share expressed in percentages of the national taxes (i.e., 30%, 35% and 40% stipulated in subparagraphs (a), (b), and (c) of Section 284 is not the issue, but it is the amount upon which said just share shall be based. Section 6, Article X of the Constitution indicates "national taxes" as the source of the just share of the LGUs. On the other hand, Section 284 of the LGC states that the share is based on the "national internal revenue taxes".

The SC agreed to the contention of petitioner Garcia that "Congress has exceeded its constitutional boundary by limiting to the NIRTs the base from which to compute the just share of the LGUs" and explained:

Although the power of Congress to make laws is plenary in nature, congressional lawmaking remains subject to the limitations stated in the 1987 Constitution. The phrase national internal revenue taxes engrafted in Section 284 is undoubtedly more restrictive than the term national taxes written in Section 6. As such, Congress has actually departed from the letter of the 1987 Constitution stating that national taxes should be the base from which the just share of the LGU comes. Such departure is impermissible. *Verba legis non est recedendum* (from the words of a statute there should be no departure). Equally impermissible is that Congress has also thereby curtailed the guarantee of fiscal autonomy in favor of the LGUs under the 1987 Constitution.

Taxes are the enforced proportional contributions exacted by the State from persons and properties pursuant to its sovereignty in order to support the Government and to defray all the public needs. Every tax has three elements, namely: (a) it is an enforced proportional contribution from persons and properties; (b) it is imposed by the State by virtue of its sovereignty; and (c) it is levied for the support of the Government. Taxes are classified into national and local. National taxes are those levied by the National Government, while local taxes are those levied by the LGUs.

What the phrase *national internal revenue taxes* as used in Section 284 included are all the taxes enumerated in Section 21 of the National Internal Revenue Code (NIRC), as amended by R.A. No. 8424, viz.:

Section 21. *Sources of Revenue.* - The following taxes, fees and charges are deemed to be national internal revenue taxes:

- (a) Income tax;

- (b) Estate and donor's taxes;
- (c) Value-added tax;
- (d) Other percentage taxes;
- (e) Excise taxes;
- (f) Documentary stamp taxes; and
- (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.

In view of the foregoing enumeration of what are the national internal revenue taxes, Section 284 has effectively deprived the LGUs from deriving their just share from other national taxes, like the customs duties.

Strictly speaking, customs duties are also taxes because they are exactions whose proceeds become public funds. According to *Garcia v. Executive Secretary*, customs duties is the nomenclature given to taxes imposed on the importation and exportation of commodities and merchandise to or from a foreign country. Although customs duties have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes, it is often difficult to say which of the two is the principal objective in a particular instance, for, verily, customs duties, much like internal revenue taxes, are rarely designed to achieve only one policy objective. We further note that Section 102(00) of R.A. No. 10863 (Customs Modernization and Tariff Act) expressly includes all fees and charges imposed under the Act under the blanket term of *taxes*.

It is clear from the foregoing clarification that the exclusion of *other* national taxes like customs duties from the base for determining the *just share* of the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution.

Still, the OSG posits that Congress can manipulate, by law, the base of the allocation of the *just share* in the national taxes of the LGUs. The position of the OSG cannot be sustained. Although it has the primary discretion to determine and fix the just share of the LGUs in the national taxes (e.g., Section 284 of the LGC), Congress cannot disobey the express mandate of Section 6, Article X of the 1987 Constitution for the *just share* of the LGUs to be derived from the national taxes. The phrase as determined by law in Section 6 follows and qualifies the phrase just share, and cannot be construed as qualifying the

succeeding phrase *in the national taxes*. The intent of the people in respect of Section 6 is really that the base for reckoning the just share of the LGUs should include all national taxes. To read Section 6 differently as requiring that *the just share of LG Us in the national taxes shall be determined by law* is tantamount to the unauthorized revision of the 1987 Constitution.

As to the claim of the petitioners for payment of the arrears arising from the deficient computation of the IRA, the SC ruled:

The petitioners' prayer for the payment of the arrears of the LGUs' *just share* on the theory that the computation of the base amount had been unconstitutional all along **cannot be granted**. (emphasis supplied)

It is true that with our declaration today that the IRA is not in accordance with the constitutional determination of the just share of the LGUs in the national taxes, logic demands that the LGUs should receive the difference between the *just share* they should have received had the LGC properly reckoned such just share from all national taxes, on the one hand, and the share - represented by the IRA - the LGUs have actually received since the effectivity of the IRA under the LGC, on the other. This puts the National Government in arrears as to the *just share* of the LGUs. A legislative or executive act declared void for being unconstitutional cannot give rise to any right or obligation.

Yet, the Court has conceded in *Araullo v. Aquino III* that:

x x x the generality of the rule makes us ponder whether rigidly applying the rule may at times be impracticable or wasteful. Should we not recognize the need to except from the rigid application of the rule the instances in which the void law or executive act produced an almost irreversible result?

The need is answered by the doctrine of operative fact. The doctrine, definitely not a novel one, has been exhaustively explained in *De Agbayani v. Philippine National Bank*:

The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a

mere scrap of paper. As the new Civil Code puts it: 'When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.' **Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.**

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect 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.

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. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official.'

The doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect. But its use must be subjected to great scrutiny and circumspection, and it cannot be invoked to validate an unconstitutional law or executive act, but is resorted to only as a matter of equity and fair play. It applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application.

Conformably with the foregoing pronouncements in *Araullo v. Aquino III*, **the effect of our declaration through this decision of the unconstitutionality of Section 284 of the LGC and its related laws as far as they limited the source of the just share of the LGUs to the NIRTs is prospective.** It cannot be otherwise. VII. Automatic release of the LGUs' just share in the National Taxes Section 6, Article X of the 1987 Constitution commands that the just share of the LGUs in national taxes shall be automatically released to them. The term automatic connotes something mechanical, spontaneous and perfunctory; and, in the context of this case, the LGUs are not required to perform any act or thing in order to receive their just share in the national taxes. (emphasis supplied)

Further, the SC declared that the just share of the LGUs in the national taxes need not be appropriated in the GAA inasmuch as the Constitution prescribed that the same shall be automatically released to the LGUs, *viz*:

The 1987 Constitution is forthright and unequivocal in ordering that the just share of the LGUs in the national taxes shall be automatically released to them. With Congress having established the just share through the LGC, it seems to be beyond debate that the inclusion of the just share of the LGUs in the annual GAAs is unnecessary, if not superfluous. Hence, the just share of the LGUs in the national taxes shall be released to them without need of yearly appropriation.

NOTE:

Per SC En Banc Resolution dated October 8, 2019 on the motion for clarification filed by the Office of the Solicitor General on the subject SC decision (G.R. Nos. 199802 and 208488), the SC resolved to deny the motion for lack of merit. However, the following pronouncements were made by the SC:

Inevitably, the 2019 Budget can no longer include the changes brought about by Our July 3, 2018 decision. While the amounts and the national taxes during the third fiscal year preceding or in 2016 can already be determined as of this time, it would be too late to include the same in the 2019 budget since Congress had already approved the 2019 General Appropriations Act (GAA), and we are already in the last quarter of the year.

Neither can the same amounts be considered in drawing up the 2020 and 2021 budget because their budget cycles have already commenced. Notable that for the 2020 budget, Congress is already in the process of conducting budget hearings to finalize the GAA. Adding the amounts based on our ruling in the 2020 budget would only disrupt the proceedings and impede the passing of the GAA. It would also be imprudent for the Court to compel the Executive to start from scratch and jettison all existing plans and allotments to the detriment of the 2020 and 2021 GAA.

LUCMAN VS. MALAWI¹¹
(G.R. No. 159794, December 19, 2006, Third Division)

- SUITS INVOLVING THE INTERNAL REVENUE ALLOTMENT OF THE BARANGAY MAY NOT BE FILED BY THE BARANGAY CHAIRMEN IF NOT IN REPRESENTATION OF AND UPON PROPER AUTHORIZATION FROM THE BARANGAY AS JURIDICAL ENTITY. - *The IRA funds for which the bank accounts were created belong to the barangays headed by respondents. The barangays are the only lawful recipients of these funds. Consequently, any transaction or claim involving these funds can be done only through the proper authorization from the barangays as juridical entities.*

The determination, therefore, of whether or not the IRA funds were unlawfully withheld or improperly released to third persons can only be determined if the barangays participated as parties to this action. These questions cannot be resolved with finality without the involvement of the barangays. After all, these controversies involve funds rightfully belonging to the barangays. Hence, the barangays are indispensable parties in this case.

x x x

Clearly, this case was not initiated by the barangays themselves. Neither did the barangay chairmen file the suit in representation of their respective barangays. Nothing from the records shows otherwise. On this score alone, the case in the lower court should have been dismissed.

Even if the barangays themselves had filed the case, still it would not prosper. The case involves government funds and as such, any release therefrom can only be done in accordance with the prevailing rules and procedures.

Facts:

A petition for mandamus was filed by Alimatar Malawi, Abdulkhayr Pangcoga, Salimatar Sarip, Lomala Cadar, Aliriba S. Macarambon and Abdul Usman (Malawi, et al.), who were the barangay chairmen of various barangays in the Municipality of Pagayawan, Lanao del Sur, against Maclarin M. Lucman as Manager of Land Bank of the Philippines (LBP), the depository bank of the subject barangays.

The barangay chairmen alleged that they were deprived of their Internal Revenue Allotments (IRAs) for the 2nd and 3rd quarters of 1997, and that Lucman released said IRAs to third persons.

¹¹ Maclarin M. Lucman, in His Capacity as the Manager of the Land Bank of the Philippines, Marawi City, Petitioner, vs. Alimatar Malawi, Abdulkhayr Pangcoga, Salimatar Sarip, Lomala Cadar, Aliriba S. Macarambon and Abdul Usman, Respondents; G.R. No. 159794, December 19, 2006, Third Division.

Malawi, et al. were the incumbent barangay chairmen of their respective barangays prior to the 12 May 1997 barangay elections. However, the May 12, 1997 elections in the subject barangays resulted in failure of elections, then a subsequent special elections likewise resulted in failure of elections. Hence, Malawi, et al., as incumbent barangay chairmen, remained in office in a holdover capacity.

Meanwhile, starting in the second quarter of 1997, LBP was selected as the government depository bank for the subject barangays and the authorized public officials had to open new accounts with the proper LBP branch in behalf of their barangays.

Initially, Malawi, et al. were not allowed by Lucman to open their respective barangay accounts for failure to submit the individual certifications showing their right to continue serving as barangay chairmen, and the requisite Municipal Accountant's Advice granting authority to withdraw IRA deposits per Commission on Audit Circular No. 94-004. Eventually, Malawi, et al., except Cadar and Usman, were allowed to open their barangay accounts. However, they were not allowed to withdraw the IRA funds in the absence of the requisite Accountant's Advice.

Subsequently, five (5) other persons presented themselves before the LBP branch as the newly-proclaimed Punong Barangays of the five barangays concerned. They presented individual certification of election as Punong Barangay issued by the provincial director of the DILG-ARMM and another certification issued by the Local Government Operations Officer attesting to, among others, the revocation of the certification previously issued to Malawi, et al.

Consequently, the LBP branch proceeded to release the IRA funds for the 2nd and 3rd quarters of 1997 to the newly-elected officials.

In view thereof, Malawi, et al. filed the petition for mandamus to compel Lucman (LBP branch) to allow them to open and maintain deposit accounts covering the IRAs of their respective barangays and to withdraw therefrom.

Ultimately, the Regional Trial Court (RTC) rendered a Decision directing Lucman (LBP branch) to pay the barangay chairmen, except Malawi who failed to testify, the respective IRAs of their barangays even without the Accountant's Advice until their terms of office expired.

The Court of Appeals (CA) affirmed the RTC's Decision *in toto*. Hence, the present petition for review was filed by Lucman before the Supreme Court (SC).

Petitioner Lucman asserted that respondent punong barangays have no cause of action inasmuch as they failed to present valid certifications showing their right to continue serving as punong barangay and the requisite Municipal Accountant's Advice. Lucman also claimed that the LBP Marawi Branch had already released the subject IRAs to the Barangay Treasurers who were acting in conjunction with the duly recognized Punong Barangays. Hence, such circumstances rendered the petition for mandamus moot and academic.

Petitioner further averred that respondents Malawi, et al. had no legal personality to institute the petition for mandamus in their own names inasmuch as the IRAs pertain to the barangays and not to them, and that the subject barangays already received their respective IRAs.

Issue/s:

Whether or not Malawi, et al., claiming as the rightful punong barangays, may institute the petition for mandamus in their own name, and not in the name or on behalf of the subject barangays.

Held:

The SC granted the petition. The Court reversed and set aside the assailed decisions of the RTC and the CA, and ordered the dismissal of the petition for mandamus. The SC likewise referred to and directed the Department of the Interior and Local Government to investigate the alleged IRA withdrawals by the respondents or by impostors from the Barangay accounts to be reported to the Court.

The SC held, among others, as follows:

The IRA funds for which the bank accounts were created belong to the barangays headed by respondents. The barangays are the only lawful recipients of these funds. Consequently, any transaction or claim involving these funds can be done only through the proper authorization from the barangays as juridical entities.

The determination, therefore, of whether or not the IRA funds were unlawfully withheld or improperly released to third persons can only be determined if the barangays participated as parties to this action. These questions cannot be resolved with finality without the involvement of the barangays. After all, these controversies involve funds rightfully belonging to the barangays. Hence, the barangays are indispensable parties in this case.

An indispensable party is defined as parties-in-interest without whom there can be no final determination of an action. x x x

x x x

In *Arcelona*, the Court also dwelt on the consequences of failure to include indispensable parties in a case, categorically stating that the presence of indispensable parties is a condition for the exercise of juridical power and when an indispensable party is not before the court, the action should be dismissed. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

The joinder of indispensable parties is mandatory. Without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality. Strangers to a case are not bound by the judgment rendered by the court.

Clearly, this case was not initiated by the barangays themselves. Neither did the barangay chairmen file the suit in representation of their respective barangays. Nothing from the records shows otherwise. On this score alone, the case in the lower court should have been dismissed.

Even if the barangays themselves had filed the case, still it would not prosper. The case involves government funds and as such, any release therefrom can only be done in accordance with the prevailing rules and procedures.

The Government Accounting and Auditing Manual (GAAM) provides that the local treasurers shall maintain the depositary accounts in the name of their respective local government units with banks. Under the Local Government Code, the treasurer is given the power, among others, to: (1) *keep custody* of barangay funds and properties; and (2) *disburse* funds in accordance with the financial procedures provided by the Local Government Code. The same manual defines disbursements as constituting all cash paid out during a given period either in currency or by check. Sec. 344 of the Local Government Code further provides for the following requirements in cases of disbursements, to wit:

Sec. 344. No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to the validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses xxx approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

Thus, as a safeguard against unwarranted disbursements, certifications are required from: (a) the local budget officer as to the existence and validity of the appropriation; (b) the local accountant as to the legal obligation incurred by the appropriation; (c) the local treasurer as to the availability of funds; and (d) the local department head as to the validity, propriety and legality of the claim against the appropriation.

Further, the GAAM provides for the basic requirements applicable to all classes of disbursements that shall be complied with, to wit:

- a) **Certificate of Availability of Fund.** Existence of lawful appropriation, the unexpended balance of which, free from other obligations, is sufficient to cover the expenditure, certified as available by an accounting officer or any other official required to accomplish the certificate.

Use of moneys appropriated solely for the specific purpose for which appropriated, and for no other, except when authorized by law or by a corresponding appropriating body.

- b) **Approval of claim or expenditure by head of office or his duly authorized representative.**
- c) **Documents to establish validity of claim.** Submission of documents and other evidences to establish the validity and correctness of the claim for payment.

d) **Conformity of the expenditure to existing laws and regulations.**

e) **Proper accounting treatment.**

This prescribed legal framework governing the release and disbursement of IRA funds to the respective barangays disabuses from the notion that a barangay chairman, relying solely on his authority as a local executive, has the right to demand physical possession of the IRA funds allocated by the national government to the barangay. The right to demand for the funds belongs to the local government itself through the authorization of their Sanggunian.

One final note. There is no conclusive proof from the records showing that the IRA funds for the 2nd and 3rd quarters of the barangays concerned remitted by the DBM had already been withdrawn from the LBP Marawi Branch. Considering the implications of this action of possibly depriving several local government units of their IRAs, the Court took the initiative to request the COMELEC to issue certifications on who were the duly elected chairmen of the barangays concerned. The COMELEC issued to this Court a list of the elected barangay chairmen which confirmed the re-election of respondents as barangay chairmen of their respective barangays. If withdrawals were indeed made, whether by the respondents or by impostors, the matter deserves to be investigated since public funds are involved. Accordingly, we refer the matter to the Department of Interior and Local Government (DILG) for investigation and appropriate action.

PILAR VS. THE SANGGUNIANG BAYAN OF DASOL, PANGASINAN, ET AL.¹²
(G.R. No. 63216, March 12, 1984, Second Division)

- **MAYOR LIABLE FOR DAMAGES FOR ACTING IN GROSS AND EVIDENT BAD FAITH IN REFUSING TO SATISFY DEMANDABLE CLAIM.** - *Since petitioner's claim for salaries has already been provided for and paid, the case has become moot and academic.*

Nevertheless, We find and rule that petitioner is entitled to damages and attorney's fees because the facts show that petitioner was forced to litigate in order to claim his lawful salary which was unduly denied him for three (3) years and that the Mayor acted in gross and evident bad faith in refusing to satisfy petitioner's plainly valid, just and demandable claim. (Article 2208, (2) and (5), New Civil Code).

- **EXERCISE OF VETO POWER IN ARBITRARY MANNER.** - *Respondent Mayor vetoed without just cause on October 26, 1982 the Resolution of the Sangguniang Bayan appropriating the salary of the petitioner. While "to veto or not to veto involves the exercise of discretion" as contended by respondents, respondent Mayor, however, exceeded his authority in an arbitrary manner when he vetoed the resolution since there exists sufficient municipal funds from which the salary of the petitioner could be paid. Respondent Mayor's refusal, neglect or omission in complying with the directives of the Provincial Budget Officer and the Director of the Bureau of Local Government that the salary of the petitioner be provided for and paid the prescribed salary rate, is reckless and oppressive, hence, by way of example or correction for the public good, respondent Mayor is liable personally to the petitioner for exemplary or corrective damages.*

Facts:

On February 16, 1983, then Vice-Mayor of Dasol, Pangasinan, Hon. Expedito B. Pilar, filed a petition for mandamus to compel the Sangguniang Bayan (SB) and the municipal treasurer to pay the proper salary due him as the Vice-Mayor, as prescribed by Batas Pambansa Blg. 51 and implemented by Circular No. 9-A of the Joint Commission on Local Government and Personnel Administration (JCLGPA), and to recover actual, moral and exemplary damages plus attorney's fees.

Vice-Mayor Pilar was elected in the 1980 local elections. The elected officials assumed office on March 1, 1980.

¹² The Hon. Expedito B. Pilar, in his Capacity as Vice-Mayor and Concurrently Presiding Officer Protempore of the Sangguniang Bayan of Dasol, Pangasinan, Petitioner, vs. The Sangguniang Bayan of Dasol, Pangasinan, Composed of the Hon. Lodovico Espinosa, Municipal Mayor and Presiding Officer of Said Body and the Following Members of that Body: Hon. Avelino N. Nacar, Hon. Luz B. Jimenez, Hon. Gerardo B. Rivera, Hon. Juan M. Bonus, Hon. Apolonio G. Abella, Hon. Abraham Balaoing, Hon. Jaime Abella, Hon. Laurentino Balaoing, Hon. Ma. Linda Bustria, Hon. Ceferino Quintio, Hon. Elifas Vidal, and Mr. Victoriano Buaga, Municipal Treasurer of Dasol, Pangasinan, Respondents.

On March 4, 1980, the SB of Dasol adopted Resolution No. 1 increasing the annual salaries of the mayor and municipal treasurer to P18,636.00 and P16,044.00, respectively. The said resolution did not include the increase in the salary of the Vice-Mayor despite the fact that his position is entitled to an annual salary equivalent to that of the municipal treasurer. (JCLGPA Circular Nos. 9-A and 15).

Petitioner questioned the failure of the SB to appropriate the proper amount of salary due his position. Two increases in his pay adopted by the SB were still short of his proper salary rate. Eventually on October 26, 1982, the SB passed a resolution appropriating the amount of P15,144.00 as payment for the unpaid (deficiency in) salaries of the Vice-Mayor from January 1, 1981 to December 31, 1982. However, the same resolution was vetoed by then Mayor Lodovico Espinosa. Hence, the Vice-Mayor filed the petition before the Supreme Court (SC).

Nevertheless, during the pendency of the case, on April 20, 1983, the SB already enacted an appropriation ordinance which included the amount of P29,985.00 to cover the payment of the salary differentials of the Vice-Mayor.

Issue/s:

Whether or not the petition is already moot and academic because during the pendency of the case, the SB already enacted an appropriation which included the amount to cover the payment of the salary differentials of the Vice-Mayor.

Held:

The SC declared that the petition has already been rendered moot and academic, but the Mayor was ordered to pay, from his private and personal funds, the petitioner Vice-Mayor for actual damages and costs of litigation (P5,000.00), moral damages (P5,000.00), exemplary or corrective damages (P5,000.00), and attorney's fees (P5,000.00).

The SC explained, among others, as follows:

Petitioner admitted that at the time he submitted his memorandum, he has been fully paid of his salaries as provided for by Batas Pambansa Blg 51 and implemented by Circular No. 9-A of the Joint Commission for Local Government and Personnel Administration.

Since petitioner's claim for salaries has already been provided for and paid, the case has become moot and academic.

Nevertheless, We find and rule that petitioner is entitled to damages and attorney's fees because the facts show that petitioner was forced to litigate in order to claim his lawful salary which was unduly denied him for three (3) years and that the Mayor acted in gross and evident bad faith in refusing to satisfy petitioner's plainly valid, just and demandable claim. (Article 2208, (2) and (5), New Civil Code).

That respondent Hon. Mayor Lodovico Espinosa alone should be held liable and responsible for the miserable plight of the petitioner is clear. Respondent Mayor vetoed without just cause on October 26, 1982 the Resolution of the Sangguniang Bayan appropriating the salary of the petitioner. While "to veto or not to veto involves the exercise of discretion" as contended by respondents, respondent Mayor, however, exceeded his authority in an arbitrary manner when he vetoed the resolution since there exists sufficient municipal funds from which the salary of the petitioner could be paid. Respondent Mayor's refusal, neglect or omission in complying with the directives of the Provincial Budget Officer and the Director of the Bureau of Local Government that the salary of the petitioner be provided for and paid the prescribed salary rate, is reckless and oppressive, hence, by way of example or correction for the public good, respondent Mayor is liable personally to the petitioner for exemplary or corrective damages.

Petitioner is likewise entitled to actual damages and costs of litigation which We reduce from P13,643.50 to P5,000.00 and for mental anguish, serious anxiety, wounded feelings, moral shock, social humiliation and similar injury, We hold that petitioner is entitled to P5,000.00 as moral damages.

All the above sums as damages including attorney's fees in the amount of P5,000.00 shall be paid personally by respondent Mayor Lodovico Espinosa from his private funds.

CASIÑO VS. COURT OF APPEALS¹³
(G.R. No. 91192, December 2, 1991, Second Division)

- **ORDINANCE REQUIRING MORE VOTES THAN PRESCRIBED IN THE LOCAL GOVERNMENT CODE SHALL GOVERN.** - *Resolution No. 378 was declared invalid by the Court of Appeals for failure to comply with the required votes necessary for its validity. Although the charter of the City of Gingoog and the Local Government Code require only a majority for the enactment of an ordinance, Resolution No. 49 cannot be validly amended by the resolution in question without complying with the categorical requirement of a three-fourths vote incorporated in the very same ordinance sought to be amended. The pertinent provisions in the aforesaid city charter and the Local Government Code obviously are of general application and embrace a wider scope or subject matter. In the enactment of ordinances in general, the application of the aforementioned laws cannot be disputed. Undeniably, however, Section 6.44 of said ordinance regarding amendments thereto is a specific and particular provision for said ordinance and explicitly provides for a different number of votes. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general statement must be taken to affect only such cases within its language as are not within the provisions of the particular enactment.*

In the instant case, although the general law on the matter requires a mere majority, the higher requisite vote in Resolution No. 49 shall govern since municipal authorities are in a better position to determine the evils sought to be prevented by the inclusion or incorporation of particular provisions in enacting a particular statute and, therefore, to pass the appropriate ordinance to attain the main object of the law. This more stringent requirement on the necessary votes for amendments to Resolution No. 49 apparently forestalled the apprehended contingency for, to borrow the words of respondent court, "in an apparent attempt to get rid of this legal stumbling block (the prohibition against a cockpit in a residential zone under Proclamation 49), the Sangguniang Panglunsod of Gingoog City passed Resolution No. 378, Code Ordinance, series of 1985," . . . "thereby reclassifying Block 125 into a recreational zone." Withal, it is legally permissible, as exceptions to the general provisions on measures covered by city charters and the Local Government Code, that the vote requirement in certain ordinances may be specially provided for, as in the case of Section 6.44 of Resolution No. 49, instead of the usual majority vote.

¹³ Robinson V. Casiño, Petitioner, vs. The Court of Appeals, Gingoog Gallera, Inc., Represented by its President and Manager, Lindy L. De Lara, Respondents; G.R. No. 91192, December 2, 1991, Second Division.

Facts:

Robinson V. Casiño is the owner and licensed operator of a cockpit known as the Don Romulo Rodriguez Coliseum (Coliseum) located at Block 125 at the corner of Lugod and Jadol Streets, Gingoog City. However, by virtue of the passage of Resolution No. 49, Code Ordinance, series of 1984, by the Sangguniang Panlungsod of Gingoog City, certain areas of the City, including the site of the Coliseum, were classified as residential zones. Consequently, Casiño's license to operate the cockpit – Coliseum – was cancelled.

Particularly, Article 10, Section 6.44 of Resolution No. 49 explicitly states:

Sec 6.44. Amendments to the zoning ordinance.— Changes in the zoning ordinance as a result of the review by the Local Review Committee shall be treated as an amendment provided that any amendment to the zoning ordinance or provision thereof shall be carried out through a resolution of three fourths vote of the Sangguniang Panlungsod. Said amendments shall take effect only after approval and authentication by the HSRC.

Subsequently, however, under Resolution No. 378, Code Ordinance, series of 1985, Block 125, where the Coliseum was located, was reclassified as within the recreational zone. Hence, said later Resolution allegedly amended Resolution No. 49. It was established that nine (9) members of the Sanggunian participated, with four (4) members voting in favor of the amendment. Four (4) voted against it, and with one (1) abstention. The Vice-Mayor, as presiding officer, broke the deadlock and voted for the amendment.

When Resolution No. 378 was transmitted for approval of then City Mayor Miguel Paderanga, he returned the same to the Sanggunian within ten days, without any action, stating that his approval thereof was not necessary since it did not involve a disposition of city government funds, as provided by Section 180 of the Local Government Code and Section 14 of the Charter of Gingoog City.

In this regard, in view of Resolution No. 378, Casiño was granted anew with a permit to operate a cockpit dated April 2, 1986 by the succeeding City Mayor, Arturo S. Lugod. Such authority to operate a cockpit was renewed by another permit dated January 5, 1987.

In this regard, Gingoog Gallera, Inc., (Gallera) protested the operation of the Coliseum before the Philippine Gamefowl Commission (PGC) on the ground that no certificate of registration had yet been issued by the PGC. This action caused the suspension by the PGC of the operations of the Coliseum.

Meanwhile, a special civil action for prohibition and mandamus with preliminary injunction was filed by Gallera before the Regional Trial Court (RTC), Branch XXVII, Gingoog City, against Casiño on the ground that Resolution No. 378, purportedly amending zoning Ordinance No. 49, was invalid, thus, the classification of the site of the Coliseum as within the residential zone remain unchanged. Hence, the permits issued by Mayor Paderanga were null and void.

On July 25, 1988, the trial court ruled in favor of Gallera, and declared the questioned Mayor's permits as null and void. Casiño and all persons representing him or acting in his behalf were ordered to refrain from further operating the cockpit. The Court of Appeals (CA) affirmed the ruling of the RTC. Hence, Casiño sought recourse before the Supreme Court (SC).

One of the issues raised by Casiño is that the CA erred in declaring the subject Mayor's permits as null and void on the premise that Resolution No. 378 did not amend Section 6.44 of Resolution No. 49. He argued that the three-fourths (3/4) voting requirement prescribed under Section 6.44 of Resolution No. 49 was merely a formal requirement, and was an ultra vires act of the Sanggunian.

Issue/s:

Whether or not Resolution No. 378, series of 1985, properly amended Section 6.44 of Resolution No. 49, series of 1984, considering that the subject section explicitly required three-fourths (3/4) vote to amend the zoning ordinance or any provision thereof, while Resolution No. 378 was passed by a majority or five (5) votes.

Held:

The SC denied the petition, and affirmed the decision of the CA.

Among others, the SC pronounced as follows:

The foregoing discussion brings us to the determinant legal query to be resolved, which is the validity of Resolution No. 378. Petitioner argues for the legality of Resolution No. 378 because the same was passed by the sanggunian by a majority of five (5) affirmative votes as against four (4) negative votes. He contends that the three-fourths vote requirement under Section 6.44, Resolution No. 49, aside from its being merely a formal requirement, is an enactment of the sanggunian which is ultra vires.

We do not agree. Resolution No. 378 was declared invalid by the Court of Appeals for failure to comply with the required votes necessary for its validity. Although the charter of the City of Gingoog and the Local Government Code require only a majority for the enactment of an ordinance, Resolution No. 49 cannot be validly amended by the resolution in question without complying with the categorical requirement of a three-fourths vote incorporated in the very same ordinance sought to be amended. The pertinent provisions in the aforesaid city charter and the Local Government Code obviously are of general application and embrace a wider scope or subject matter. In the enactment of ordinances in general, the application of the aforementioned laws cannot be disputed. Undeniably, however, Section 6.44 of said ordinance regarding amendments thereto is a specific and particular provision for said ordinance and explicitly provides for a different number of votes. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general statement must be taken to affect only such cases within its language as are not within the provisions of the particular enactment.

In the instant case, although the general law on the matter requires a mere majority, the higher requisite vote in Resolution No. 49 shall govern since municipal authorities are in a better position to determine the evils sought to be prevented by the inclusion or incorporation of particular provisions in enacting a particular statute and, therefore, to pass the appropriate ordinance to attain the main object of the law. This more stringent requirement on the necessary votes for amendments to Resolution No. 49 apparently forestalled the apprehended contingency for, to borrow the words of respondent court, "in an apparent attempt to get rid of this legal stumbling block (the prohibition against a cockpit in a residential zone under Proclamation 49), the Sangguniang Panglunsod of Gingoog City passed Resolution No. 378, Code Ordinance, series of 1985," . . . "thereby reclassifying Block 125 into a recreational zone." Withal, it is legally permissible, as exceptions to the general provisions on measures covered by city charters and the Local Government Code, that the vote requirement in certain ordinances may be specially provided for, as in the case of Section 6.44 of Resolution No. 49, instead of the usual majority vote.

In sum, Block 125 where Coliseum is located remains classified as a residential area, hence the operation of a cockpit therein is prohibited.
x x x

x x x

It bears mention, however, that the issue in this case is the validity of the city mayor's permits of April 22, 1986 and January 5, 1987 and the nullity whereof is affirmed in this opinion. Respondents observe that they see no useful purpose in having said permits declared null and void since they are already *functus officio*. We agree, however, with the stance taken respondent court that this adjudication would still be in order since it can hereafter serve as a guide for the proper and legal issuance of mayor's permits to cockpits owners. As pertinently quoted, justice demands that we act then, not only for the vindication of the outraged rights, though gone, but also for the guidance of and as a restraint upon the future.

DE LOS REYES VS. SANDIGANBAYAN¹⁴
(G.R. No. 121215, November 13, 1997, Third Division)

- *NATURE OF VETO POWER. - Contrary to petitioner's belief, the grant of the veto power confers authority beyond the simple mechanical act of signing an ordinance or resolution, as a requisite to its enforceability. Such power accords the local chief executive the discretion to sustain a resolution or ordinance in the first instance or to veto it and return it with his objections to the Sanggunian, which may proceed to reconsider the same. The Sanggunian concerned, however, may override the veto by a two-thirds (2/3) vote of all its members thereby making the ordinance or resolution effective for all legal intents and purposes. It is clear, therefore, that the concurrence of a local chief executive in the enactment of an ordinance or resolution requires, not only a flourish of the pen, but the application of judgment after meticulous analysis and intelligence as well.*
- *MINUTES OF SANGGUNIANG SESSION ACCORDED GREAT WEIGHT. - In the case at bar, the minutes of the session reveal that petitioner attended the session of the Sangguniang Bayan on July 27, 1992. It is evident, therefore, that petitioner approved the subject resolution knowing fully well that "the subject matter treated therein was neither taken up and discussed nor passed upon by the Sangguniang Bayan during the legislative session."*

x x x

Thus, the Court accords full recognition to the minutes as the official repository of what actually transpires in every proceeding. It has happened that the minutes may be corrected to reflect the true account of a proceeding, thus giving the Court more reason to accord them great weight for such subsequent corrections, if any, are made precisely to preserve the accuracy of the records. In light of the conflicting claims of the parties in the case at bar, the Court, without resorting to the minutes, will encounter difficulty in resolving the dispute at hand.

Facts:

Then Mayor Oscar De Los Reyes of Mariveles, Bataan, together with Sangguniang Bayan (SB) Member Jesse Concepcion and SB Secretary Antonio Zurita, was charged with falsification of a public document, for allegedly making it appear that SB Resolution No. 57-S-92 appropriating the amount of P8,500.00 for the payment of the terminal leave benefits of two municipal employees was passed by the Council on July 27, 1992, when the minutes of the proceedings showed no indication of the supposed approval of the Resolution.

¹⁴ Mayor Oscar De Los Reyes, Petitioner, vs. Sandiganbayan, Third Division, and the People of the Philippines, Respondents; G.R. No. 121215 November 13, 1997, Third Division.

After preliminary investigation, an information was filed before the Sandiganbayan against De Los Reyes and Concepcion, but excluded Zurita who was already deceased.

Prior to his arraignment, De Los Reyes filed a Motion for Reinvestigation on October 14, 1994. He contended that a similar complaint based on the same factual context was already previously dismissed by the Ombudsman. He further submitted a joint affidavit of the other members of the SB of Mariveles attesting to the actual passage and approval of Resolution No. 57-S-92.

Nevertheless, the Sandiganbayan, per resolution dated December 29, 1994, denied the Motion for Reinvestigation, ruling, among others that, “[t]he allegations of fact and the arguments of counsel are best taken up in the trial on the merits. As found by the prosecution, a prima facie case exists.”

De Los Reyes filed a Motion for Reconsideration, but to no avail. Hence, he filed a petition for certiorari before the Supreme Court (SC).

Issue/s:

1. Whether or not the final step in the approval of an ordinance or resolution, where the local chief executive affixes his signature, is purely a ministerial act;
2. Whether or not a complaint may be dismissed when a previous complaint with similar factual context was already dismissed by the Ombudsman; and
3. Whether or not the minutes taken during the Sanggunian session is significant in the determination of questions involving the passage of legislative measures.

Held:

The SC dismissed the petition and affirmed the decision of the Sandiganbayan. The Sandiganbayan was further directed to set the criminal case for arraignment and trial.

The SC expounded, among others, as follows:

In an effort to exonerate himself from the charge, petitioner argues that the deliberations undertaken and the consequent passage of Resolution No. 57-S-92 are legislative in nature. He adds that as local chief executive, he has neither the official custody of nor the duty to prepare said resolution; hence, he could not have taken advantage of his official position in committing the crime of falsification as defined and punished under Article 1716 of the Revised Penal Code.

Petitioner would like to impress upon this Court that the final step in the approval of an ordinance or resolution, where the local chief executive affixes his signature, is purely a ministerial act. This view is erroneous. Article 109(b) of the Local Government Code outlines the veto power of the Local Chief Executive which provides:

Art. 109 (b). The local chief executive, except the punong barangay shall have the power to veto any particular item or items of an appropriations ordinance, an ordinance or resolution adopting a local development plan and public investment program or an ordinance directing the payment of money or creating liability. . . . (Emphasis supplied)

Contrary to petitioner's belief, the grant of the veto power confers authority beyond the simple mechanical act of signing an ordinance or resolution, as a requisite to its enforceability. Such power accords the local chief executive the discretion to sustain a resolution or ordinance in the first instance or to veto it and return it with his objections to the Sanggunian, which may proceed to reconsider the same. The Sanggunian concerned, however, may override the veto by a two-thirds (2/3) vote of all its members thereby making the ordinance or resolution effective for all legal intents and purposes. It is clear, therefore, that the concurrence of a local chief executive in the enactment of an ordinance or resolution requires, not only a flourish of the pen, but the application of judgment after meticulous analysis and intelligence as well.

Petitioner's other contention that the Ombudsman should have dismissed the present case in view of a previous dismissal of a similar complaint involving the same factual context is likewise misplaced.

As explained by Deputy Special Prosecutor Leonardo P. Tamayo in his comment, the other case relied upon by petitioner has no relation whatsoever with the one in question. Notably, the former case was subject of a separate complaint and preliminary investigation, hence, the findings and records therein could not be "made part of the case under consideration."

It must be stressed that the Ombudsman correctly relied on the minutes taken during the session of the Sangguniang Bayan held last July 27, 1992, which petitioner regards as inconclusive evidence of what actually transpired therein. In a long line of cases, the Court, in resolving conflicting assertions of the protagonists in a case, has placed reliance on the minutes or the transcribed stenographic notes to ascertain the truth of the proceedings therein.

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In the case at bar, the minutes of the session reveal that petitioner attended the session of the Sangguniang Bayan on July 27, 1992. It is evident, therefore, that petitioner approved the subject resolution knowing fully well that "the subject matter treated therein was neither taken up and discussed nor passed upon by the Sangguniang Bayan during the legislative session."

Thus, the Court accords full recognition to the minutes as the official repository of what actually transpires in every proceeding. It has happened that the minutes may be corrected to reflect the true account of a proceeding, thus giving the Court more reason to accord them great weight for such subsequent corrections, if any, are made precisely to preserve the accuracy of the records. In light of the conflicting claims of the parties in the case at bar, the Court, without resorting to the minutes, will encounter difficulty in resolving the dispute at hand.

With regard to the joint affidavit of some members of the Sangguniang Bayan attesting to the actual passage and approval of Resolution No. 57-S-92, the Court finds the same to have been belatedly submitted as a last minute attempt to bolster petitioner's position, and, therefore, could not in any way aid the latter's cause.

Indeed, the arguments raised by petitioner's counsel are best taken up in the trial on the merits.

ZAMORA VS. CABALLERO¹⁵
(G.R. No. 147767, January 14, 2004, Third Division)

- WHEN COURT IS CONSTRAINED TO LOOK INTO THE JOURNAL AND NOT JUST THE SANGGUNIAN RESOLUTION TO DETERMINE PARTICIPATION OF SANGGUNIAN MEMBERS. - *Clearly, this Court is constrained to look into the proceedings of the Sanggunian as recorded in the Journal and not just rely on Resolution Nos. 05 and 07 to determine who and how many participated in the consideration thereof. The placing of the asterisks after the names of five members in the Resolutions is highly irregular and suspicious especially since both resolutions indicate that petitioner, whose name is also followed by asterisks, was present even if it is clear from the Journal that he had already left the session before the Sanggunian took note of the resignation of Board Member Sotto and voted on the motions.*
- PRESIDENTIAL DECREE (PD) NO. 1818 PROHIBITING COURTS FROM ISSUING INJUNCTIONS OR RESTRAINING ORDERS COVERS ADMINISTRATIVE ACTS INVOLVING QUESTIONS OF FACTS OR EXERCISE OF DISCRETION; COURTS COULD NOT BE PREVENTED TO RESTRAIN ADMINISTRATIVE ACTS INVOLVING QUESTIONS OF LAW. - *Respondents other contention that the construction of the capitol building cannot be enjoined in light of Malaga v. Penachos, Jr. fails to convince. In Malaga, this Court declared that although Presidential Decree No. 1818 prohibits any court from issuing injunctions in cases involving infrastructure projects, the prohibition extends only to the issuance of injunctions or restraining orders against administrative acts in controversies involving facts or the exercise of discretion in technical cases. On issues clearly outside this dimension and involving questions of law, this Court declared that courts could not be prevented from exercising their power to restrain or prohibit administrative acts.*
- DEFINITIONS OF QUORUM AND MAJORITY IN THE CASE OF SANGGUNIAN. - *Quorum is defined as that number of members of a body which, when legally assembled in their proper places, will enable the body to transact its proper business or that number which makes a lawful body and gives it power to pass upon a law or ordinance or do any valid act. Majority, when required to constitute a quorum, means the number greater than half or more than half of any total. In fine, the entire membership must be taken into account in computing the quorum of the sangguniang panlalawigan, for while the constitution merely states that majority of each House shall constitute a quorum, Section 53 of the LGC is more exacting as it requires that the majority of **all** members of the sanggunian . . . elected and qualified shall constitute a quorum.*

xxx

The trial court should thus have based its determination of the existence of a quorum on the total number of members of the Sanggunian without regard to the filing of a leave of absence by Board Member Sotto. The fear that a majority may, for reasons of political affiliation, file leaves of absence in order to cripple the functioning of the sanggunian is already addressed by the grant of coercive power to a mere majority of sanggunian members present when there is no quorum.

¹⁵ Manuel E. Zamora, Petitioner, vs. Governor Jose R. Caballero, Anesio M. Ranario, in His Capacity as Provincial Administrator, Mariano Kintanar, in His Capacity as Provincial Auditor, Carmen R. Rasul, in His (sic) Capacity as Provincial Treasurer, Rolando L. Osorio, Belinda G. Apawan, Armando L. Seras, Ruwel Peter S. Gonzaga, Armando C. Codilla, Raul B. Basaes, Graciano C. Arafol, Jr., Respondents; G.R. No. 147767, January 14, 2004, En Banc.

NOTE: In Javier vs. Cadio (G.R. No. 185369, August 03, 2016, Third Division), the Supreme Court ruled that the Vice-Governor, as the Presiding Officer, shall be considered a part of the SP for purposes of ascertaining if a quorum exists. In determining the number which constitutes as the majority vote, the Vice-Governor is excluded.

- TEMPORARY PRESIDING OFFICER CANNOT VOTE AS A SANGGUNIAN MEMBER IF THERE IS NO TIE TO BREAK. - *While acting as presiding officer, Board Member Osorio may not, at the same time, be allowed to exercise the rights of a regular board member including that of voting even when there is no tie to break. A temporary presiding officer who merely steps into the shoes of the presiding officer could not have greater power than that possessed by the latter who can vote only in case of a tie.*
- VOTE OF MAJORITY OF ALL SANGGUNIAN MEMBERS REQUIRED TO AUTHORIZE THE LOCAL CHIEF EXECUTIVE TO ENTER INTO CONSTRUCTION CONTRACT. - *Lastly, for a resolution authorizing the governor to enter into a construction contract to be valid, the vote of the majority of all members of the Sanggunian, and not only of those present during the session, is required in accordance with Section 468 of the LGC in relation to Article 107 of its Implementing Rules.*

Even including the vote of Board Member Osorio, who was then the Acting Presiding Officer, Resolution No. 07 is still invalid. Applying Section 468 of the LGC and Article 107 of its Implementing Rules, there being fourteen members in the Sanggunian, the approval of eight members is required to authorize the governor to enter into the Contract with the Allado Company since it involves the creation of liability for payment on the part of the local government unit.

Facts:

Board Member (BM) Manuel Zamora of the Sangguniang Panlalawigan (SP) of Compostela Valley filed a petition before the Regional Trial Court (RTC) assailing the validity of the acts of the SP in its 4th Regular Session on February 26, 2001 for lack of quorum and failure to comply with the required number of votes to approve the following measures:

- Resolution No. 5 declaring the entire Province of Compostela Valley under a state of calamity;
- Resolution No. 7 authorizing the Governor, on behalf of the Province, to enter into a construction contract with Allado Construction Company; and
- Notation and acceptance of the letter of irrevocable resignation submitted by BM Gemma Theresa M. Sotto.

Particularly, Zamora alleged as follows:

1. While the Journal and Resolutions during the session reflected the presence of 13 members, the SP conducted official business with only 7 actually present out of 14 members.
2. There was only 6 members who voted in favor of Resolution No. 5.
3. For Resolution No. 7, after 6 members voted in the affirmative, the then Presiding Officer BM Rolando Osorio relinquished his seat to BM Graciano Arafol who earlier voted so that the former can vote in favor of the Resolution as an SP member. Thereafter, BM Arafol and BM Osorio switched, and Osorio reassumed as Presiding Officer.

On the other hand, Respondents contended, among others, that BM Sotto was out of the country at the date of the session, thus, the actual number of BMs within the country is only 13 which should be the basis for determining the quorum during the questioned session.

The RTC dismissed the petition based on the following grounds:

1. BM Sotto should not be counted for purposes of determining quorum for the questioned session since she was abroad. Citing *Avelino vs. Cuenco*, the RTC ruled that despite the rule under Section 53(b) of the Local Government Code of 1991 (LGC), Republic Act No. 7160, providing for the compulsion of any member absent without justifiable cause, BM Sotto, being abroad, was beyond the reach of the legal processes of the SP and could not be arrested to compel her attendance to the session.
2. Presidential Decree (PD) No. 1818¹⁶ prohibits the issuance of restraining order or injunction in any case involving government infrastructure projects.

Hence, this petition before the Supreme Court (SC) questioning the decision of the RTC, assigning the following errors: “(1) applying the case of *Avelino v. Cuenco* to a controversy involving a local government unit; (2) taking judicial notice of Board Member Sotto’s being in the United States without proof thereof; and (3) ruling that to grant a Temporary Restraining Order would be in violation of P.D. 1818.”

¹⁶ Prohibiting Courts from Issuing Restraining Orders or Preliminary Injunctions in Cases Involving Infrastructure and Natural Resource Development Projects of, and Public Utilities Operated by, the Government.

Respondents, on the other hand, contented that the SC has no authority to look beyond the Journal and Resolutions of the Sanggunian, and that the construction of the capitol building cannot be enjoined. Further, it was asserted that the presence of 13 members in the questioned session should be conclusive in view of *Arroyo v. De Venecia* and *U.S. v. Pons*.

Issue/s:

1. Whether or not the entries in the Journals and Resolutions of the Sanggunian are conclusive upon the Courts.
2. Definition and determination of quorum and majority vote.
3. Whether or not a BM who is a temporary presiding officer may be allowed to relinquish his seat as such to vote on a legislative measure as a member of the Sanggunian.
4. Whether or not the courts are not allowed to enjoin government infrastructure projects by virtue of PD No. 1818.
5. Whether or not the required votes are met in the passage of SP Resolution Nos. 5 and 7.

Held:

The SC granted the petition, thus, reversed and set aside the order of the RTC. Consequently, Resolution Nos. 5 and 7 were declared null and void. The Court ruled, among others:

In the instant case, this Court is not called upon to inquire into the Sanggunian's compliance with its own rules. Rather, it is called upon to determine whether the Sanggunian complied with the LGC, a law enacted by Congress, and its Implementing Rules.

Moreover, the Journal of the Sanggunian is far from clear and explicit as to the presence of a quorum when the questioned acts were taken. It does not indicate how many members were actually present when the body voted on the motions leading to the adoption of Resolution Nos. 05 and 07. While the Journal and the Resolutions show that 13 members attended the session, the Journal shows that only six members were called by the presiding officer to vote on the motions. Six members whose names appear in attendance, namely: Vice-Governor Navarro and Board Members Zamora, Yanong, Castillo, Andres and Gentugaya, were not called and, save for the absent Vice-Governor, no explanation was given therefor.

Coincidentally, in Resolutions 05 and 07, the names of the Board Members who were not called upon to vote, including petitioner as he had in the meantime left, are followed by two asterisks (**).

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Clearly, this Court is constrained to look into the proceedings of the Sanggunian as recorded in the Journal and not just rely on Resolution Nos. 05 and 07 to determine who and how many participated in the consideration thereof. The placing of the asterisks after the names of five members in the Resolutions is highly irregular and suspicious especially since both resolutions indicate that petitioner, whose name is also followed by asterisks, was present even if it is clear from the Journal that he had already left the session before the Sanggunian took note of the resignation of Board Member Sotto and voted on the motions.

Respondents other contention that the construction of the capitol building cannot be enjoined in light of *Malaga v. Penachos, Jr.* fails to convince. In *Malaga*, this Court declared that although Presidential Decree No. 1818 prohibits any court from issuing injunctions in cases involving infrastructure projects, the prohibition extends only to the issuance of injunctions or restraining orders against administrative acts in controversies involving facts or the exercise of discretion in technical cases. On issues clearly outside this dimension and involving questions of law, this Court declared that courts could not be prevented from exercising their power to restrain or prohibit administrative acts.

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The present case, however, involves a local legislative body, the Sangguniang Panlalawigan of Compostela Valley Province, and the applicable rule respecting quorum is found in Section 53(a) of the LGC which provides:

Section 53. *Quorum*.-

(a) **A majority of all members** of the sanggunian who have been **elected and qualified shall constitute a quorum** to transact official business. Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results. (Emphasis supplied)

Quorum is defined as that number of members of a body which, when legally assembled in their proper places, will enable the body to transact its proper business or that number which makes a lawful body and gives it power to pass upon a law or ordinance or do any valid act. Majority, when required to constitute a quorum, means the number greater than half or more than half of any total. In fine, the entire membership must be taken into account in computing the quorum of the *sangguniang panlalawigan*, for while the constitution merely states that majority of each House shall constitute a quorum, Section 53 of the LGC is more exacting as it requires that the majority of **all** members of the *sanggunian* . . . *elected and qualified* shall constitute a quorum.

The difference in the wordings of the Constitution and the LGC is not merely a matter of style and writing as respondents would argue, but is actually a matter of meaning and intention. The qualification in the LGC that the majority be based on those elected and qualified was meant to allow *sanggunians* to function even when not all members thereof have been proclaimed. And, while the intent of the legislature in qualifying the quorum requirement was to allow *sanggunians* to function even when not all members thereof have been proclaimed and have assumed office, the provision necessarily applies when, after all the members of the *sanggunian* have assumed office, one or some of its members file for leave. What should be important then is the concurrence of election to and qualification for the office. And election to, and qualification as member of, a local legislative body are not altered by the simple expedient of filing a leave of absence.

The trial court should thus have based its determination of the existence of a quorum on the total number of members of the Sanggunian without regard to the filing of a leave of absence by Board Member Sotto. The fear that a majority may, for reasons of political affiliation, file leaves of absence in order to cripple the functioning of the *sanggunian* is already addressed by the grant of coercive power to a mere majority of *sanggunian* members present when there is no quorum.

A *sanggunian* is a collegial body. Legislation, which is the principal function and duty of the *sanggunian*, requires the participation of all its members so that they may not only represent the interests of their respective constituents but also help in the making of decisions by voting upon every question put upon the body. The acts of only a part of the Sanggunian done outside the parameters of the legal provisions aforementioned are legally infirm, highly questionable and are, more importantly, null and void. And all such acts cannot be given binding force and effect for they are considered unofficial acts done during an unauthorized session.

Board Member Sotto is then deemed not resigned because there was no quorum when her letter of irrevocable resignation was noted by the Sanggunian. For the same reason, Resolution Nos. 05 and 07 are of no legal effect.

Even assuming *arguendo* that there were indeed thirteen members present during the questioned February 26, 2001 session, Resolution No. 05 declaring the entire province of Compostela Valley under state of calamity is still null and void because the motion for its approval was approved by only six members. When there are thirteen members present at a session, the vote of only six members cannot, at any instance, be deemed to be in compliance with Section 107(g) of the Rules and Regulations Implementing the LGC which requires the concurrence of the approval by the majority of the members present and the existence of a quorum in order to validly enact a resolution.

The motion to grant the Governor authority to enter into the construction contract is also deemed not approved in accordance with the law even if it received seven affirmative votes, which is already the majority of thirteen, due to the defect in the seventh vote. For as priorly stated, as the Journal confirms, after all six members voted in the affirmative, Board Member Osorio, as acting presiding officer, relinquished his seat to Board Member Arafol and thereafter cast his vote as a member in favor of granting authority to the Governor.

This Court is faced with an act clearly intended to circumvent an express prohibition under the law a situation that will not be condoned. The LGC clearly limits the power of presiding officers to vote only in case of a tie, *to wit*.

Section 49. *Presiding Officer*. (a) The vice-governor shall be the presiding officer of the *sangguniang panlalawigan* x x x. **The presiding officer shall vote only to break a tie.**

(b) In the event of inability of the regular presiding officer to preside at a *sanggunian* session, the members present and constituting a quorum shall elect from among themselves a temporary presiding officer. x x x (Italics in the original. Emphasis supplied.)

While acting as presiding officer, Board Member Osorio may not, at the same time, be allowed to exercise the rights of a regular board member including that of voting even when there is no tie to break. A temporary presiding officer who merely steps into the shoes of the presiding officer could not have greater power than that possessed by the latter who can vote only in case of a tie.

[NOTE: In *Javier vs. Cadio* (G.R. No. 185369, August 03, 2016) the SC ruled that the Vice-Governor, as the Presiding Officer, shall be considered a part of the SP for purposes of ascertaining if a quorum exists. In determining the number which constitutes as the majority vote, the Vice-Governor is excluded.]

Lastly, for a resolution authorizing the governor to enter into a construction contract to be valid, the vote of the majority of all members of the Sanggunian, and not only of those present during the session, is required in accordance with Section 468 of the LGC in relation to Article 107 of its Implementing Rules.

Even including the vote of Board Member Osorio, who was then the Acting Presiding Officer, Resolution No. 07 is still invalid. Applying Section 468 of the LGC and Article 107 of its Implementing Rules, there being fourteen members in the Sanggunian, the approval of eight members is required to authorize the governor to enter into the Contract with the Allado Company since it involves the creation of liability for payment on the part of the local government unit.

MONTUERTO VS. TY¹⁷
(G.R. No. 177736, October 6, 2008, En Banc)

- APPOINTMENT OF A MUNICIPAL GOVERNMENT DEPARTMENT HEAD (e.g., MUNICIPAL BUDGET OFFICER) BY THE MAYOR NEEDS CONCURRENCE OF THE MAJORITY OF ALL SANGGUNIANG BAYAN MEMBERS; VERBAL CONCURRENCE BY SANGGUNIAN IS NOT SUFFICIENT; WITHOUT CONCURRENCE, APPOINTMENT IS NOT VALID AND NO LEGAL TITLE IS ACQUIRED DESPITE TEN (10) YEARS OF TENURE OF APPOINTEE. - *The law is clear. Under Section 443(a) and (d) of Republic Act (R.A.) No. 7160 or the Local Government Code, the head of a department or office in the municipal government, such as the Municipal Budget Officer, shall be appointed by the mayor with the concurrence of the majority of all Sangguniang Bayan members subject to civil service law, rules and regulations. Per records, the appointment of petitioner was never submitted to the Sangguniang Bayan for its concurrence or, even if so submitted, no such concurrence was obtained.*

x x x

Moreover, we agree with the ruling of the CA that the verbal concurrence allegedly given by the Sanggunian, as postulated by the petitioner, is not the concurrence required and envisioned under R.A. No. 7160. The Sanggunian, as a body, acts through a resolution or an ordinance. Absent such resolution of concurrence, the appointment of petitioner failed to comply with the mandatory requirement of Section 443(a) and (d) of R.A. No. 7160. Without a valid appointment, petitioner acquired no legal title to the Office of Municipal Budget Officer, even if she had served as such for ten years.

Facts:

Petitioner, Melanie P. Montuerto was issued an appointment as Municipal Budget Officer (MBO) on March 17, 1992 by the then Mayor Supremo T. Sabitsana of the Municipality of Almeria, Biliran. Her appointment was approved as permanent by the Acting Civil Service Commission (CSC) Field Officer on March 24, 1992.

However, after almost ten years, the Sangguniang Bayan (SB) of Almeria, Biliran passed SB Resolution No. 01-S-2002 on January 14, 2002 entitled, *A Resolution Requesting the Civil Service Commission Regional Office, to Revoke the Appointment of Mrs. Melanie P. Montuerto, Municipal Budget Officer of the Municipality of Almeria, Biliran for Failure to Secure the Required Concurrence from the Sangguniang Bayan.*

¹⁷ Melanie P. Montuerto, Petitioner, vs. Honorable Mayor Rolando E. Ty and the Sangguniang Bayan, Represented By Honorable Vice-Mayor Richard D. Jaguros, all of the Municipality of Almeria, Biliran; G.R. No. 177736, October 6, 2008, En Banc.

There is no record that shows the concurrence of the SB with the appointment of Montuerto as MBO, except a Joint Affidavit by the majority of the then members of the SB that in the Regular Session of the sanggunian, the concurrence on the appointment of MBO Montuerto was not highlighted and inadvertently omitted in the Minutes of the session but they fully recall that there was a verbal concurrence on her appointment.

Eventually, the CSC Regional Office (RO) No. VIII issued an Order recalling the approval of the appointment of Montuerto as MBO for lack of required concurrence of the majority of all the members of the SB of Almeria, Biliran.

A motion for reconsideration of said decision was filed by Montuerto, but at such point, the incumbent SB Secretary certified that there is no record that would show that the appointment of Montuerto as MBO was submitted to the SB for concurrence from June 1992 up to the present (June 10, 2002), but the SB minutes of the March 2, 1992 regular session pointed out the presence of a budget officer who explained the details of the municipal annual budget.

Consequently, the CSC RO No. VIII denied petitioner's motion for reconsideration. The CSC Central Office subsequently dismissed the appeal of Montuerto. Ultimately, the case was elevated to the Supreme Court (SC).

Issue/s:

Whether or not the appointment of petitioner as MBO, without the written concurrence of the *Sanggunian*, but duly approved by the CSC, and after the appointee had served as such for almost ten years without interruption, can still be revoked by the Commission.

Held:

The SC denied the petition for lack of merit. It pronounced that the CSC has the authority to recall the appointment of Montuerto.

The SC expounded, among others, as follows:

The law is clear. Under Section 443(a) and (d) of Republic Act (R.A.) No. 7160 or the Local Government Code, the head of a department or office in the municipal government, such as the Municipal Budget Officer, shall be appointed by the mayor with the concurrence of the majority of all *Sangguniang Bayan* members subject to civil service law, rules and regulations. Per records, the appointment of petitioner was never submitted to the *Sangguniang Bayan* for its concurrence or, even if so

submitted, no such concurrence was obtained. Such factual finding of quasi-judicial agencies, especially if adopted and affirmed by the CA, is deemed final and conclusive and may not be reviewed on appeal by this Court. This Court is not a trier of facts and generally, does not weigh anew evidence already passed upon by the CA. Absent a showing that this case falls under any of the exceptions to this general rule, this Court will refrain from disturbing the findings of fact of the tribunals below.

Moreover, we agree with the ruling of the CA that the verbal concurrence allegedly given by the *Sanggunian*, as postulated by the petitioner, is not the concurrence required and envisioned under R.A. No. 7160. The *Sanggunian*, as a body, acts through a resolution or an ordinance. Absent such resolution of concurrence, the appointment of petitioner failed to comply with the mandatory requirement of Section 443(a) and (d) of R.A. No. 7160. Without a valid appointment, petitioner acquired no legal title to the Office of Municipal Budget Officer, even if she had served as such for ten years.

LA CARLOTA CITY, NEGROS OCCIDENTAL, ET AL. VS. ATTY. ROJO¹⁸
(G.R. No. 181367, April 24, 2012, En Banc)

- VICE-MAYOR CONSIDERED AS A MEMBER OF THE SANGGUNIAN; INCLUDED IN DETERMINING QUORUM. - RA 7160 clearly states that the Sangguniang Panlungsod **shall be composed of the city vice-mayor as presiding officer**, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members. Black's Law Dictionary defines composed of as **formed of** or **consisting of**. As the presiding officer, the vice-mayor can vote only to break a tie. In effect, the presiding officer votes when it matters the most, that is, to break a deadlock in the votes. Clearly, the vice-mayor, as presiding officer, is a member of the Sangguniang Panlungsod considering that he is mandated under Section 49 of RA 7160 to vote to break a tie. To construe otherwise would create an anomalous and absurd situation where the presiding officer who votes to break a tie during a Sanggunian session is not considered a member of the Sanggunian.

X X X

In the same manner, a quorum of the Sangguniang Panlungsod should be computed based on the total composition of the Sangguniang Panlungsod. In this case, the Sangguniang Panlungsod of La Carlota City, Negros Occidental is composed of the presiding officer, ten (10) regular members, and two (2) ex-officio members, or a total of thirteen (13) members. A majority of the 13 members of the Sangguniang Panlungsod, or at least seven (7) members, is needed to constitute a quorum to transact official business. Since seven (7) members (including the presiding officer) were present on the 17 March 2004 regular session of the Sangguniang Panlungsod, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

NOTE: In Javier vs. Cadio (G.R. No. 185369, August 03, 2016, Third Division), the Supreme Court ruled that the Vice-Governor, as the Presiding Officer, shall be considered a part of the SP for purposes of ascertaining if a quorum exists. In determining the number which constitutes as the majority vote, the Vice-Governor is excluded.

¹⁸ La Carlota City, Negros Occidental, Represented by its Mayor, Hon. Jeffrey P. Ferrer, and the Sangguniang Panlungsod of La Carlota City, Negros Occidental, Represented by its Vice-Mayor, Hon. Demie John C. Honrado, Petitioners, vs. Atty. Rex G. Rojo, Respondent; G.R. No. 181367, April 24, 2012, En Banc.

Facts:

On March 18, 2004, Atty. Rex G. Rojo, who had just tendered his resignation the day before as member of the Sangguniang Panlungsod (SP) of La Carlota City, Negros Occidental, was appointed as permanent SP Secretary by then Vice-Mayor Rex R. Jalandoon.

When the appointment papers of Atty. Rojo was submitted to the Civil Service Commission Negros Occidental Field Office (CSCFO-Negros Occidental) for attestation, the CSCFO eventually informed the Vice-Mayor of the infirmities noted on the appointment documents, particularly, that the Chairman of the Personnel Selection Board and the Human Resource Management Officer did not sign the required certifications. In view of the failure of the appointing authority to comply with the directive, per letter dated April 14, 2004, the CSCFO considered the appointment of Atty. Rojo as permanently recalled or withdrawn.

Vice-Mayor Jalandoon considered the recall as disapproval of the appointment, thus, brought the matter to the CSC Regional Office (CSCRO) No. 6 in Iloilo City, through an appeal. Before the CSCRO could resolve the appeal, the newly-elected Mayor Jeffrey P. Ferrer and Vice-Mayor Demie John C. Honrado, representing the City of La Carlota and SP, respectively, intervened. Among other arguments, they contended that the resignation of Atty. Rojo as SP member was ineffective for failing to comply with the provision on quorum under Section 82(d) of Republic Act (RA) No. 7160, the Local Government Code of 1991.

The CSCRO, in a Decision dated September 20, 2004, reversed and set aside the ruling of the CSCFO and approved the appointment of Atty. Rojo. As to the intervenors' argument that the resignation of Atty. Rojo as SP member was ineffective, the CSCRO resolved that his resignation from the SP was valid having been tendered with the majority of the SP members in attendance, particularly with seven (7) out of the thirteen (13) councilors being present.

Mayor Ferrer and Vice-Mayor Honrado appealed the CSCRO decision to the CSC but the same was dismissed on the ground that the appellants were not the appointing authority and were therefore improper parties to the appeal. Their motion for reconsideration was likewise denied.

Similarly, the Court of Appeals (CA) denied the petition for review filed by the intervenors Mayor and Vice-Mayor, and concluded that inasmuch as Atty. Rojo possessed the minimum qualifications for the position of SP Secretary and that the appointing authority has sufficiently complied with the other requirements for a valid appointment, then the CSC's approval of the appointment was proper.

Hence, the City and SP, as represented by the Mayor and Vice-Mayor, filed a petition for review before the Supreme Court (SC) assailing the decision of the CA.

Issue/s:

Whether the appointment of Atty. Rojo as SP Secretary violated the constitutional proscription against eligibility of an elective official for appointment during his tenure, considering that his resignation as SP member was deemed not accepted by the Sanggunian during its regular session because of lack of quorum.

Held:

The SC denied the petition and affirmed the decision of the CA, ruling, among others, as follows:

Petitioners allege that respondent's appointment as *Sangguniang Panlungsod* Secretary is void. Petitioners maintain that respondent's irrevocable resignation as a *Sangguniang Panlungsod* member was not deemed accepted when it was presented on 17 March 2004 during the scheduled regular session of the *Sangguniang Panlungsod* of La Carlota City, Negros Occidental for lack of quorum. Consequently, respondent was still an incumbent regular *Sangguniang Panlungsod* member when then Vice-Mayor Jalandon appointed him as *Sangguniang Panlungsod* Secretary on 18 March 2004, which contravenes Section 7, Article IX-B of the Constitution.

The resolution of this case requires the application and interpretation of certain provisions of Republic Act No. 7160 (RA 7160), otherwise known as the Local Government Code of 1991. The pertinent provisions read:

Section 82. *Resignation of Elective Local Officials.* **(a) Resignations by elective local officials shall be deemed effective only upon acceptance by the following authorities:**

X X X

(3) The sanggunian concerned, in case of sanggunian members; and

X X X

(b) Copies of the resignation letters of elective local officials, together with the action taken by the aforesaid authorities, shall be furnished the Department of Interior and Local Government.

(c) The resignation shall be deemed accepted if not acted upon by the authority concerned within fifteen (15) working days from receipt thereof.

(d) **Irrevocable resignations by sanggunian members shall be deemed accepted upon presentation before an open session of the sanggunian concerned and duly entered in its records:** *Provided, however,* That this subsection does not apply to sanggunian members who are subject to recall elections or to cases where existing laws prescribe the manner of acting upon such resignations.

Section 49. **Presiding Officer.** (a) The vice-governor shall be the presiding officer of the sangguniang panlalawigan; **the city vice-mayor, of the sangguniang panlungsod;** the municipal vice-mayor, of the sangguniang bayan; and the punong barangay, of the sangguniang barangay. **The presiding officer shall vote only to break a tie.**

X X X

Section 52. **Sessions.** (a) On the first day of the session immediately following the election of its members, the sanggunian shall, by resolution, fix the day, time, and place of its regular sessions. The minimum number of regular sessions shall be once a week for the sangguniang panlalawigan, sangguniang panlungsod, and sangguniang bayan, and twice a month for the sangguniang barangay.

(b) When public interest so demands, special session may be called by the local chief executive or by a majority of the members of the sanggunian.

(c) All sanggunian sessions shall be open to the public unless a closed-door session is ordered by an affirmative vote of a majority of the members present, there being a quorum, in the public interest or for reasons of security, decency, or morality. No two (2) sessions, regular or special, may be held in a single day.

(d) In the case of special sessions of the sanggunian, a written notice to the members shall be served personally at the members usual place of residence at least twenty-four (24) hours before the special session is held. Unless otherwise concurred in by two-thirds (2/3) vote of the sanggunian members present, there being a quorum, no other matters may be considered at a special session except those stated in the notice.

(e) Each sanggunian shall keep a journal and record of its proceedings which may be published upon resolution of the sanggunian concerned.

Section 53. **Quorum.** (a) **A majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum to transact official business.** Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.

X X X

Section 457. **Composition.** (a) **The sangguniang panlungsod, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members.**

(b) In addition thereto, there shall be three (3) sectoral representatives: one (1) from the women; and as shall be determined by the sanggunian concerned within ninety (90) days prior to the holding of the local elections, one (1) from the agricultural or industrial workers; and one (1) from the other sectors, including the urban poor, indigenous cultural communities, or disabled persons.

(c) The regular members of the sangguniang panlungsod and the sectoral representatives shall be elected in the manner as may be provided for by law. (Boldfacing supplied)

Petitioners insist that the vice-mayor, as presiding officer of the *Sangguniang Panlungsod*, should not be counted in determining whether a quorum exists. Excluding the vice-mayor, there were only six (6) out of the twelve (12) members of the *Sangguniang Panlungsod* who were present on 17 March 2004. Since the required majority of seven (7) was not reached to constitute a quorum, then no business could have validly been transacted on that day including the acceptance of respondent's irrevocable resignation.

On the other hand, respondent maintains that in this case, the *Sangguniang Panlungsod* consists of the presiding officer, ten (10) regular members, and two (2) ex-officio members, or a total of thirteen (13) members. Citing the Department of Interior and Local Government (DILG) Opinion No. 28, s. 2000, dated 17 April 2000, respondent asserts that the vice-mayor, as presiding officer, should be included in determining the existence of a quorum. Thus, since there were six (6) members plus the presiding officer, or a total of seven (7) who were present on the 17 March 2004 regular

session of the *Sangguniang Panlungsod*, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

X X X

X X X **In short, whether a vice-mayor has the power, function or duty of a member of the *Sangguniang Panlungsod* is determined by the Local Government Code.**

On 10 October 1991, the Congress approved RA 7160 or the Local Government Code. Under RA 7160, the city vice-mayor, as presiding officer, is a member of the *Sangguniang Panlungsod*, thus:

Section 49. **Presiding Officer.** (a) The vice-governor shall be the presiding officer of the sangguniang panlalawigan; **the city vice-mayor, of the sangguniang panlungsod**; the municipal vice-mayor, of the sangguniang bayan; and the punong barangay, of the sangguniang barangay. **The presiding officer shall vote only to break a tie.**

X X X

RA 7160 clearly states that the *Sangguniang Panlungsod* **shall be composed of the city vice-mayor as presiding officer**, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members. Black's Law Dictionary defines composed of as **formed of** or **consisting of**. As the presiding officer, the vice-mayor can vote only to break a tie. In effect, the presiding officer votes when it matters the most, that is, to break a deadlock in the votes. Clearly, the vice-mayor, as presiding officer, is a member of the *Sangguniang Panlungsod* considering that he is mandated under Section 49 of RA 7160 to vote to break a tie. To construe otherwise would create an anomalous and absurd situation where the presiding officer who votes to break a tie during a *Sanggunian* session is not considered a member of the *Sanggunian*.

The Senate deliberations on Senate Bill No. 155 (Local Government Code) show the intent of the Legislature to treat the vice-mayor not only as the presiding officer of the *Sangguniang Panlungsod* but also as a member of the *Sangguniang Panlungsod*. X X X

X X X

During the deliberations, Senator Pimentel, the principal author of the the Local Government Code of 1991, clearly agrees with Senator Gonzales that the provincial governor, the city mayor, and the municipal mayor who were previously the presiding officers of their respective *sanggunian* are no longer the presiding officers under the proposed Local Government Code, and thus, they ceased to be members of their respective *sanggunian*. In the same manner that under the Local Government Code of 1991, the vice-governor, the city vice-mayor, and the municipal vice-mayor, as presiding officers of the *Sangguniang Panlalawigan*, *Sangguniang Panlungsod*, *Sangguniang Bayan*, respectively, are members of their respective *sanggunian*.

In the 2004 case of *Zamora v. Governor Caballero*, the Court interpreted Section 53 of RA 7160 to mean that the entire membership must be taken into account in computing the quorum of the *sangguniang panlalawigan*. The Court held:

Quorum is defined as that number of members of a body which, when legally assembled in their proper places, will enable the body to transact its proper business or that number which makes a lawful body and gives it power to pass upon a law or ordinance or do any valid act. Majority, when required to constitute a quorum, means the number greater than half or more than half of any total. In fine, the *entire membership* must be taken into account in computing the quorum of the *sangguniang panlalawigan*, for while the constitution merely states that majority of each House shall constitute a quorum, Section 53 of the LGC is more exacting as it requires that the majority of all members of the *sanggunian* . . . *elected and qualified* shall constitute a quorum.

The trial court should thus have based its determination of the existence of a quorum on the total number of members of the Sanggunian without regard to the filing of a leave of absence by Board Member Sotto. The fear that a majority may, for reasons of political affiliation, file leaves of absence in order to cripple the functioning of the *sanggunian* is already addressed by the grant of coercive power to a mere majority of *sanggunian* members present when there is no quorum.

A *sanggunian* is a collegial body. Legislation, which is the principal function and duty of the *sanggunian*, requires the participation of all its members so that they may not only represent the interests of their respective constituents but also help in the making of decisions by voting upon every question put upon the body. The acts of only a part of the Sanggunian done outside the parameters of the legal provisions aforementioned

are legally infirm, highly questionable and are, more importantly, null and void. And all such acts cannot be given binding force and effect for they are considered unofficial acts done during an unauthorized session.

In stating that there were fourteen (14) members of the *Sanggunian*, the Court in *Zamora* clearly included the Vice-Governor, as presiding officer, as part of the entire membership of the *Sangguniang Panlalawigan* which must be taken into account in computing the quorum.

DILG Opinions, which directly ruled on the issue of whether the presiding officer should be included to determine the quorum of the *sanggunian*, have consistently conformed to the Courts ruling in *Zamora*.

In DILG Opinion No. 46, s. 2007, the Undersecretary for Local Government clearly stated that the vice-mayor is included in the determination of a quorum in the *sanggunian*. x x x

x x x

In the same manner, a quorum of the *Sangguniang Panlungsod* should be computed based on the total composition of the *Sangguniang Panlungsod*. In this case, the *Sangguniang Panlungsod* of La Carlota City, Negros Occidental is composed of the presiding officer, ten (10) regular members, and two (2) ex-officio members, or a total of thirteen (13) members. A majority of the 13 members of the *Sangguniang Panlungsod*, or at least seven (7) members, is needed to constitute a quorum to transact official business. Since seven (7) members (including the presiding officer) were present on the 17 March 2004 regular session of the *Sangguniang Panlungsod*, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

x x x

Clearly, the appointment of respondent on 18 March 2004 was validly issued considering that: (1) he was considered resigned as *Sangguniang Panlungsod* member effective 17 March 2004; (2) he was fully qualified for the position of *Sanggunian* Secretary; and (3) there was substantial compliance with the appointment requirements.

NOTE: In *Javier vs. Cadiao* (G.R. No. 185369, August 03, 2016, Third Division), the SC ruled that the Vice-Governor, as the Presiding Officer, shall be considered a part of the SP for purposes of ascertaining if a quorum exists. In determining the number which constitutes as the majority vote, the Vice-Governor is excluded.

JAVIER VS. CADIAO¹⁹
(G.R. No. 185369, August 03, 2016, Third Division)

- VICE-GOVERNOR COUNTED AS A MEMBER OF THE SANGGUNIAN FOR PURPOSES OF ASCERTAINING QUORUM, BUT EXCLUDED IN DETERMINING THE REQUIRED VOTE. - *The Vice-Governor, as the Presiding Officer, shall be considered a part of the SP for purposes of ascertaining if a quorum exists. In determining the number which constitutes as the majority vote, the Vice-Governor is excluded. The Vice-Governor's right to vote is merely contingent and arises only when there is a tie to break.*

x x x

In the instant petition, when the Combong Resolution was deliberated upon, all the ten (10) regular and three (3) ex-officio members, plus the Presiding Officer, were present. Seven members voted for, while six voted against the Combong Resolution. There was no tie to break as the majority vote had already been obtained.

- DECLARATION OF LEGISLATIVE ACT AS INVALID SOLELY FOR NON-COMPLIANCE WITH INTERNAL RULES BEYOND COURT'S JURISDICTION. - *While the petitioners raise other issues pertaining to alleged violations by the respondents of the SP's IRP, the Court deems it proper not to resolve them anymore. Again, the Court reiterates that the instant petition has been rendered moot by the termination of the contending parties' tenure in June of 2010. Further, it is beyond the Court's province to declare a legislative act as invalid solely for non-compliance with internal rules.*

Facts:

The Sangguniang Panlalwigan (SP) of Antique passed Resolution No. 42-2008 which sought the reorganization of the then standing committees of the Sanggunian. The Resolution was included as an urgent matter in the agenda of the 5th regular session of the SP.

All SP members and the Vice-Governor were present during said session, and the Resolution was passed with seven (7) voting for its approval and six (6) against it. Consequently, changes were made in the chairmanship and membership of the standing committees.

¹⁹ J. Tobias M. Javier and Vincent H. Piccio III, Petitioners, vs. Rhodora J. Cadiao, Alfonso V. Combong, Jr., Benjamin E. Juanitas, Calixto G. Zaldivar Iii, Dante M. Beriong, Fernando C. Corvera, Hector L. Frangue and Kenny S. Olandres, Respondents; G.R. No. 185369, August 03, 2016; Third Division.

Consequently, petitioners Javier and Piccio, with some other SP members (then plaintiffs), questioned the legality of the passage of SP Resolution No. 42-2008 contending that since the Resolution was considered as an “urgent matter” should have been passed by an affirmative vote of two-thirds (2/3) of all the members present pursuant to its Internal Rules of Procedure (IRP). Hence, inasmuch as all fourteen (14) members of the SP were present during the deliberations, nine (9) votes were necessary to approve the Resolution.

Further, then plaintiffs cited Article 107(g) of the Implementing Rules and Regulations (IRR) of the Local Government Code of 1991 (LGC) and legal opinions of the Department of the Interior and Local Government and argued that at least eight (8) votes constitute simple majority to validly pass the Resolution since all fourteen (14) members of the SP, to include the Vice-Governor as presiding officer, were present during the session. In such case, the simple majority of 14 is half of 14, plus 1.

The Regional Trial Court (RTC) upheld the validity of the questioned Resolution and dismissed the petition for lack of merit. The RTC ruled, among others, that the presence of the Vice-Governor should not be considered in the determination of what constitutes majority. Accordingly, when the Resolution was passed, thirteen (13) SP members and the Vice-Governor were present. The thirteen (13) SP members voted with seven (7) for and six (6) against the passage of the Resolution, thus, a majority was already obtained, and that the Vice-Governor as the presiding officer no longer needed to vote since there was no tie to break.

The RTC likewise held that Sections 11, 21, 50(5) and 54(a) of the LGC enumerated the instances where the two-thirds (2/3) voting requirement is prescribed, and “urgent matters” are not included therein. Hence, the IRP of the SP “cannot rise above its source and impose more stringent standards than what the LGC itself necessitates.”

Issue/s:

1. Whether or not the Vice-Governor, as the presiding officer of the *Sangguniang Panlalawigan*, be counted in the determination of what number constitutes as the majority.
2. Whether or not the passage of the Resolution was valid considering that it was taken up as an “urgent matter” in the agenda of the SP session wherein the SP’s IRP requires two-thirds (2/3) affirmative vote.

Held:

The Supreme Court (SC) denied the petition. It ruled, among others, as follows:

Procedurally, the petition is outrightly dismissible for being moot and academic. The terms of office of the contending parties had already ended in June of 2010. There is no more substantial relief which can be gained by the petitioners, or which would be negated by the dismissal of the case.

However, by reason of the public interest involved, the Court shall take exception of the case and still address the first, second and fourth issues raised herein for the bench, bar and public's guidance.

The Vice-Governor, as the Presiding Officer, shall be considered a part of the SP for purposes of ascertaining if a quorum exists. In determining the number which constitutes as the majority vote, the Vice-Governor is excluded. The Vice-Governor's right to vote is merely contingent and arises only when there is a tie to break.

x x x

In *La Carlota City, Negros Occidental, et al. v. Atty. Rojo*, the Court interpreted a provision pertaining to the composition of the Sangguniang Panlungsod, viz.:

x x x x

R.A. 7160 clearly states that the Sangguniang Panlungsod shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members.' Black's Law Dictionary defines composed of as "formed of" or "consisting of." As the presiding officer, the vice-mayor can vote only to break a tie. In effect, the presiding officer votes when it matters the most, that is, to break a deadlock in the votes. Clearly, the vice-mayor, as presiding officer, is a "member" of the Sangguniang Panlungsod considering that he is mandated under Section 49 of RA 7160 to vote to break a tie. To construe otherwise would create an anomalous and absurd situation where the presiding officer who votes to break a tie during a Sanggunian session is not considered a "member" of the Sanggunian. (Underlining ours and emphasis in the original)

It can, thus, be concluded that the Vice-Governor forms part of the composition of the SP as its Presiding Officer, and should be counted in the determination of the existence of a quorum. However, the nature of the position of the Presiding Officer as a component of the SP is distinct from the other members comprising the said body.

Section 415 of the LGC provides the manner through which the SP members are elected. The Vice-Governor is elected at large; hence, holds the mandate of the entire body politic. In contrast thereto, the regular SP members are elected by district. They hold the mandate of a specific constituency within the body politic. On the other hand, the ex-officio SP members represent their respective groups.

Consequently, the regular and ex-officio SP members enjoy full rights of participation, which include debating and voting, all exercised in pursuit of championing the interests of their respective constituencies. The Vice-Governor, however, does not represent any particular group. As a Presiding Officer, his or her mandate is to ensure that the SP effectively conducts its business for the general welfare of the entire province. Logically then, the Vice-Governor should be the embodiment of impartiality. As the Presiding Officer of the SP, he or she is without liberty to readily take sides, or to cast a vote to every question put upon the body. It follows then that the law cannot reasonably require that the Vice-Governor be included in the determination of the required number of votes necessary to resolve a matter every time the SP votes on an issue. It bears stressing though that while the Vice-Governor does not enjoy full rights of participation in the floors of the SP, as the holder of the body politic's general mandate, the power to render conclusion to an issue when there is a deadlock, pertains to him or her. Thus, Section 49 of the LGC is explicit that "the presiding officer shall vote only to break a tie."

Associate Justice Arturo D. Brion's concurring opinion in *La Carlota* is illuminating, viz.:

If the voting level required would engage the entirety of the sanggunian as a collegial body, making the quorum requirement least significant, there is no rhyme or reason to include the presiding officer's personality at all. The possibility of that one instance where he may be allowed to vote is nil. To include him in sanggunian membership without this qualification would adversely affect the statutory rule that generally prohibits him from voting.

To illustrate, in disciplining members of the sanggunian where the penalty involved is suspension or expulsion, the LGC requires the concurrence of two-thirds (2/3) of all the members of the sanggunian. If the Sanggunian has thirteen (13) regular members (excluding the presiding officer), the votes needed to impose either of the penalty is eight. However, should the presiding officer be also included, therefore raising the membership to fourteen (14), - on the premise that he is also sanggunian member - even if he cannot vote in this instance, an additional one vote is required - i.e., nine votes are required - before the penalty is imposed. The presiding officer's innocuous inclusion as sanggunian member negatively impacts on the prohibition against him from voting since his mere inclusion affects the numerical value of the required voting level on a matter where generally and by law he has no concern. (Citation omitted and underscoring ours)

In the instant petition, when the Combong Resolution was deliberated upon, all the ten (10) regular and three (3) ex-officio members, plus the Presiding Officer, were present. Seven members voted for, while six voted against the Combong Resolution. There was no tie to break as the majority vote had already been obtained.

To hold that the Presiding Officer should be counted in determining the required number of votes necessary to uphold a matter before the SP shall be counter-productive. It would admit deadlocks as ordinary incidents in the conduct of business of the SP, which in effect incapacitates the said body from addressing every issue laid before it. In the process, the SP's responsiveness, effectivity and accountability towards the affairs of the body politic would be diminished.

x x x

While the petitioners raise other issues pertaining to alleged violations by the respondents of the SP's IRP, the Court deems it proper not to resolve them anymore. Again, the Court reiterates that the instant petition has been rendered moot by the termination of the contending parties' tenure in June of 2010. Further, it is beyond the Court's province to declare a legislative act as invalid solely for non-compliance with internal rules.

SARMIENTO VS. THE TREASURER OF THE PHILIPPINES²⁰
(G.R. Nos. 125680 and 126313, September 4, 2001, En Banc)

- PROHIBITED INCREASE IN THE PRESIDENT'S BUDGET PROPOSAL REFERS TO THE TOTAL BUDGET, NOT THE INDIVIDUAL ITEMS OF APPROPRIATIONS. - *For his part, the Solicitor General claims that the phrase "for the operation of the government" means that Congress is enjoined from increasing the total budget for the operation of the government as recommended by the President, not the individual items of appropriations.*

We agree. Records of the 1986 Constitutional Commission reveals that the purpose of the above-quoted provision is to avoid the possibility of a big budget deficit if Congress were given an unbridled hand in passing upon the appropriations recommended by the President as specified in the budget. The constitutional prohibition against such increase is an assurance that the expected income of the government will be sufficient for the operational expenses of its different agencies and projects specified in the appropriations law.

Facts:

Petitioners, as taxpayers, assailed the constitutionality of some provisions of Republic Act (RA) No. 8174, the Fiscal Year (FY) 1996 General Appropriations Act (GAA), particularly as follows:

1. That Congress increased the budget proposals of the President in the FY 1996 GAA, in violation of Section 25 (1), Article VI of the Constitution which provides:

Sec. 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.

They assert that the "appropriations" referred to in said prohibition to increase refers to *individual items* of appropriations.

On the other hand, the Solicitor General argued that the phrase "for the operation of the government" in the provision "means that Congress is enjoined from increasing the *total budget* for the operation of the government as recommended by the President, not the *individual items* of appropriations."

²⁰ Andres Sarmiento, et al. vs. The Treasurer of the Philippines and the Secretary of Budget and Management and Philippine Constitution Association, Exequiel B. Garcia and Ramon B. Gonzales vs. Hon. Celso Gangan, Chairman, Commission on Audit and Hon. Salvador Enriquez, Secretary of Budget and Management; G.R. Nos. 125680 and 126313, September 4, 2001, En Banc.

2. Petitioners also assailed the validity of the Congressional Initiative Allocations (CIAs) where individual members of the House of Representatives were allocated amounts ranging from ₱1.5 million to ₱3.6 billion, and in the Senate, ₱140 million to ₱5.4 billion each. Petitioners claim that these CIAs are not authorized by the Constitution or any law.
3. Further, petitioners attacked the constitutionality of the Countrywide Development Fund (CDF) under Article XLII of the FY 1996 GAA. They sought the reversal of the ruling in *Philconsa vs. Enriquez* which upheld the constitutionality of the CDF in the FY 1994 GAA, with the contention that “nowhere in [the] GAA of 1996 is it provided that the President shall implement the projects proposed and identified by members of Congress” and “that the proposal and identification of projects by members of Congress are not merely recommendatory considering that requests for releases of funds under the CDF are *automatically granted* by the Budget Secretary.”

It was argued by the Solicitor General, however, that the principle of *stare decisis* should be applied in this case since the provision being questioned is “basically the same provision in the 1994 GAA held as constitutional by this Court in ***Philconsa***.”

4. The last item challenged by the petitioners is paragraph 4 of the Special Provision of the FY 1996 GAA which provides:
 4. Realignment of Allocation for Operational Expenses. A member of Congress may realign his allocation for operational expenses to any other expense category provided the total of said allocation is not exceeded.

They allege that said provision contravenes Section 25 (5), Article VI of the 1987 Constitution, to wit:

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 the 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.

Issue/s:

Whether or not the following provisions of the FY 1996 GAA are constitutional:

1. Increases made by Congress in the budget proposal of the President;
2. Congressional Initiative Allocation;

3. Countrywide Development Fund; and
4. Realignment of Operational Expenses.

Held:

The Supreme Court (SC) found that Congress did not overstep the bounds of its constitutional power, thus, denied the petition.

Particularly, the SC ruled, among others:

I. INCREASES IN THE BUDGET PROPOSAL OF THE PRESIDENT

Petitioners contend that Congress, in the GAA of 1996, increased the budget proposals of the President, in violation of Sec. 25 (1), Article VI of the Constitution which provides:

"Sec. 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."

They stress that the phrase "appropriations" "as specified in the budget" refers to individual items of appropriations which Congress may not increase. For his part, the Solicitor General claims that the phrase "for the operation of the government" means that Congress is enjoined from increasing the *total budget* for the operation of the government as recommended by the President, not the *individual items* of appropriations.

We agree. Records of the 1986 Constitutional Commission reveals that the purpose of the above-quoted provision is to avoid the possibility of a big budget deficit if Congress were given an unbridled hand in passing upon the appropriations recommended by the President as specified in the budget. The constitutional prohibition against such increase is an assurance that the expected income of the government will be sufficient for the operational expenses of its different agencies and projects specified in the appropriations law.

An appropriation bill has been defined as a measure before the legislative body authorizing the expenditure of public money and specifying the amount, manner and purpose of the various items of expenditure. Thus, Congress has the prerogative to appropriate for certain items of expenditure, specified by the President in the budget, as long as the entire appropriation does not exceed the proposed total amount of the budget.

Here, Congress merely exercised its prerogative of allocating the obtainable budget of the government to its different agencies and projects. It increased the proposed budget for some items, but decreased the proposed budget for others. It bears to emphasize that Congress did not increase the overall recommended appropriations of the President. The law itself (GAA of 1996) reduced the proposed total amount from P415,557,000.00 to only P 415,555,560.00.

II. CONGRESSIONAL INITIATIVE ALLOCATIONS

Petitioners challenge the validity of the Congressional Initiative Allocations (CIA) where individual members of the House of the Representatives are allocated a minimum of P1.5 million to a maximum of P 3.6 billion, and in the Senate, a minimum of P 140 million to a maximum of P 5.4 billion each. Petitioners insist that these allocations are not authorized by the Constitution or any law.

The Constitution mandates that no money shall be paid out of the Treasury except in pursuance **of an appropriation made by law**. Hence, the CIA, in so far as it allocates, millions to billions of pesos to our Senators and Congressmen, **must be pursuant to a law**. However, petitioners failed to point out any specific law, or even a provision of law, which contains the CIA. Neither did the Solicitor General shed light on his assertion that the CIA is an "insertion in an item as a result of realignment made by Congress" in the GAA of 1996.

x x x

Accordingly, for petitioners' failure to specify any provision in R.A. 8174 containing the CIA, their attempt to raise a justiciable issue must fail.

III. COUNTRYWIDE DEVELOPMENT FUND

Petitioners question the constitutionality of Article XLII of R.A. 8174 (GAA of 1996) on the Countrywide Development Fund (CDF). Seeking the reversal of this Court's ruling in *Philconsa vs. Enriquez* upholding the constitutionality of the CDF in the GAA of 1994, they contend that nowhere in GAA of 1996 is it provided that the President shall implement the projects proposed and identified by members of Congress. Moreover, they allege that the proposal and identification of projects by members of Congress are not merely recommendatory considering that requests for releases of funds under the CDF are *automatically granted* by the Budget Secretary.

The Solicitor General argues that since the questioned provision in the 1996 GAA on CDF is basically the same provision in the 1994 GAA held as constitutional by this Court in *Philconsa*, the instant case should be resolved in the same manner, following the principle of *stare decisis*.

We sustain the Solicitor General's argument.

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We observe that petitioners merely reiterate their arguments in *Philconsa*. We thus find no compelling justification to review, much less reverse, this Court's ruling on the constitutionality of the CDF.

IV. REALIGNMENT OF OPERATIONAL EXPENSES

Petitioners impugn the validity of Paragraph 4 of the Special Provisions of R.A. 8174 (1996 GAA) which provides:

"4. Realignment of Allocation for Operational Expenses. A member of Congress may realign his allocation for operational expenses to any other expense category provided the total of said allocation is not exceeded."

According to them, said provision contravenes Section 25 (5), Article VI of the Constitution, which reads:

"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 the 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."

The validity of a provision in a general appropriations act authorizing a member of Congress to realign his allocation for operational expenses has likewise been settled by this Court in *Philconsa*, thus:

Under the Special Provisions applicable to the Congress of the Philippines, the members of Congress only determine the necessity of the realignment of the savings in the allotments for their operating expenses. They are in the best position to do so because they are the ones who know whether there are savings available in some items and whether there are deficiencies in other items of their operating expenses that need augmentation. However, it is the Senate President and the Speaker of the House of Representatives, as the case may be, who shall approve the realignment. Before giving their stamp of approval, these two officials will have to see to it that:

(1) The funds to be realigned or transferred are actually savings in the items of expenditures from which the same are to be taken; and

(2) The transfer or realignment is for the purpose of augmenting the items of expenditure to which said transfer or realignment is to be made." (emphasis ours)

Clearly, therefore, on the basis of the principle of *stare decisis*, petitioner's case must fail.

VILLANUEVA VS. OPLE²¹
(G.R. No. 165125, November 18, 2005, Third Division)

- MERE FAILURE TO ENACT A BUDGET DOES NOT MAKE ALL DISBURSEMENTS ILLEGAL AND FAILURE TO PROVE UNLAWFUL EXPENDITURE NEGATES FINDING OF UNDUE INJURY TO THE GOVERNMENT. - *First, the mere failure of the local government to enact a budget did not make all its disbursements illegal. Section 323 of the LGC provides for the automatic reenactment of the budget of the preceding year, in case the Sanggunian fails to enact one within the first 90 days of the fiscal year. Hence, the contention in the present case that money was paid out of the local treasury without any valid appropriation must necessarily fail.*

X X X

Third, petitioners failed to substantiate their allegations that the government had suffered undue injury. They concluded that there had been undue injury simply on the basis of their unsubstantiated claims of illegal disbursements. Having failed to prove any unlawful expenditure, the claim of undue injury must necessarily fail.

- DELAY IN SUBMITTING A BUDGET PROPOSAL DOES NOT AUTOMATICALLY MAKE THE LOCAL CHIEF EXECUTIVE LIABLE. - *Fourth, petitioners relied solely on Section 318 of the LGC, which allegedly exposed the mayor to criminal liability for delay in submitting a budget proposal. The pertinent provision reads:*

Sec. 318. Preparation of the Budget by the Local Chief Executive. Upon receipt of the statements of income and expenditures from the treasurer, the budget proposals of the heads of departments and offices, and the estimates of income and budgetary ceilings from the local finance committee, the local chief executive shall prepare the executive budget for the ensuing fiscal year in accordance with the provisions of this Title.

The local chief executive shall submit the said executive budget to the sanggunian concerned not later than the sixteenth (16th) of October of the current fiscal year. Failure to submit such budget on the date prescribed herein shall subject the local chief executive to such criminal and administrative penalties as provided for under this Code and other applicable laws.

Under the above LGC provision, criminal liability for delay in submitting the budget is qualified by various circumstances. For instance, the mayor must first receive the necessary financial documents from other city officials in order to be able to prepare the budget. In addition, criminal liability must conform to the provisions of the LGC and other applicable laws. Noteworthy is the fact that petitioners failed to present evidence that would fulfill these qualifications stated in the law.

²¹ Cesar T. Villanueva, Pedro S. Santos, and Roy C. Soriano, Petitioners vs. Mayor Felix V. Ople and Vice-Mayor Josefina R. Contreras, Respondents; G.R. No. 165125, November 18, 2005, Third Division.

Facts:

The Municipal Mayor and Vice-Mayor were charged by the Petitioners before the Office of the Ombudsman for violation of Section 3(e) of Republic Act (RA) No. 3019 or the Anti-Graft and Corrupt Practices Act, in relation to Sections 305 (a), 318 and 351 of the Local Government Code of 1991 (LGC), RA No. 7160.

The Petitioners alleged that the Fiscal Year (FY) 2003 proposed Annual Budget of the Municipality was submitted by the Mayor belatedly to the Sangguniang Bayan, only on June 11, 2003, instead of October 16 of the preceding year, as mandated by Section 318 of the LGC. They further alleged that the Vice-Mayor failed to refer the budget to the chief legal counsel of the municipality, but instead sought the approval by the Sangguniang Bayan of the alleged Illegal Annual Budget for 2003.

Moreover, the Petitioners asserted that since no enabling resolution was enacted authorizing the expenditures of the municipality to be based on the annual budget for the preceding year, the disbursement of public funds while there was no enacted annual budget was illegal.

They charged that Respondents as liable for illegal disbursements done in the discharge of their official functions, through evident bad faith and/or gross negligence that caused undue injury to the Municipality.

Respondents, on the other hand, claimed that the proposed executive budget was actually submitted not on June 11, 2003, but on June 26, 2003. Nevertheless, the late submission was explained to be owing to the Municipality's compliance with the Commission on Audit (COA) Circular No. 2002-2003, otherwise known as the New Government Accounting System, which mandated the revision of accounting procedures. In compliance with the COA Circular, the Municipality had to review and modify its financial transactions beginning January 1, 2002, and the data from the accounting department are necessary in order to prepare the executive budget.

In addition, the Respondents averred that the Appropriation Ordinance was eventually passed and its effectivity date was January 1, 2003. They contended that the LGC does not require the vice-mayor to submit the proposed executive budget to the municipal legal office for review as a condition for its enactment.

Finally, the Respondents contended that the disbursements of public funds in the absence of an approved budget were legal under Section 323 of the LGC.

Ultimately, the Deputy Ombudsman issued a Resolution recommending that the case against the Respondents be dismissed for lack of probable cause, based on the following, among others:

1. The charge was premised on alleged illegal disbursements supposing to have caused undue injury to the government, but Petitioners failed to specify which disbursements had been illegally made.
2. Section 323 of the LGC authorized the reenactment of the budget for the preceding year in order for the municipal government to carry out its mandates and functions. Thus, the disbursements made under the re-enacted budget when the new budget had not yet been approved could not have been illegal.

The Deputy Ombudsman, in denying the Motion for Reconsideration filed by the Petitioners emphasized that the alleged undue injury should have been specified, quantified, and proven to the point of moral certainty.

Issues:

1. Whether or not the Mayor should be liable for the late submission of the proposed executive budget in view of the prescribed deadline under Section 318 of the LGC.
2. Whether or not disbursements of municipal funds in the absence of an enacted annual budget are illegal and can be characterized as undue injury.

Held:

The SC ruled that the Petition was bereft of merit. The Deputy Ombudsman had sufficient bases for finding that there was no probable cause to support the charge. The Court pronounced, among others, as follows:

First, the mere failure of the local government to enact a budget did not make all its disbursements illegal. Section 323 of the LGC provides for the automatic reenactment of the budget of the preceding year, in case the Sanggunian fails to enact one within the first 90 days of the fiscal year. Hence, the contention in the present case that money was paid out of the local treasury without any valid appropriation must necessarily fail.

Second, Section 323 states that only the annual appropriations for salaries and wages, statutory and contractual obligations, and essential operating expenses are deemed reenacted. Petitioner failed to identify disbursements that had gone beyond this coverage.

Third, petitioners failed to substantiate their allegations that the government had suffered undue injury. They concluded that there had been undue injury simply on the basis of their unsubstantiated claims of illegal disbursements.

Having failed to prove any unlawful expenditure, the claim of undue injury must necessarily fail.

Fourth, petitioners relied solely on Section 318 of the LGC, which allegedly exposed the mayor to criminal liability for delay in submitting a budget proposal. The pertinent provision reads:

Sec. 318. Preparation of the Budget by the Local Chief Executive. Upon receipt of the statements of income and expenditures from the treasurer, the budget proposals of the heads of departments and offices, and the estimates of income and budgetary ceilings from the local finance committee, the local chief executive shall prepare the executive budget for the ensuing fiscal year in accordance with the provisions of this Title.

The local chief executive shall submit the said executive budget to the sanggunian concerned not later than the sixteenth (16th) of October of the current fiscal year. Failure to submit such budget on the date prescribed herein shall subject the local chief executive to such criminal and administrative penalties as provided for under this Code and other applicable laws.

Under the above LGC provision, criminal liability for delay in submitting the budget is qualified by various circumstances. For instance, the mayor must first receive the necessary financial documents from other city officials in order to be able to prepare the budget. In addition, criminal liability must conform to the provisions of the LGC and other applicable laws. Noteworthy is the fact that petitioners failed to present evidence that would fulfill these qualifications stated in the law.

ALBON VS. FERNANDO²²
(G.R. No. 148357, June 30, 2006, Second Division)

- USE OF LGU FUNDS FOR PRIVATELY-OWNED SIDEWALKS UNLAWFUL. - *Therefore, the use of LGU funds for the widening and improvement of privately-owned sidewalks is unlawful as it directly contravenes Section 335 of RA 7160. This conclusion finds further support from the language of Section 17 of RA 7160 which mandates LGUs to efficiently and effectively provide basic services and facilities. The law speaks of infrastructure facilities intended primarily to service the needs of the residents of the LGU and which are funded out of municipal funds. It particularly refers to municipal roads and bridges and similar facilities.*

Facts:

On June 14, 1999 petitioner Aniano A. Albon, as a taxpayer, filed a petition for certiorari, prohibition and injunction against several officials of the City of Marikina, namely, Mayor Bayani F. Fernando, City Engineer Alfonso Espirito, Assistant City Engineer Anaki Maderal, and City Treasurer Natividad Cabalquinto, for undertaking the widening, clearing and repair of the sidewalks of Marikina Greenheights Subdivision.

Petitioner alleged that the use of government equipment, and the disbursement of the funds of the City for the “grading, widening, clearing, repair and maintenance of the existing sidewalks of Marikina Greenheights Subdivision,” a private property owned by V.V. Soliven, Inc., was unconstitutional and unlawful. Petitioner averred that respondents violated the prohibition under the 1987 Constitution against the use of public funds for private purposes, as well as Sections 335 and 336 of Republic Act (RA) No. 7160, the Local Government Code of 1991, and the Anti-Graft and Corrupt Practices Act (RA No. 3016). Petitioner also alleged that there was no appropriation for the project.

At the outset, the Regional Trial Court (RTC) denied the application for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction based on Presidential Decree (PD) No. 1818 and Supreme Court (SC) Circular No. 68-94 which prohibited courts from issuing a TRO or injunction in any case, dispute or controversy involving an infrastructure project of the government.

Eventually, the RTC dismissed the petition and ruled that the City of Marikina was authorized to carry out the contested undertaking pursuant to its inherent police power.

²² Aniano A. Albon, Petitioner, vs. Bayani F. Fernando, City Mayor of Marikina, Engr. Alfonso Espirito, City Engineer of Marikina, Engr. Anaki Maderal, Assistant City Engineer of Marikina, and Natividad Cabalquinto, City Treasurer of Marikina, Respondents; G.R. No. 148357, June 30, 2006, Second Division.

The lower court invoked the SC's decision in *White Plains Association v. Legaspi*, and declared that the roads and sidewalks inside the Marikina Greenheights Subdivision were deemed public property. This ruling was sustained by the Court of Appeals. Hence, the case was elevated by Albon to the SC.

Issue/s:

Whether or not a local government unit (LGU) may validly use public funds for the widening, repair and improvement of the sidewalks of a privately-owned subdivision.

Held:

The SC remanded the case to the RTC for immediate determination of “(1) whether V.V. Soliven, Inc. has retained ownership of the open spaces and sidewalks of Marikina Greenheights Subdivision or has donated them to the City of Marikina and (2) whether the public has full and unimpeded access to, and use of, the roads and sidewalks of the subdivision.”

In summary, the SC declared that the ownership of the sidewalks in Marikina Greenheights Subdivision is material to the determination of the validity of the questioned appropriation and disbursements made by the City of Marikina. Accordingly, whether or not V.V. Soliven, Inc. is still the owner of the open spaces and sidewalks in the subdivision or has already donated the same to the City; and whether or not the public has full and unimpeded access to the roads and sidewalks of the subdivision are factual matters that need to be resolved first in order to be able to determine the validity of the challenged appropriation and expenditure.

Among others, the SC pronounced as follows:

There is no question about the public nature and use of the sidewalks in the Marikina Greenheights Subdivision. One of the whereas clauses of PD 1216 (which amended PD 957) declares that open spaces, roads, alleys and sidewalks in a residential subdivision are for public use and beyond the commerce of man. In conjunction herewith, PD 957, as amended by PD 1216, mandates subdivision owners to set aside open spaces which shall be devoted exclusively for the use of the general public.

X X X

The ruling in the 1991 *White Plains Association* decision relied on by both the trial and appellate courts was modified by this Court in 1998 in *White Plains Association v. Court of Appeals*. Citing *Young v. City of Manila*, this Court held in its 1998 decision that subdivision streets belonged to the owner until donated to the government or until expropriated upon payment of just compensation.

x x x

x x x Ownership of the sidewalks in a private subdivision belongs to the subdivision owner/developer until it is either transferred to the government by way of donation or acquired by the government through expropriation.

Section 335 of RA 7160 is clear and specific that no public money or property shall be appropriated or applied for private purposes. This is in consonance with the fundamental principle in local fiscal administration that local government funds and monies shall be spent solely for public purposes.

x x x

In *Pascual*, the validity of RA 920 (An Act Appropriating Funds for Public Works) which appropriated ₱85,000 for the construction, repair, extension and improvement of feeder roads within a privately-owned subdivision was questioned. The Court held that where the land on which the projected feeder roads were to be constructed belonged to a private person, an appropriation made by Congress for that purpose was null and void.

In *Young v. City of Manila*, the City of Manila undertook the filling of low-lying streets of the Antipolo Subdivision, a privately-owned subdivision. The Court ruled that as long as the private owner retained title and ownership of the subdivision, he was under the obligation to reimburse to the city government the expenses incurred in land-filling the streets.

Moreover, the implementing rules of PD 957, as amended by PD 1216, provide that it is the registered owner or developer of a subdivision who has the responsibility for the maintenance, repair and improvement of road lots and open spaces of the subdivision prior to their donation to the concerned LGU. The owner or developer shall be deemed relieved of the responsibility of maintaining the road lots and open space only upon securing a certificate of completion and executing a deed of donation of these road lots and open spaces to the LGU.

Therefore, the use of LGU funds for the widening and improvement of privately-owned sidewalks is unlawful as it directly contravenes Section 335 of RA 7160. This conclusion finds further support from the language of Section 17 of RA 7160 which mandates LGUs to efficiently and effectively provide basic services and facilities. The law speaks of infrastructure facilities intended primarily to service the needs of the residents of the LGU and which are *funded out of municipal funds*. It particularly refers to *municipal* roads and bridges and similar facilities.

DBM VS. CITY GOVERNMENT OF CEBU²³
(G.R. No. 127301, March 14, 2007, First Division)

- **APPROPRIATION ORDINANCE NOT THE BASIS OF UPGRADING POSITIONS.** - *Considering that Ordinance No. 1468 is only an appropriation ordinance, petitioners erred in asserting that the ordinance upgrades the position of Cebu City Government Department Head from Salary Grade 26 to Salary Grade 27, and the position of Cebu City Government Assistant Department Head from Salary Grade 24 to Salary Grade 25. In this case, the bases for the correct salary grades of all positions in the local government unit are provided for by Joint Commission Circular No. 37 dated September 30, 1989, Joint Commission Circular No. 39 dated October 2, 1990 and Bulletin No. 10 dated March 7, 1991.*
- **DETERMINATION OF CORRECT SALARY GRADES BASED ON GUIDELINES.** - *It is hereby clarified that in determining the correct salary grades of the City Government Department Heads and City Government Assistant Department Heads based on Joint Commission Circular No. 37 as embodied in Joint Commission Circular No. 39 dated October 2, 1990, respondent must also read the guidelines in Bulletin No. 10, dated March 7, 1991, to arrive at the correct salary grades for said positions.*

Facts:

The case emanated from the following actions of the City Government of Cebu (City, for brevity) and the surrounding circumstances:

1. Grant of additional allowances to the judges and fiscals of the City in an amount more than ₱1,000 per month through an appropriation ordinance which was disallowed by the City Auditor of Cebu as being violative of Local Budget Circular (LBC) No. 55 dated March 15, 1994 issued by the Department of Budget and Management (DBM);
2. Provision of appropriations for the salary adjustments from second (2nd) step to eighth (8th) step of the salary schedule for department heads and assistant government department heads under Ordinance No. 1468 passed on August 9, 1993.

²³ Department of Budget and Management and Honorable Secretary Salvador M. Enriquez, Jr., Petitioners, vs. The City Government of Cebu, Respondent; G.R. No. 127301, March 14, 2007, First Division.

However, such salary adjustment was apparently covered by DBM Regional Memorandum Circular (RMC) No. 92-1 dated March 23, 1992 disallowing the grant on a full implementation basis of the 8th step of the Salary Schedule of Joint Circular No. 36, since it violated Republic Act (RA) No. 6758 (Compensation and Position Classification Act of 1989) and CSC-DBM Joint Circular No. 1 mandating that the grant of step increments must be based on merit and/or length of service. Said RMC enjoined the local government units that have granted step increments/salary increases not in accordance with CSC-DBM Joint Circular No. 1 to adjust said salary increases and accordingly return/refund the excess amounts received by incumbents; and

3. Abolition of the positions of Legal Officers (LOs) III and IV, and creation of ten Assistant City Attorneys with higher salary grade (SG), SG-24, under Ordinance No. 1450 passed on May 19, 1993.

However, when the City requested the reclassification of the LO positions, the DBM, per letter dated November 19, 1993, explained that based on existing classification standards/criteria under RA No. 6758, a highly-urbanized city like Cebu City, may be authorized with a City Attorney, classified as City Government Department Head I, who is assisted by an Assistant City Attorney, classified as City Government Assistant Department Head I; 2 LO IV which are actually chiefs of divisions to be each supported by 4 LO III.

Accordingly, the DBM allowed the reclassification of 1 City Government Department Head I (SG-25) to City Government Department Head II (SG-26); 1 City Government Assistant Department Head I (SG-23) to City Government Assistant Department Head II (SG-24); and 2 LO IV (SG-22) to Attorney IV (SG-23). On the other hand, the proposed higher SG (24) for the LO IV was not allowed since it will overlap with the SG assignment of its supervisor, the City Government Assistant Department Head II (SG-24).

Consequently, the City filed a petition for certiorari before the Supreme Court (SC), which referred the case to the Court of Appeals (CA). The City assailed the legality of the following:

1. DBM LBC No. 55 which set the guidelines on compensation and position classification in the LGUs, including the City, and the granting of additional allowances and other benefits to national government officials and employees assigned within its jurisdiction in the form of honorarium at rates not exceeding ₱1,000;
2. DBM RMC No. 92-1 enjoining LGUs, including the City, from granting step increments/salary increases not in accordance with CSC-DBM Joint Circular No. 1, and requiring the adjustments and return/refund of excess salary increases; and

3. DBM letter-reply dated November 19, 1993 on the approved reclassification of LO positions.

The CA denied the petition for lack of merit, ruling as follows:

1. As to the issue on the legality of LBC No. 55, the CA declared the arguments of the City as without merit since the DBM denied that they disallowed the grant because the appropriation ordinance of the City was passed before the effectivity of the LBC.
2. DBM RMC No. 92-1 is valid since the DBM was expressly directed under RA No. 6758 to establish and administer a Unified Compensation and Position Classification System that shall be applied to all government entities. DBM was likewise authorized to promulgate rules and regulations relative to grant of step increments under Section 13 of the same law.

Further, the CA explained that the DBM did not exceed its authority since it is evident from RA No. 6758 that the grant of step increments must be based on merit and length of service, and that the DBM RMC disallowed only the grants of step increments that are not based on merit and length of service.

Likewise, the CA declared that the RMC does not undermine the local autonomy of LGUs, including the City. It was elucidated that under RA No. 7160, the Local Government Code of 1991 (LGC), the LGUs are granted the power to determine the compensation of their local officials and employees. However, such power is not without limitation because Section 81 of the same law prescribed that increases in compensation are subject to certain conditions, including the pertinent provisions of RA No. 6758, to wit:

Sec. 81. Compensation of Local Officials and Employees. The compensation of local officials and personnel shall be determined by the sanggunian concerned: Provided, That the increase in compensation of elective local officials shall take effect only after the terms of office of those approving such increase shall have expired: Provided, further, That the increase in compensation of the appointive officials and employees shall take effect as provided in the ordinance shall not exceed the limitations on budgetary allocations for personal services provided under Title Five, Book II of this code: Provided, finally, That such compensation may be based upon the pertinent provisions of Republic Act Numbered Sixty-seven fifty-eight, (R.A. No. 6758), otherwise known as the Compensation and Position Classification Act of 1989.

3. Nevertheless, the CA concluded that Ordinance No. 1468 does not violate RMC No. 92-1, stating as follows:

. . . Ordinance No. 1468 increased the salary of concerned personnel not through a step increment but through changes in position titles and in their corresponding salary grades. The position titles of Department Heads and Assistant Department Heads were changed. Correspondingly, a change in salary grades, in this case, from a lower grade to a higher grade. Correspondingly, an increase in salary. This is not step-increment. The salary increased because the position titles and salary grades were changed. Ordinance No. 1468 is not a grant of step-increment. Therefore, its passage cannot be in violation of Memorandum Circular No. 92-1.

4. On the other hand, the CA declared Ordinance No. 1450 as void inasmuch as “allowing the ordinance would result in the overlap of the salary grade of both the City Government Assistant Department Head (Salary Grade 24) and the proposed Assistant City Attorneys (Salary Grade 24) in violation of the State policy to provide equal pay only for substantially equal work under R.A. No. 6758.”

On July 2, 1996, DBM moved for clarification of the Decision of the CA, particularly on Ordinance No. 1468, in view of the apparent conflict between the declaration of validity of the ordinance and Bulletin No. 10 dated March 7, 1991 of the Joint Commission on Local Government Personnel Administration (JCLGPA), and prayed that the ordinance, insofar as it upgrades the position of Cebu City Government Assistant Department Heads from SG-24 to SG-25 and Cebu City Government Department Heads from SG-26 to SG-27, be declared void for being contrary to the JCLGPA Bulletin No. 10.

The CA denied the motion for clarification for lack of merit, stating that its decision has already become final and executory per entry of Judgment dated June 5, 1996 while the motions for leave to file motion for clarification and to admit the said motion for clarification were belatedly filed only on July 5, 1996. It cited that, as a rule, a decision that has already become final and executory can no longer be corrected or amended, except for the correction of clerical error or mistake.²⁴ It concluded, “[i]n this case what is sought to be corrected or amended is the text of the dispositive portion of the decision which can no longer be done under our rules and established jurisprudence.”

Hence, DBM filed a petition for review on certiorari alleging that the CA seriously committed an error in denying its motion for clarification and refusing to resolve the ambiguity raised to avoid confusion. The petitioners argued that the motion for clarification did not pray reconsideration of the CA decision which was actually favorable to them, but merely sought to clarify the ambiguity. The contention is that

²⁴ citing *Francisco v. Bautista*, 192 SCRA 388.

the declaration of Ordinance No. 1468 as valid failed to consider that pursuant to Bulletin No. 10 dated March 7, 1991, the City of Cebu is classified only as a highly urbanized City, thus, the City Government Department Head is assigned SG-26, and not SG-27, while the City Government Assistant Department Head is assigned SG-24, and not SG-25.

Issue/s:

Whether or not an appropriation ordinance (Ordinance No. 1468 of Cebu City) is the basis of the upgrading of the positions covered thereby.

Held:

The SC granted the petition for review and found that clarification is in order to avoid confusion. The Court ruled, among others, as follows:

The Court notes that Ordinance No. 1468, approved on August 9, 1993, merely provided for **appropriations** for the salary adjustments of department heads and assistant department heads **to conform with the correct position titles under Joint Commission Circular Nos. 37 and 39** which took effect on July 1, 1989. It is clearly stated therein that the salary adjustments of department heads and assistant department heads will conform with the correct position titles under Joint Commission Circular Nos. 37 and 39 dated September 30, 1989 and October 2, 1990, respectively. Bulletin No. 10, dated March 7, 1991, provided the guidelines for the proper implementation of Joint Commission Circular No. 39. The Bulletin was issued primarily to respond to the numerous queries on the interpretation of certain changes in the Index of Occupational Services, Position Titles and Salary Grades issued under Joint Commission Circular No. 37 dated September 30, 1989 as embodied in Joint Commission Circular No. 39 dated October 2, 1990. Hence, in this case, Joint Commission Circular Nos. 37 and 39 should be read together with Bulletin No. 10 in determining the correct salary grades of the City Government Department Heads and Assistant Department Heads of Cebu City, which is classified as a highly urbanized city.

Considering that Ordinance No. 1468 is only an appropriation ordinance, petitioners erred in asserting that the ordinance upgrades the position of Cebu City Government Department Head from Salary Grade 26 to Salary Grade 27, and the position of Cebu City Government Assistant Department Head from Salary Grade 24 to Salary

Grade 25. In this case, the bases for the correct salary grades of all positions in the local government unit are provided for by Joint Commission Circular No. 37 dated September 30, 1989, Joint Commission Circular No. 39 dated October 2, 1990 and Bulletin No. 10 dated March 7, 1991.

X X X

In this case, the clarification sought by petitioners did not involve an erroneous judgment. As respondent in its original petition merely questioned the validity of DBM Regional Memorandum Circular No. 92-1 in relation to Cebu City Ordinance No. 1468, the CA correctly ruled that Ordinance No. 1468 was valid because it did not involve the grant of step increments and therefore could not be violative of Regional Memorandum Circular No. 92-1, which enjoined respondent from granting step increments/salary increases not in accordance with CSC-DBM Joint Circular No. 1 mandating that the grant of step increments must be based on merit and/or length of service.

To avoid confusion arising from the declaration of validity of Ordinance No. 1468, clarification is in order.

WHEREFORE, the petition for review on certiorari is GRANTED. It is hereby clarified that in determining the correct salary grades of the City Government Department Heads and City Government Assistant Department Heads based on Joint Commission Circular No. 37 as embodied in Joint Commission Circular No. 39 dated October 2, 1990, respondent must also read the guidelines in Bulletin No. 10, dated March 7, 1991, to arrive at the correct salary grades for said positions.

MENDOZA VS. DE GUZMAN²⁵
(G.R. Nos. 156697-98, October 09, 2007, En Banc)

- VALIDITY OF AN ORDINANCE MAY NOT BE QUESTIONED IN A PETITION FOR MANDAMUS. - *As pointed out by the CA, a municipal ordinance is not subject to collateral attack. The validity of the Ordinance cannot be assailed in the respondents' petition for mandamus as that would be a collateral attack on a law. Public policy forbids collateral impeachment of legislative acts. To sustain petitioner's claim would run counter to the principles of due process and the presumption in favor of constitutionality. It was therefore erroneous for the trial court case to allow petitioner to present evidence disputing the Ordinance when the main controversy pertained to an entirely different issue.*

To reiterate, a petition for mandamus is not the proper proceeding to raise the invalidity of the questioned Ordinance. It has been held that when a municipal corporation has the power to enact an ordinance but does so in an unauthorized mode, the Ordinance is still legally binding until judicially held otherwise. The validity of the Ordinance cannot be questioned collaterally as a matter of defense to an action under it. Whether the Ordinance was indeed a falsified document must be resolved in a separate action. This would afford the proper parties the opportunity to prove the validity of the Ordinance in an appropriate proceeding. Until thus resolved, the Ordinance in question enjoys a presumption of validity, and petitioner as incumbent mayor is duty-bound to implement it.

Facts:

Appropriation Ordinance No. 02, series of 1998, was enacted by the Sanggunian Bayan (SB) of Naujan, Province of Oriental Mindoro, entitled, "An Ordinance Enacting Supplemental Budget No. 1 of the General Fund for FY 1998 of the Municipality of Naujan, Province of Oriental Mindoro."

Based on the Ordinance, then Mayor Nelson B. Melgar issued various appointments promoting Abstenencia De Guzman and other municipal employees, who thereafter took their oath in June 1998.

On July 3, 1998, the newly elected Municipal Mayor, Norberto M. Mendoza, suspended the implementation of Appropriation Ordinance No. 02 based on alleged irregularities in its enactment. Consequently, the salaries and emoluments arising from the appointments of De Guzman and others were suspended, and the appointments were temporarily terminated or those promoted were reverted to their former positions.

²⁵ Mayor Norberto M. Mendoza, Petitioner, vs. Abstenencia De Guzman, et al., Respondents; G.R. Nos. 156697-98, October 09, 2007, En Banc.

Meanwhile, Mayor Mendoza requested the Sangguniang Panlalawigan (SP) of Oriental Mindoro to declare, in its review, the subject Ordinance as illegal, invalid, and ineffective on the ground that the same was not deliberated on by the SB in violation of Article 107, Rule 17 of the Implementing Rules and Regulations (IRR) of the Local Government Code of 1991 (Republic Act [RA] No. 7160). Likewise, the Mayor requested the CSC to recall the appointments issued by former Mayor Melgar on the basis of the questioned Ordinance.

The CSC granted the request of Mayor Mendoza, thus, invalidated the specified appointments. De Guzman, et al., filed a motion for reconsideration but the same was denied by the CSC. Hence, they filed a petition for review with the Court of Appeals (CA) on January 4, 2000.

On the other hand, the SP of Oriental Mindoro passed Resolution No. 152-98 dated August 3, 1998 approving the Ordinance, but the Resolution was not approved by then Oriental Mindoro Governor Rodolfo G. Valencia on the ground that it did not conform to the required Three-Reading Rule in violation of Article 107 of the IRR of RA No. 7160.

On August 26, 1998, De Guzman, et al., filed a petition for mandamus before the Regional Trial Court in Oriental Mindoro seeking to compel Mayor Mendoza to implement Appropriation Ordinance No. 02 and to direct him to pay the salaries and emoluments due De Guzman and others. The petition was dismissed for lack of merit. Hence, De Guzman, et al., filed an appeal before the CA.

Consequently, the two appealed cases were consolidated. In sum, the main argument of Mayor Mendoza is that the questioned Ordinance was not validly enacted into law by the SB of Naujan as evidenced by sworn declarations and relevant documents.

On June 28, 2002, the CA rendered a decision holding that Mayor Mendoza committed grave abuse of discretion and disregarded the presumption of validity of laws and ordinances, by suspending the implementation of the subject Ordinance and by causing the CSC to recall the appointments of De Guzman and others. Accordingly, the appellate court ordered the Mayor to implement Appropriation Ordinance No. 02.

Hence, Mayor Mendoza filed a petition for review on certiorari before the Supreme Court (SC) assailing the decision of the CA.

Issue/s:

Whether or not the CA erred in ruling that Appropriation Ordinance No. 02 is valid, and not susceptible to be questioned in the petition for mandamus.

Held:

The SC affirmed the ruling of the CA, with the following explanation, among others:

It must be pointed out that the petition filed by respondents before the RTC was for mandamus. The writ of mandamus is available when any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law. The issue put forth by respondents is the unjustified refusal of petitioner to perform a ministerial duty by invalidating respondents' appointments and excluding them from enjoying salaries they are entitled to. Hence, according to respondents, mandamus would lie.

But petitioner mayor insists that the issue to be resolved is the validity of the Ordinance. He does not question the ministerial duty to enforce the Ordinance, his main argument hinging on the irregular enactment of the said Ordinance during the time of his predecessor.

Petitioner's postulation is bereft of merit.

As pointed out by the CA, a municipal ordinance is not subject to collateral attack. The validity of the Ordinance cannot be assailed in the respondents' petition for mandamus as that would be a collateral attack on a law. Public policy forbids collateral impeachment of legislative acts. To sustain petitioner's claim would run counter to the principles of due process and the presumption in favor of constitutionality. It was therefore erroneous for the trial court case to allow petitioner to present evidence disputing the Ordinance when the main controversy pertained to an entirely different issue.

To reiterate, a petition for mandamus is not the proper proceeding to raise the invalidity of the questioned Ordinance. It has been held that when a municipal corporation has the power to enact an ordinance but does so in an unauthorized mode, the Ordinance is still legally binding until judicially held otherwise. The validity of the Ordinance cannot be questioned collaterally as a matter of defense to an action under it. Whether the Ordinance was indeed a falsified document must be resolved in a separate action. This would afford the proper parties the opportunity to prove the validity of the Ordinance in an appropriate proceeding. Until thus resolved, the Ordinance in question enjoys a presumption of validity, and petitioner as incumbent mayor is duty-bound to implement it.

QUISUMBING V. GARCIA²⁶
(G.R. No. 175527, December 08, 2008, En Banc)

- UNDER REENACTED BUDGET, CONTRACTUAL OBLIGATIONS NOT IN THE PREVIOUS YEAR'S ANNUAL AND SUPPLEMENTAL BUDGETS CANNOT BE DISBURSED; NEW INFRASTRUCTURE CONTRACTS ARE NOT INCLUDED AS REENACTED ITEMS, THUS, REQUIRE PRIOR APPROVAL OF THE SANGGUNIAN. – x x x *there appear two basic premises from which the Court can proceed to discuss the question of whether prior approval by the Sangguniang Panlalawigan was required before Gov. Garcia could have validly entered into the questioned contracts. **First, the Province of Cebu was operating under a reenacted budget in 2004. Second, Gov. Garcia entered into contracts on behalf of the province while this reenacted budget was in force.***

x x x

The fact that the Province of Cebu operated under a reenacted budget in 2004 lent a complexion to this case which the trial court did not apprehend. Sec. 323 of R.A. No. 7160 provides that in case of a reenacted budget, only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith.

It should be observed that, as indicated by the word only preceding the above enumeration in Sec. 323, the items for which disbursements may be made under a reenacted budget are exclusive. Clearly, contractual obligations which were not included in the previous year's annual and supplemental budgets cannot be disbursed by the local government unit. It follows, too, that new contracts entered into by the local chief executive require the prior approval of the sanggunian.

- WHEN THE APPROPRIATION ORDINANCE IS DEEMED SUFFICIENT AUTHORIZATION OF THE SANGGUNIAN FOR THE LOCAL CHIEF EXECUTIVE TO ENTER INTO CONTRACTS. - *The question of whether a sanggunian authorization separate from the appropriation ordinance is required should be resolved depending on the particular circumstances of the case. Resort to the appropriation ordinance is necessary in order to determine if there is a provision therein which specifically covers the expense to be incurred or the contract to be entered into. Should the appropriation ordinance, for instance, already contain in sufficient detail the project and cost of a capital outlay such that all that the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract, no further authorization is required, the appropriation ordinance already being sufficient.*

On the other hand, should the appropriation ordinance describe the projects in generic terms such as infrastructure projects, inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems projects, reclamation projects or roads and bridges, there is an obvious need for a covering contract for every specific project that in turn requires approval by the sanggunian. Specific sanggunian approval may also be required for the purchase of goods and services which are neither specified in the appropriation ordinance nor encompassed within the regular personal services and maintenance operating expenses.

²⁶ Hon. Gabriel Luis Quisumbing, Hon. Estrella P. Yapha, Hon. Victoria G. Corominas, Hon. Raul D. Bacaltos (Members of the Sangguniang Panlalawigan of Cebu), Petitioners, v. Hon. Gwendolyn F. Garcia (In her capacity as Governor of the Province of Cebu), Hon. Delfin P. Aguilar (in his capacity as Director IV (Cluster Director) of COA), Cluster IV - Visayas Local Government Sector, Hon. Helen S. Hilayo (In her capacity as Regional Cluster Director of COA), and Hon. Roy L. Ursal (In his capacity as Regional Legal and Adjudication Director of COA), Respondents; G.R. No. 175527, December 08, 2008, En Banc.

Facts:

The Commission on Audit (COA) conducted a financial audit on the Province for the period ending December 2004. In its audit report, it stated that several contracts entered into by the Provincial Governor were not supported by a Sangguniang Panlalawigan Resolution authorizing the Provincial Governor to enter into a contract, as required under Section 22 of Republic Act (RA) No. 7160, the Local Government Code of 1991. Consequently, the audit team recommended that the local chief executive (LCE) must secure a Sanggunian Resolution authorizing the former to enter into a contract as provided under Section 22 of RA No. 7160.

The Provincial Governor sought reconsideration of the findings and recommendation of the COA, but nevertheless, filed a Petition for Declaratory Relief before the Regional Trial Court (RTC). The Governor alleged that the infrastructure contracts complied with the bidding procedures under RA No. 9184, the Government Procurement Reform Act, and were entered into pursuant to the general and/or supplemental appropriation ordinances passed by the Sangguniang Panlalawigan, thus, a separate authority to enter into such contracts was no longer necessary.

The RTC ruled, among others, that it is only when the contract (entered into by the LCE) involves obligations which are not backed by prior ordinances that the prior authority of the Sanggunian concerned is required, and that in the case, the Sangguniang Panlalawigan had already given its prior authorization when it passed the appropriation ordinances which authorized the expenditures in the questioned contracts.

The Petitioners, all members of the Sangguniang Panlalawigan, assailed the decision of the RTC before the Supreme Court (SC). Nevertheless, in the course of the proceedings, it became apparent that the Province was operating under a reenacted budget in 2004.

Issue/s:

Whether or not prior authorization from the Sanggunian is necessary before the LCE can enter into contracts on behalf of the LGU, pursuant to Section 22 (c) of RA No. 7160 which provides, in part, that, "Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned."

Held:

The Supreme Court (SC) granted the petition in part. It reversed the decision of the RTC and remanded the same to the court for further proceedings. The SC held, among others, as follows:

Based on the foregoing discussion, there appear two basic premises from which the Court can proceed to discuss the question of whether prior approval by the *Sangguniang Panlalawigan* was required before Gov. Garcia could have validly entered into the questioned contracts. **First, the Province of Cebu was operating under a reenacted budget in 2004. Second, Gov. Garcia entered into contracts on behalf of the province while this reenacted budget was in force.**

Sec. 22(c) of R.A. No. 7160 provides:

Sec. 22. *Corporate Powers.*(a) Every local government unit, as a corporation, shall have the following powers:

x x x

(c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the *sanggunian* concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall.

As it clearly appears from the foregoing provision, prior authorization by the *sanggunian* concerned is required before the local chief executive may enter into contracts on behalf of the local government unit.

The fact that the Province of Cebu operated under a reenacted budget in 2004 lent a complexion to this case which the trial court did not apprehend. Sec. 323 of R.A. No. 7160 provides that in case of a reenacted budget, only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith.

It should be observed that, as indicated by the word only preceding the above enumeration in Sec. 323, the items for which disbursements may be made under a reenacted budget are exclusive. Clearly, contractual obligations which were not included in the previous year's annual and supplemental budgets cannot be disbursed by the local government unit. It follows, too, that new contracts entered into by the local chief executive require the prior approval of the *sanggunian*.

X X X

As things stand, the declaration of the trial court to the effect that no prior authorization is required when there is a prior appropriation ordinance enacted does not put the controversy to rest. The question which should have been answered by the trial court, and which it failed to do was whether, during the period in question, there did exist ordinances (authorizing Gov. Garcia to enter into the questioned contracts) which rendered the obtention of another authorization from the *Sangguniang Panlalawigan* superfluous. It should also have determined the character of the questioned contracts, *i.e.*, whether they were, as Gov. Garcia claims, mere disbursements pursuant to the ordinances supposedly passed by the *sanggunian* or, as petitioners claim, new contracts which obligate the province without the provincial board's authority.

It cannot be overemphasized that the paramount consideration in the present controversy is the fact that the Province of Cebu was operating under a re-enacted budget in 2004, resulting in an altogether different set of rules as directed by Sec. 323 of R.A. 7160. This Decision, however, should not be so construed as to proscribe any and all contracts entered into by the local chief executive without formal *sanggunian* authorization. In cases, for instance, where the local government unit operates under an annual as opposed to a re-enacted budget, it should be acknowledged that the appropriation passed by the *sanggunian* may validly serve as the authorization required under Sec. 22(c) of R.A. No. 7160. After all, an appropriation *is* an authorization made by ordinance, directing the payment of goods and services from local government funds under specified conditions or for specific purposes. The appropriation covers the expenditures which are to be made by the local government unit, such as current operating expenditures and capital outlays.

The question of whether a *sanggunian* authorization separate from the appropriation ordinance is required should be resolved depending on the particular circumstances of the case. Resort to the appropriation ordinance is necessary in order to determine if there is a provision therein which specifically covers the expense to be incurred or the contract to be entered into. Should the appropriation ordinance, for instance, already contain in sufficient detail the project and cost of a capital outlay such that all that the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract, no further authorization is required, the appropriation ordinance already being sufficient.

On the other hand, should the appropriation ordinance describe the projects in generic terms such as infrastructure projects, inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems projects, reclamation projects or roads and bridges, there is an obvious need for a covering contract for every specific project that in turn requires approval by the *sanggunian*. Specific *sanggunian* approval may also be required for the purchase of goods and services which are neither specified in the appropriation ordinance nor encompassed within the regular personal services and maintenance operating expenses.

LUMAYNA VS. COA²⁷
(G.R. No. 185001, September 25, 2009, En Banc)

- SALARY INCREASE SUBJECT TO PERSONAL SERVICES LIMITATION; FACTUAL FINDINGS OF COA (ADMINISTRATIVE BODIES) ACCORDED GREAT WEIGHT. - *At the outset, it must be stressed that factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.*

In this case, the assailed Decisions of the COA clearly presented the factual findings and adequately explained the legal basis for disallowing the said amount. Indeed, as computed by Ms. Virginia Farro, the Provincial Budget Officer of Ifugao, the annual budget of Mayoyao for 2002 exceeded the limit for personal services as prescribed in Section 325(a) of the LGC by P3,944,568.05. Further, it was established that the grant of the increase through the adoption of higher salary class schedule is not among the list of items and activities whereby the limitation for personal services may be waived pursuant to LBC No. 75. Finally, the municipality adopted the salary rates under LBC No. 69 and not the salary rates under LBC No. 74. No grave abuse of discretion amounting to lack or excess of jurisdiction can thus be attributed to respondent COA. x x x

- RELIEF FROM REFUND OF DISALLOWED AMOUNT IN VIEW OF PRESUMPTION OF GOOD FAITH. - *In the instant case, although the 5% salary increase exceeded the limitation for appropriations for personal services in the Municipality of Mayoyao, this alone is insufficient to overthrow the presumption of good faith in favor of petitioners as municipal officials. It must be mentioned that the disbursement of the 5% salary increase of municipal personnel was done under the color and by virtue of resolutions enacted pursuant to LBC No. 74, and was made only after the Sangguniang Panlalawigan declared operative the 2002 municipal budget. x x x*

Furthermore, granting arguendo that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes. As we see it, the disbursement of the 5% salary increase was done in good faith. Accordingly, petitioners need not refund the disallowed disbursement in the amount of P895,891.50.

²⁷ Ronnie H. Lumayna, Romeo O. Chulana, Helen A. Bonhaon, Peter G. Lahina, Jr., Juanito O. Lichnahan, Jr., Sammy C. Chang-Agan, Bonifacio L. Baichon, Reynaldo B. Uchayan, John L. Martin, Augusta C. Panito, Rosendo P. Bongyo, Jr., Klarisa Mae C. Chawana, Petitioners, vs. Commission on Audit, Respondent; G.R. No. 185001, September 25, 2009, En Banc.

NOTE: Under Section 10 of Republic Act (RA) No. 11466 (An Act Modifying the Salary Schedule for Civilian Government Personnel and Authorizing the Grant of Additional Benefits, and for Other Purposes), otherwise known as the “Salary Standardization Law of 2019”, the modified salary schedule and additional incentives authorized therein may be granted to personnel of LGUs subject to compliance with the Personal Services Limitation under Sections 325 and 331 of RA No. 7160 and authorization from the Sanggunian.

Sub-section (a) of the same Section provides, among others, that the salaries of LGU personnel that may be authorized shall correspond to the LGU’s income classification, thus, the earlier authority for LGUs to adopt a higher salary schedule is no longer applicable.

Facts:

Under Sangguniang Bayan (SB) Resolution No. 66, s. 2002, the Municipality of Mayoyao, Ifugao adopted a first class salary scheme and implemented a 5% salary increase for its personnel. As covered by SB Resolution No. 94, s. 2002, the funds used for the grant of salary increase was sourced from realignment of the amount of P1,936,524.96 from the fiscal year (FY) 2002 annual budget of the Municipality that was originally appropriated for the salaries and benefits of 17 new positions.

Subsequently, the Commission on Audit (COA) disallowed the grant of the salary increases to the personnel of the Municipality for the period February 15 to September 30, 2002 in the total amount of P895,891.50, which is being required to be refunded by the petitioners (Municipal Mayor, Municipal Budget Officer, Municipal Accountant, and the SB members who approved the Resolution granting the salary increase).

The disallowance was anchored on the failure of the Municipality to comply with the limitations provided by law, particularly Section 325(a)²⁸ of Republic Act (RA) No. 7160, the Local Government Code of 1991 (LGC), on the limitation of appropriations for Personal Services (PS).

²⁸SECTION 325. General Limitations. – The use of the provincial, city, and municipal funds shall be subject to the following limitations:

(a) The total appropriations, whether annual or supplemental, for personal services of a local government unit for one (1) fiscal year shall not exceed forty-five percent (45%) in the case of first to third class provinces, cities and municipalities, and fifty-five percent (55%) in the case of fourth class or lower, of the total annual income from regular sources realized in the next preceding fiscal year. The appropriations for salaries, wages, representation and transportation allowances of officials and employees of the public utilities and economic enterprises owned, operated, and maintained by the local government unit concerned shall not be included in the annual budget or in the computation of the maximum amount for personal services. The appropriations for the personal services of such economic enterprises shall be charged to their respective budgets;

The assailed COA decision affirming the disallowance held as follows:

After a careful evaluation, this Commission answers in the negative subject to the extended discussions hereunder.

Anent the first assignment of error, the same has been judiciously passed upon in LAO-Local Decision No. 2003-104. While the Municipality of Mayoyao may grant salary increases pursuant to LBC No. 74, such grant should comply with the limitations provided by law, specifically Section 325 (a) of R.A. No. 7160. There is no doubt that in the grant of the 5% salary increase to the officials and employees of the Municipality of Mayoyao, the limitation for PS in the annual budget of said Municipality had been exceeded. In fact, in a recomputation made Ms. Virginia B. Farro, Provincial Budget Officer of Ifugao, as embodied in her letter dated July 04, 2003, it was revealed that the Annual Budget of the Municipality exceeded the PS limit by P3,944,568.05. Furthermore, Mr. Julian L. Pacificador, Jr., Regional Director, DBM-CAR, in his letter dated December 3, 2003 asserted that the grant of the increase through the adoption of higher salary class schedule is not included in the list of items and activities whereby PS limitation may be waived under LBC No. 75. It must also be noted that the Municipality's budget adopted the salary rates under LBC No. 69 and not the salary rates under LBC No. 74.

Anent the second assignment of error, the same will not suffice to over-turn the other grounds for the audit disallowance. The fact remains that the grant of the 5% salary increase contravened the limitation of the law as explicitly provided under item (a) of section 325 of R.A. No. 7160.

Anent the third assignment of error, while the Sangguniang Panlalawigan of Ifugao, in its resolution No. 2002-556, has declared operative the 2002 Annual Budget of Mayoyao, the review of said Sanggunian was only limited to the provisions stated in the said budget which contained, among others, provisions for the funding of the 17 newly created positions and not the salary increases. Thus, the declaration of the Sangguniang Panlalawigan of Ifugao that the 2002 annual budget was operative did not include the grant of the 5% salary increase because the same was not actually contained in the said budget but in SB Resolution No. 66, series of 2002.

Anent the 4th assignment of error, the disallowance is not based solely on the results of the favorable review of the Sangguniang Panlalawigan of Ifugao since there are other grounds which would justify and uphold the disallowance.

Issue/s:

1. Whether or not the grant of the salary increase was a valid exercise of legislative prerogative by the SB.
2. Whether or not the Municipality did not exceed the PS limitations for 2002 since the realignment of funds pursuant to SB Resolution No. 94, s. 2002 did not create any increase in the PS because it covered existing PS appropriations (amount originally intended for the 17 new positions which were vacated and/or abolished) that were realigned to fund the salary increase which is also a PS expenditure.

Held:

The SC affirmed the disallowance of the 5% salary increase of the municipal personnel of Mayoyao, Ifugao, covering the period 15 February to 30 September 2002 in the amount of P895,891.50, but with modification that petitioners need not refund the said disallowed amount.

The SC ruled, among others, as follows:

The COA disallowed the amount of P895,891.50 on the ground that the 5% salary increase exceeded the total allowable appropriations of the municipality for personal services provided by law, specifically Section 325(a) of the LGC. It based its finding on the recomputation made by Ms. Virginia B. Farro, Provincial Budget Officer of Ifugao, which showed that the Annual Budget of the municipality exceeded the personal services limit by P3,944,568.05. According to the COA, the municipality's budget adopted the salary rates under LBC No. 69 instead of the salary rates prescribed under LBC No. 74 which is the applicable circular in this case.

As regards petitioners reliance on Resolution No. 2002-556 of the *Sangguniang Panlalawigan*, the COA in its Decision No. 2005-071 made it clear that the review of the 2002 municipal budget by the *Sangguniang Panlalawigan* was only limited to the provisions stated in the said budget which contained, among others, provisions for the funding of the 17 newly created positions, and not its re-alignment to the 5% salary increase. Consequently, the declaration by the *Sangguniang Panlalawigan* in the said Resolution that the 2002 municipal budget was operative did not include the grant of the 5% salary increase, as the same was not contained in the said budget but in Resolution No. 66, s. 2002.

We find that the COA correctly affirmed the disallowance of the amount of P895,891.50.

At the outset, it must be stressed that factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.

In this case, the assailed Decisions of the COA clearly presented the factual findings and adequately explained the legal basis for disallowing the said amount. Indeed, as computed by Ms. Virginia Farro, the Provincial Budget Officer of Ifugao, the annual budget of Mayoyao for 2002 exceeded the limit for personal services as prescribed in Section 325(a) of the LGC by P3,944,568.05. Further, it was established that the grant of the increase through the adoption of higher salary class schedule is not among the list of items and activities whereby the limitation for personal services may be waived pursuant to LBC No. 75. Finally, the municipality adopted the salary rates under LBC No. 69 and not the salary rates under LBC No. 74. No grave abuse of discretion amounting to lack or excess of jurisdiction can thus be attributed to respondent COA. x x x

x x x

However, we find that petitioners should not be ordered to refund the disallowed amount because they acted in good faith.

x x x

In the instant case, although the 5% salary increase exceeded the limitation for appropriations for personal services in the Municipality of Mayoyao, this alone is insufficient to overthrow the presumption of good faith in favor of petitioners as municipal officials. It must be mentioned that the disbursement of the 5% salary increase of municipal personnel was done under the color and by virtue of resolutions enacted pursuant to LBC No. 74, and was made only after the *Sangguniang Panlalawigan* declared operative the 2002 municipal budget. In fact, the Notice of Disallowance was issued only on 16 May 2003, after the municipality had already implemented the salary increase. Moreover, in its Resolution No. 2004-1185, the *Sangguniang Panlalawigan* reconsidered its prior disallowance of the adoption of a first class salary schedule and 5% salary increase of the Municipality of Mayoyao based on its finding that the municipal officials concerned acted in good faith x x x.

Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes. As we see it, the disbursement of the 5% salary increase was done in good faith. Accordingly, petitioners need not refund the disallowed disbursement in the amount of P895,891.50.

NOTE: Under Section 10 of Republic Act (RA) No. 11466 (An Act Modifying the Salary Schedule for Civilian Government Personnel and Authorizing the Grant of Additional Benefits, and for Other Purposes), otherwise known as the "Salary Standardization Law of 2019", the modified salary schedule and additional incentives authorized therein may be granted to personnel of LGUs subject to compliance with the Personal Services Limitation under Sections 325 and 331 of RA No. 7160 and authorization from the Sanggunian.

Sub-section (a) of the same Section provides, among others, that the salaries of LGU personnel that may be authorized shall correspond to the LGU's income classification, thus, the earlier authority for LGUs to adopt a higher salary schedule is no longer applicable.

ALECHA VS. PASION²⁹
(G.R. No. 164506, January 19, 2010, Third Division)

- FINANCIAL CAPABILITY OF LOCAL GOVERNMENT UNIT (LGU) TO ADOPT HIGHER SALARY RATE. - *A fifth-class municipality like Midsalip is not absolutely prohibited from adopting a salary schedule equivalent to that of a special city or a first-class province. Local Budget Circular No. 64 dated January 1, 1997, in conjunction with paragraph 11 of Local Budget Circular No. 56, allows LGUs lower than special cities and first-class provinces and cities to adopt a salary scheme for special cities and first-class provinces. The adoption of a higher salary schedule needs only to comply with the following requirements: x x x*

x x x

Petitioners aver that the Municipality of Midsalip was financially incapable of implementing a higher salary schedule but the evidence showed otherwise. Five years into the implementation of the higher salary schedule, the Municipality of Midsalip had savings of P 14,913,554.68 in its bank account. Not only that. The financial capability of the Municipality of Midsalip, as shown by the certified statement of savings of unobligated balances for the years 2002 and 2003 issued by the Midsalip municipal treasurer and accountant, revealed repeated surplus accounts in the amounts of P7,709,311.64 and P 5,070,913.23 for the said years, respectively. The certification of the Midsalip municipal accountant dated January 14, 2003 also stated that there was no realignment or disbursement of the 20% municipal development project for personal services expenditures from 1998 to 2002.

NOTE: Under Executive Order [EO] No. 201, s. 2016 [Modifying the Salary Schedule for Civilian Government Personnel and Authorizing the Grant of Additional Benefits for Both Civilian and Military and Uniformed Personnel], LGUs are no longer authorized to adopt a higher salary schedule than that pertaining to its income class. Section 10 (i) of EO No. 201 provides, among others, that “[t]he implementation of the modified Salary Schedule for LGU personnel, including the rate of Representation and Transportation Allowances, shall further correspond to the LGU’s income classification x x x.”

²⁹ Paulino M. Alecha And Precioso M. Tapitan, Petitioners, vs. Elmer Ben V. Pasion, Rodolfo M. Elman, Antonio E. Valenzuela, Mayor Ulysses D. Perez, Vice-Mayor Stewart R. Padayhag, SB Member Pablo Mantos Sr., SB Member Casimero Baobao, SB Member Filomeno Rosillosa, SB Member Feliciano Oling, SB Member Norberto Ramos, SB Member Luis Palongpalong, SB Member Rogelio Bugtay, SB Member Oscar Atay, ABC President Primitivo Verdad, Jr., SK Chairman Jackson Padayhag, ABC President Sergio Dagoldol, SK Chairman Tristan B. Baguio, Mun. Secretary Protacio Elmidulan, Jr., MPDC Vicente Llesis, Civil Registrar Medardo Colita, Budget Officer Ramonita B. Baguio, Mun. Engr. Segundo Arandid, Jr., Mun. Assessor Wilfredo Flores, MAO Alejandro Jimenez, Mun. Accountant Avelino Dedoro and DSWD [Officer] Susan Mago, Respondents; G.R. No. 164506, January 19, 2010, Third Division.

Facts:

On September 12, 2003, Paulino M. Alecha and Precioso M. Tapitan filed a criminal complaint before the Office of the Ombudsman for Mindanao against several municipal officials (herein respondents) of the Municipality of Midsalip, Zamboanga del Sur, for violation of Section 3(e) of the Anti-graft and Corrupt Practices Act (Republic Act [RA] No. 3019), Section 81 of the Local Government Code of 1991 (RA No. 7160), Section 10 of the Salary Standardization Law (RA No. 6758), and RA No. 9137 (An Act Appropriating the Sum of Ten Billion Nine Hundred Million Pesos [P10,900,000,000.00] as Supplemental Appropriation For FY 2001 and for Other Purposes).

The complaint alleged that the said municipal officials conspired in unlawfully adopting and actually collecting the salaries, representation and travel allowances (RATA) and personnel economic relief assistance (PERA) at rates prescribed for special cities and/or first class provinces or cities, despite the fact that the Municipality of Midsalip had no financial capacity to cover such expenditures, and which seriously affected the delivery of basic services in the local government unit.

On January 27, 2004, the Ombudsman (Mindanao) dismissed the complaint and denied the motion for reconsideration subsequently filed.

Consequently, Alecha and Tapitan filed a Petition for Certiorari with the Supreme Court (SC) claiming that the Ombudsman (Mindanao) committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaint. Among others, petitioners averred that the respondent municipal officials had been receiving salaries for special cities even though the Municipality of Midsalip was a fifth-class municipality.

Issue/s:

Whether or not the Municipality of Midsalip is financially capable to adopt a salary schedule of a special city or first class province.

Held:

The SC found that the petition has no merit, thus, dismissed the same, and expounded, among others, as follows:

A fifth-class municipality like Midsalip is not absolutely prohibited from adopting a salary schedule equivalent to that of a special city or a first-class province. Local Budget Circular No. 64 dated January 1, 1997, in conjunction with paragraph 11 of Local Budget Circular No. 56, allows local government units (LGUs) lower than special cities and first-class provinces and cities to adopt a salary scheme for special cities and first-class provinces. The adoption of a higher salary schedule needs only to comply with the following requirements:

- (1) the LGU is financially capable;
- (2) the salary schedule to be adopted shall be uniformly applied to all positions in the in the LGU concerned;
- (3) the salary schedule for the special and highly urbanized cities and first class provinces and cities shall not be higher than that being adopted by the national government;
- (4) in implementing a new and higher salary schedule, the salary grade allocation of positions and the salary steps of personnel shall be retained;
- (5) the adoption of the higher salary schedule shall be subject to the budgetary and general limitations on personal services expenditures mandated under Sections 324 and 325 of RA 7160;
- (6) in the case of component cities and municipalities, the salary schedule to be adopted shall not be higher than that of the province or city in the case of some municipalities, where they belong [;] and
- (7) the adoption of a higher salary schedule shall not in any manner alter the existing classification of the LGU concerned.

It is beyond cavil that the Municipality of Midsalip has complied with the above conditions.

Petitioners aver that the Municipality of Midsalip was financially incapable of implementing a higher salary schedule but the evidence showed otherwise. Five years into the implementation of the higher salary schedule, the Municipality of Midsalip had savings of P 14,913,554.68 in its bank account. Not only that. The financial capability of the Municipality of Midsalip, as shown by the certified statement of savings of unobligated balances for the years 2002 and 2003 issued by the Midsalip municipal treasurer and accountant, revealed repeated surplus accounts in the amounts of P7,709,311.64 and P 5,070,913.23 for the said years, respectively. The certification of the Midsalip municipal accountant dated January 14, 2003 also stated that there was no realignment or

disbursement of the 20% municipal development project for personal services expenditures from 1998 to 2002.

Petitioners themselves do not deny that the local budget ordinance of the Municipality of Midsalip (which adopted the salary schedule of special cities) was duly approved by the *Sangguniang Panlalawigan* of Zamboanga del Sur (thus becoming part of the provincial budget ordinance of said province) and later, by the Department of Budget and Management. The Commission on Audit, in turn, after reviewing and auditing the expenditures of the Municipality of Midsalip (including the assailed salaries and allowances) did not disallow or suspend the foregoing disbursements and/or expenditures.

In sum, we find no grave abuse of discretion on the part of the Ombudsman (Mindanao) in dismissing the letter-complaint of petitioners against respondent municipal officials. Settled is the rule that the findings of fact of the Ombudsman, when duly supported by evidence, are conclusive. Findings of fact of administrative bodies (which are equipped with expertise as far as their jurisdiction is concerned) should be accorded not only respect but even finality when supported by substantial evidence, even if not overwhelming or preponderant.

x x x One last word. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. Corollary to this heavy burden, however, is the right of public officials to be protected from unfounded suits.

NOTE: Under Executive Order [EO] No. 201, s. 2016 [Modifying the Salary Schedule for Civilian Government Personnel and Authorizing the Grant of Additional Benefits for Both Civilian and Military and Uniformed Personnel], LGUs are no longer authorized to adopt a higher salary schedule than that pertaining to its income class. Section 10 (i) of EO No. 201 provides, among others, that “[t]he implementation of the modified Salary Schedule for LGU personnel, including the rate of Representation and Transportation Allowances, shall further correspond to the LGU’s income classification x x x.”

THE PROVINCE OF NEGROS OCCIDENTAL VS. COA³⁰
(G.R. No. 182574, September 28, 2010, En Banc)

- **PRESIDENT'S GENERAL SUPERVISION OVER LOCAL GOVERNMENT UNITS.** - *The President's power of general supervision means the power of a superior officer to see to it that subordinates perform their functions according to law. This is distinguished from the President's power of control which is the power to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the President over that of the subordinate officer. The power of control gives the President the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of discretion.*

Since LGUs are subject only to the power of general supervision of the President, the President's authority is limited to seeing to it that rules are followed and laws are faithfully executed. The President may only point out that rules have not been followed but the President cannot lay down the rules, neither does he have the discretion to modify or replace the rules. Thus, the grant of additional compensation like hospitalization and health care insurance benefits in the present case does not need the approval of the President to be valid.

x x x

The CSC, through CSC MC No. 33, as well as the President, through AO 402, recognized the deficiency of the state of health care and medical services implemented at the time. Republic Act No. 7875 or the National Health Insurance Act of 1995 instituting a National Health Insurance Program (NHIP) for all Filipinos was only approved on 14 February 1995 or about two months after petitioners Sangguniang Panlalawigan passed Resolution No. 720-A. Even with the establishment of the NHIP, AO 402 was still issued three years later addressing a primary concern that basic health services under the NHIP either are still inadequate or have not reached geographic areas like that of petitioner.

Thus, consistent with the state policy of local autonomy as guaranteed by the 1987 Constitution, under Section 25, Article II and Section 2, Article X, and the Local Government Code of 1991, we declare that the grant and release of the hospitalization and health care insurance benefits given to petitioner's officials and employees were validly enacted through an ordinance passed by petitioner's Sangguniang Panlalawigan.

In sum, since petitioner's grant and release of the questioned disbursement without the President's approval did not violate the President's directive in AO 103, the COA then gravely abused its discretion in applying AO 103 to disallow the premium payment for the hospitalization and health care insurance benefits of petitioner's officials and employees.

³⁰ The Province of Negros Occidental, Represented by its Governor Isidro P. Zayco, Petitioner, vs. The Commissioners, Commission on Audit; The Director, Cluster IV-Visayas; The Regional Cluster Directors; and The Provincial Auditor, Negros Occidental, Respondents; G.R. No. 182574, September 28, 2010, En Banc.

Facts:

Resolution No. 720-A passed on December 21, 1994 by the Sangguniang Panlalawigan of Negros Occidental allocated the amount of P4,000,000 of its retained earnings for the hospitalization and health care insurance benefits of 1,949 officials and employees of the province.

Eventually, following public bidding, a Group Health Care Agreement was executed between the Province of Negros Occidental, as represented by its Governor Rafael L. Coscolluela, and Philam Care Health System Incorporated (Philam Care) involving an amount of P3,760,000 as the insurance premiums of the Province's officials and employees, and which was paid on 25 January 1996.

Consequently, upon post-audit investigation, the Provincial Auditor issued Notice of Suspension No. 97-001-101 on January 23, 1997 suspending the premium payment by the Province to Philam Care for lack of approval from the Office of the President (OP) as required under Administrative Order (AO) No. 103 dated 14 January 1994. The Provincial Auditor expounded that the insurance premium payments for health care benefits violated Republic Act (RA) No. 6758, otherwise known as the Salary Standardization Law.

The Province complied with the Auditor's directive *post-facto* and requested approval from the OP, and per Memorandum dated 26 January 1999 then President Joseph E. Estrada directed the COA to lift the suspension of P100,000 only. Nevertheless, the Provincial Auditor issued Notice of Disallowance (ND) No. 99-005-101(96) dated 10 September 1999 stating similar grounds indicated in Notice of Suspension No. 97-001-101.

The Province appealed to the Commission on Audit (COA) which, per Decision dated 14 July 2006, denied the appeal for lack of merit and affirmed the Provincial Auditor's ND. The COA averred that under AO No. 103, no government entity, including a local government unit, is exempt from securing prior approval from the President granting additional benefits to its personnel, pursuant to the policy of compensation standardization under RA No. 6758.

The COA further stated that Section 468(a)(1)(viii) of RA No. 7160, the Local Government Code of 1991, as relied upon by the Province does not stand on its own but has to be consistent with Section 12 of RA No. 6758.

The COA likewise declared that the insurance benefits from Philam Care, a private insurance company, was a duplication of the employee benefits provided under the Medicare program mandated by law. Accordingly, the provincial health care program, being a mere creation of the local sanggunian should be consistent and not contravene national laws of Congress from where local legislative bodies draw their authority.

Ultimately, the COA held the following as liable:

- (1) The 1,949 officials and employees of the Province who benefited from the hospitalization and health care insurance benefits with regard to their proportionate shares;
- (2) Then Governor Rafael L. Coscolluela who signed the contract on behalf of the Province and who approved the disbursement voucher; and
- (3) The *Sangguniang Panlalawigan* members who passed Resolution No. 720-A.

Philam Care and the Provincial Accountant were not held liable for the disallowance. As elucidated by the COA, it would be unjust to require Philam Care to refund the amount it received for services duly rendered since insurance law prohibits the refund of premiums after risks had already attached to the policy contract. On the part of the Provincial Accountant, the COA found that the Sanggunian Resolution was sufficient basis for the accountant to sign the disbursement voucher since there were adequate funds available for the purpose.

The Province filed a motion for reconsideration on October 23, 2006 which was denied by the COA on January 30, 2008. Hence, the Province filed a petition for certiorari before the Supreme Court (SC) assailing the decisions of the COA.

Issue/s:

Whether or not the COA committed grave abuse of discretion in affirming the disallowance of the payment of P3,760,000 representing the premiums for the hospitalization and health care insurance benefits granted by the Province of Negros Occidental to its officials and employees.

Held:

The SC granted the petition of the Province, and reversed and set aside COA's Decision Nos. 2006-044 and 2008-010 dated 14 July 2006 and 30 January 2008, respectively.

The SC ruled, among others, as follows:

We disagree with the COA. From a close reading of the provisions of AO 103, petitioner did not violate the rule of prior approval from the President since Section 2 states that the prohibition applies only to *government offices/agencies, including government-owned and/or controlled corporations, as well as their respective governing boards*. Nowhere is it indicated in Section 2 that the prohibition also applies to LGUs. The requirement then of prior approval from the President under AO 103 is applicable only to departments, bureaus, offices and government-owned and controlled corporations under the Executive branch. In other words, AO 103 must be observed by government offices under the President's control as mandated by Section 17, Article VII of the Constitution which states:

Section 17. The President shall have control of all **executive** departments, bureaus and offices. He shall ensure that the laws be faithfully executed. (Emphasis supplied)

Being an LGU, petitioner is merely under the President's general supervision pursuant to Section 4, Article X of the Constitution:

Sec. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. (Emphasis supplied)

The President's power of general supervision means the power of a superior officer to see to it that subordinates perform their functions according to law. This is distinguished from the President's power of control which is the power to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the President over that of the subordinate officer. The power of control gives the President the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of discretion.

Since LGUs are subject only to the power of general supervision of the President, the President's authority is limited to seeing to it that rules are followed and laws are faithfully executed. The President may only point out that rules have not been followed but the President cannot lay down the rules, neither does he have the discretion to modify or replace the

rules. Thus, the grant of additional compensation like hospitalization and health care insurance benefits in the present case does not need the approval of the President to be valid.

Also, while it is true that LGUs are still bound by RA 6758, the COA did not clearly establish that the medical care benefits given by the government at the time under Presidential Decree No. 1519 were sufficient to cover the needs of government employees especially those employed by LGUs.

Petitioner correctly relied on the Civil Service Commissions (CSC) Memorandum Circular No. 33 (CSC MC No. 33), series of 1997, issued on 22 December 1997 which provided the policy framework for working conditions at the workplace. In this circular, the CSC pursuant to CSC Resolution No. 97-4684 dated 18 December 1997 took note of the inadequate policy on basic health and safety conditions of work experienced by government personnel. Thus, under CSC MC No. 33, all government offices including LGUs were directed to provide a health program for government employees which included hospitalization services and annual mental, medical-physical examinations.

Later, CSC MC No. 33 was further reiterated in Administrative Order No. 402 (AO 402) which took effect on 2 June 1998. Sections 1, 2, and 4 of AO 402 state:

Section 1. Establishment of the Annual Medical Check-up Program. An annual medical check-up for government of officials and employees is hereby authorized to be established starting this year, in the meantime that this benefit is not yet integrated under the National Health Insurance Program being administered by the Philippine Health Insurance Corporation (PHIC).

Section 2. Coverage. x x x **Local Government Units are also encouraged to establish a similar program for their personnel.**

Section 4. Funding. x x x Local Government Units, which may establish a similar medical program for their personnel, shall utilize local funds for the purpose. (Emphasis supplied)

The CSC, through CSC MC No. 33, as well as the President, through AO 402, recognized the deficiency of the state of health care and medical services implemented at the time. Republic Act No. 7875 or the National Health Insurance Act of 1995 instituting a National Health Insurance

Program (NHIP) for all Filipinos was only approved on 14 February 1995 or about two months after petitioners *Sangguniang Panlalawigan* passed Resolution No. 720-A. Even with the establishment of the NHIP, AO 402 was still issued three years later addressing a primary concern that basic health services under the NHIP either are still inadequate or have not reached geographic areas like that of petitioner.

Thus, consistent with the state policy of local autonomy as guaranteed by the 1987 Constitution, under Section 25, Article II and Section 2, Article X, and the Local Government Code of 1991, we declare that the grant and release of the hospitalization and health care insurance benefits given to petitioner's officials and employees were validly enacted through an ordinance passed by petitioner's *Sangguniang Panlalawigan*.

In sum, since petitioner's grant and release of the questioned disbursement without the President's approval did not violate the President's directive in AO 103, the COA then gravely abused its discretion in applying AO 103 to disallow the premium payment for the hospitalization and health care insurance benefits of petitioner's officials and employees.

VELOSO VS. COA³¹
(G.R. No. 193677, September 6, 2011, En Banc)

- RETIREMENT AND GRATUITY PAY FOR LOCAL ELECTIVE OFFICIALS WHO SERVED THREE CONSECUTIVE TERMS EQUIVALENT TO TOTAL SALARIES RECEIVED DURING ENTIRE PERIOD IS EXCESSIVE AND TANTAMOUNT TO DOUBLE COMPENSATION; RECIPIENTS ACTING IN GOOD FAITH. - *Section 2 of Ordinance No. 8040 provides for the payment of **retirement and gratuity pay remuneration equivalent to the actual time served in the position for three (3) consecutive terms** as part of the EPSA. The recomputation of the award disclosed that it is equivalent to the total compensation received by each awardee for nine years that includes basic salary, additional compensation, Personnel Economic Relief Allowance, representation and transportation allowance, rice allowance, financial assistance, clothing allowance, 13th month pay and cash gift. This is not disputed by petitioners. There is nothing wrong with the local government granting additional benefits to the officials and employees. The laws even encourage the granting of incentive benefits aimed at improving the services of these employees. Considering, however, that the payment of these benefits constitute disbursement of public funds, it must not contravene the law on disbursement of public funds.*

x x x

Undoubtedly, the above computation of the awardees' reward is excessive and tantamount to double and additional compensation. This cannot be justified by the mere fact that the awardees have been elected for three (3) consecutive terms in the same position. Neither can it be justified that the reward is given as a gratuity at the end of the last term of the qualified elective official. The fact remains that the remuneration is equivalent to everything that the awardees received during the entire period that he served as such official. Indirectly, their salaries and benefits are doubled, only that they receive half of them at the end of their last term.

x x x

However, in line with existing jurisprudence, we need not require the refund of the disallowed amount because all the parties acted in good faith. In this case, the questioned disbursement was made pursuant to an ordinance enacted as early as December 7, 2000 although deemed approved only on August 22, 2002. The city officials disbursed the retirement and gratuity pay remuneration 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 reward.

³¹ Luciano Veloso, Abraham Cabochan, Jocelyn Dawis-Asuncion and Marlon M. Lacson, Petitioners, vs. Commission on Audit, Respondent; G.R. No. 193677, September 6, 2011, En Banc.

Facts:

Ordinance No. 8040, entitled *An Ordinance Authorizing the Conferment of Exemplary Public Service Award to Elective Local Officials of Manila Who Have Been Elected for Three (3) Consecutive Terms in the Same Position*, was enacted by the City Council of Manila on December 7, 2000. The Ordinance was deemed approved on August 23, 2002. Particularly, Section 2 thereof provides:

SEC. 2. The EPSA shall consist of a Plaque of Appreciation, ***retirement and gratuity pay remuneration equivalent to the actual time served in the position for three (3) consecutive terms***, subject to the availability of funds as certified by the City Treasurer. PROVIDED, That [it] shall be accorded to qualified elected City Officials on or before the first day of service in an appropriated public ceremony to be conducted for the purpose. PROVIDED FURTHER, That this Ordinance shall only cover the Position of Mayor, Vice-Mayor and Councilor: PROVIDED FURTHERMORE, That those who were elected for this term and run for higher elective position thereafter, after being elected shall still be eligible for this award for the actual time served: PROVIDED FINALLY That the necessary and incidental expenses needed to implement the provisions of this Ordinance shall be appropriated and be included in the executive budget for the year when any city official will qualify for the Award.

As part of the Exemplary Public Service Award (EPSA) authorized in the subject Ordinance, the City made partial payments in 2005 in favor of the former councilors, as follows:

<u>Councilor/Recipients</u>	<u>Amount</u>
Abraham C. Cabochan	₱1,658,989.09
Julio E. Logarta, Jr.	₱1,658,989.08
Luciano M. Veloso	₱1,658,989.08
Jocelyn Dawis-Asuncion	₱1,658,989.08
Marlon M. Lacson	₱1,658,989.08
Heirs of Hilarion C. Silva	<u>₱1,628,311.59</u>
TOTAL	<u>₱9,923,257.00</u>

Subsequently, the Supervising Auditor of the City of Manila issued Audit Observation Memorandum (AOM) No. 2005-100(05)07(05) on August 8, 2005 which indicated that the initial payment of ₱9,923,257.00 monetary reward as part of the EPSA to the former councilors of the City as authorized by City Ordinance No. 8040 has no legal basis. It was also stated that the monetary reward is excessive and tantamount to double compensation in contravention of Article 170 (c) of the implementing rules and regulations (IRR) of Republic Act (RA) No. 7160 (the Local Government Code of

1991) which provides that no elective or appointive local official shall receive additional, double or indirect compensation unless specifically authorized by law. Further, the Auditor pointed out that the appropriations for the purpose was classified as Maintenance and Other Operating Expenses instead of Personal Services contrary to Section 7, Volume III of the Manual on the New Government Accounting System (NGAS) for local government units (LGUs) and COA Circular No. 2004-008 dated September 20, 2004 prescribing the updated description of accounts under the NGAS.

Thereafter, Notice of Disallowance No. 06-010-100-05 dated May 24, 2006 was issued by the Legal and Adjudication Office – Local of the Commission on Audit (COA).

Consequently, former councilors Dawis-Asuncion, Veloso, Cabochan, Lacson, Logarta, and Silva; the City Accountant; the City Budget Officer; and the then Vice-Mayor and Presiding Officer filed a Motion to Lift the ND on November 9, 2006, and per Decision No. 2007-171 dated November 29, 2007, the LAO-Local decided in favor of the movants, as follows:

WHEREFORE, premises considered, the motion of former Vice-Mayor Danilo B. Lacuna, et al., is GRANTED and ND No. 06-010-100-05 dated May 24, 2006 is hereby ordered lifted as the reasons for the disallowance have been sufficiently explained. This decision, however, should not be taken as precedence (sic) to other or similar personal benefits that a local government unit may extend which should be appreciated based on their separate and peculiar circumstances.

The LAO-Local reasoned, among others, that “the monetary reward given to the former councilors can be one of gratuity and, therefore, cannot be considered as additional, double or indirect compensation.” It upheld the power of LGUs to grant allowances on account of the principle of local autonomy. It was also underscored that the Department of Budget and Management (DBM) did not disapprove the appropriation for the EPSA, thus, would indicate that the same is valid.

Nevertheless, upon review, the COA sustained ND No. 06-010-100-05 by finding that the monetary reward under the EPSA falls under the term compensation, and even recognizing local autonomy, the limitations on compensation are prescribed in the Salary Standardization Law (SSL). It was expounded that the SSL does not authorize the grant of such monetary reward or gratuity, and that there is no law passed by Congress which particularly authorized the said grant.

Consequently, Veloso, Cabochan, Dawis-Asuncion and Lacson filed a special civil action for *certiorari* before the Supreme Court (SC) claiming that:

The respondent Commission on Audit did not only commit a reversible error but was, in fact, guilty of grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the monetary award given under the EPSA partakes of the nature of an additional compensation prohibited under the Salary Standardization Law, and other existing laws, rules and regulations, and not a GRATUITY voluntarily given in return for a favor or services rendered purely out of generosity of the giver or grantor. (*Plastic Tower Corporation vs. NLRC*, 172 SCRA 580-581).

Apart from being totally oblivious of the fact that the monetary award given under the EPSA was intended or given in return for the exemplary service rendered by its recipient(s), the respondent COA further committed grave abuse of discretion when it effectively nullified a duly-enacted ordinance which is essentially a judicial function. In other words, in the guise of disallowing the disbursement in question, the respondent Commission arrogated unto itself an authority it did not possess, and a prerogative it did not have.

Issue/s:

1. Whether or not the COA has the authority to disallow the disbursement of local government funds; and
2. Whether or not the COA committed grave abuse of discretion in affirming the disallowance of ₱9,923,257.00 covering the EPSA of the former councilors of the City.

Held:

The SC dismissed the petition and affirmed the decisions of the COA with modification, pronouncing that the recipients need not refund the retirement and gratuity pay remuneration that they already received.

The SC explained, among others, as follows:

xxx Under the 1987 Constitution, however, the COA is vested with the authority to determine whether government entities, including LGUs, comply with laws and regulations in disbursing government funds, and to disallow illegal or irregular disbursements of these funds.

Section 2, Article IX-D of the Constitution gives a broad outline of the powers and functions of the COA, to wit:

Section 2. (1) 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.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for ***the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.***

Section 11, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987 echoes this constitutional mandate to COA.

Under the first paragraph of the above provision, the COA's audit jurisdiction ***extends to the government, or any of its subdivisions, agencies, or instrumentalities,*** including government-owned or controlled corporations with original charters. Its jurisdiction likewise covers, albeit on a post-audit basis, the constitutional bodies,

commissions and offices that have been granted fiscal autonomy, autonomous state colleges and universities, other government-owned or controlled corporations and their subsidiaries, and such non-governmental entities receiving subsidy or equity from or through the government. The power of the COA to examine and audit government agencies cannot be taken away from it as Section 3, Article IX-D of the Constitution mandates that no law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the [COA].

X X X

Thus, LGUs, though granted local fiscal autonomy, are still within the audit jurisdiction of the COA.

Now on the more important issue of whether the COA properly exercised its jurisdiction in disallowing the disbursement of the City of Manila's funds for the EPSA of its former three-term councilors.

X X X

In this case, we find no grave abuse of discretion on the part of the COA in issuing the assailed decisions as will be discussed below.

Petitioners claim that the grant of the retirement and gratuity pay remuneration is a valid exercise of the powers of the *Sangguniang Panlungsod* set forth in RA 7160.

We disagree.

Indeed, Section 458 of RA 7160 defines the power, duties, functions and compensation of the *Sangguniang Panlungsod*, to wit:

SEC. 458. *Powers, Duties, Functions and Compensation.* - (a) The *Sangguniang Panlungsod*, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

X X X

(viii) Determine the positions and salaries, wages, allowances and other emoluments and benefits of officials and employees paid wholly or mainly from city funds and provide for expenditures necessary for the proper conduct of programs, projects, services, and activities of the city government.

X X X

However, as correctly held by the COA, the above power is not without limitations. These limitations are embodied in Section 81 of RA 7160, to wit:

SEC. 81. Compensation of Local Officials and Employees. The compensation of local officials and personnel shall be determined by the sanggunian concerned: *Provided*, That the increase in compensation of elective local officials shall take effect only after the terms of office of those approving such increase shall have expired: *Provided, further*, That the increase in compensation of the appointive officials and employees shall take effect as provided in the ordinance authorizing such increase; *Provided however*, That said increases shall not exceed the limitations on budgetary allocations for personal services provided under Title Five, Book II of this Code: *Provided finally*, That such compensation may be based upon the pertinent provisions of Republic Act Numbered Sixty-seven fifty-eight (R.A. No. 6758), otherwise known as the Compensation and Position Classification Act of 1989.

Moreover, the IRR of RA 7160 reproduced the Constitutional provision that no elective or appointive local official or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emoluments, office, or title of any kind from any foreign government. Section 325 of the law limit the total appropriations for personal services of a local government unit to not more than 45% of its total annual income from regular sources realized in the next preceding fiscal year.

While it may be true that the above appropriation did not exceed the budgetary limitation set by RA 7160, we find that the COA is correct in sustaining ND No. 06-010-100-05.

Section 2 of Ordinance No. 8040 provides for the payment of ***retirement and gratuity pay remuneration equivalent to the actual time served in the position for three (3) consecutive terms*** as part of the EPSA. The recomputation of the award disclosed that it is equivalent to the total compensation received by each awardee for nine years that includes basic salary, additional compensation, Personnel Economic Relief Allowance, representation and transportation allowance, rice allowance, financial assistance, clothing allowance, 13th month pay and cash gift. This is not disputed by petitioners. There is nothing wrong with the local government granting additional benefits to the officials and employees. The laws even encourage the granting of incentive benefits aimed at improving the services of these employees. Considering, however, that the payment of these benefits constitute disbursement of public funds, it must not contravene the law on disbursement of public funds.

X X X

Undoubtedly, the above computation of the awardees' reward is excessive and tantamount to double and additional compensation. This cannot be justified by the mere fact that the awardees have been elected for three (3) consecutive terms in the same position. Neither can it be justified that the reward is given as a gratuity at the end of the last term of the qualified elective official. The fact remains that the remuneration is equivalent to everything that the awardees received during the entire period that he served as such official. Indirectly, their salaries and benefits are doubled, only that they receive half of them at the end of their last term.

X X X

However, in line with existing jurisprudence, we need not require the refund of the disallowed amount because all the parties acted in good faith. In this case, the questioned disbursement was made pursuant to an ordinance enacted as early as December 7, 2000 although deemed approved only on August 22, 2002. The city officials disbursed the retirement and gratuity pay remuneration 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 reward.

YSIDORO VS. PEOPLE³²
(G.R. No. 192330, November 14, 2012, Third Division)

- TECHNICAL MALVERSATION; DISTRIBUTION OF GOODS TO BENEFICIARIES OF ANOTHER PROGRAM. - x x x *The crime of technical malversation as penalized under Article 220 of the Revised Penal Code has three elements: a) that the offender is an accountable public officer; b) that he applies public funds or property under his administration to some public use; and c) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance. Ysidoro claims that he could not be held liable for the offense under its third element because the four sacks of rice and two boxes of sardines he gave the CSAP beneficiaries were not appropriated by law or ordinance for a specific purpose.*

x x x

Since the municipality bought the subject goods using SFP funds, then those goods should be used for SFPs needs, observing the rules prescribed for identifying the qualified beneficiaries of its feeding programs. x x x

x x x

Ysidoro disregarded the guidelines when he approved the distribution of the goods to those providing free labor for the rebuilding of their own homes. This is technical malversation. If Ysidoro could not legally distribute the construction materials appropriated for the CSAP housing beneficiaries to the SFP malnourished clients neither could he distribute the food intended for the latter to CSAP beneficiaries.

- SAVINGS UNDER SECTION 336 OF REPUBLIC ACT NO. 7160. – x x x *Ysidoro claims that the subject goods already constituted savings of the SFP and that, therefore, the same could already be diverted to the CSAP beneficiaries. He relies on Abdulla v. People which states that funds classified as savings are not considered appropriated by law or ordinance and can be used for other public purposes. The Court cannot accept Ysidoro's argument.*

The subject goods could not be regarded as savings. The SFP is a continuing program that ran throughout the year. Consequently, no one could say in mid-June 2001 that SFP had already finished its project, leaving funds or goods that it no longer needed. The fact that Polinio had already distributed the food items needed by the SFP beneficiaries for the second quarter of 2001 does not mean that the remaining food items in its storeroom constituted unneeded savings. Since the requirements of hungry mouths are hard to predict to the last sack of rice or can of sardines, the view that the subject goods were no longer needed for the remainder of the year was quite premature.

³² Arnold James M. Ysidoro, Petitioner, v. People of the Philippines, Respondent; G.R. No. 192330 : November 14, 2012, Third Division.

In any case, the Local Government Code provides that an ordinance has to be enacted to validly apply funds, already appropriated for a determined public purpose, to some other purpose. Thus:

SEC. 336. Use of Appropriated Funds and Savings. Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the sanggunian concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings in other items within the same expense class of their respective appropriations.

The power of the purse is vested in the local legislative body. By requiring an ordinance, the law gives the Sanggunian the power to determine whether savings have accrued and to authorize the augmentation of other items on the budget with those savings.

- **CRIMINAL INTENT IS NOT AN ELEMENT OF TECHNICAL MALVERSATION.** - x x x *Ysidoro insists that he acted in good faith since, first, the idea of using the SFP goods for the CSAP beneficiaries came, not from him, but from Garcia and Polinio; and, second, he consulted the accounting department if the goods could be distributed to those beneficiaries. Having no criminal intent, he argues that he cannot be convicted of the crime.*

But criminal intent is not an element of technical malversation. The law punishes the act of diverting public property earmarked by law or ordinance for a particular public purpose to another public purpose. The offense is mala prohibita, meaning that the prohibited act is not inherently immoral but becomes a criminal offense because positive law forbids its commission based on considerations of public policy, order, and convenience. It is the commission of an act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. Hence, malice or criminal intent is completely irrelevant.

Dura lex sed lex. Ysidoro's act, no matter how noble or miniscule the amount diverted, constitutes the crime of technical malversation. The law and this Court, however, recognize that his offense is not grave, warranting a mere fine

Facts:

Then Municipal Mayor Arnold James M. Ysidoro of Leyte, Leyte was charged by the Office of the Ombudsman for the Visayas with technical malversation for illegal use of public property under Article 220 of the Revised Penal Code, particularly for approving the withdrawal and release of four sacks of rice and two boxes of sardines worth P3,396.00 intended for the beneficiaries of the Supplemental Feeding Program (SFP) to the indigent calamity victims under the Core Shelter Assistance Program (CSAP).

The established facts yielded that the CSAP was then being implemented by the Municipal Social Welfare and Development Office (MSWDO) and such program provided indigent calamity victims with construction materials with which to rebuild their homes. The beneficiaries, in turn, contributed their labor for the construction. On June 15, 2001, the CASP beneficiaries in Sitio Luy-a, Barangay Tinugtogan, ceased to provide labor for the needed construction because they claimed that they had to provide food for their families. As a result, Lolita Garcia (Garcia), the CSAP Officer-in-Charge, feared that the stoppage of the construction might result in the loss of construction materials, particularly the cement.

Hence, Garcia sought assistance from Cristina Polinio (Polinio), the MSWDO officer in charge of the SFP which is a program that distributed food to malnourished children. Polinio thought that since the SFP still had stocks of rice and sardines, and that the ration to the SFP beneficiaries was already made, the remaining rice and sardines may be given to the CSAP beneficiaries.

Garcia and Polinio explained the situation to Mayor Ysidoro and sought his approval for the withdrawal and release of four sacks of rice and two boxes of sardines to the CSAP. The Mayor nevertheless required Garcia and Polinio to consult with the accounting department, and Eldelissa Elises, the supervising clerk of the Municipal Accountant's Office, signed the withdrawal slip on the belief that the circumstances involved an emergency situation which justifies the release of the goods. Accordingly, the goods were eventually distributed to the CSAP beneficiaries.

However, on August 27, 2001, a complaint for technical malversation against Mayor Ysidoro was filed by Alfredo Doller, a former Sangguniang Bayan Member of Leyte, on the ground that Mayor Ysidoro approved the distribution of the SFP goods, which were intended for Leyte's malnourished children, to the CSAP beneficiaries.

On the other hand, Mayor Ysidoro averred that the diversion of the goods was valid since the goods came from savings of the SFP and the calamity fund, and the benefit also redounded to the poor CSAP beneficiaries. He also claimed that his action was in good faith in view of the urgent need for food of the CSAP beneficiaries. Ysidoro further pointed out that the COA Municipal Auditor found no irregularity in the transactions when the comprehensive audit of the municipality for 2001 was conducted.

On February 8, 2010, the Sandiganbayan found Mayor Ysidoro guilty of technical malversation, for having applied public property to a public purpose other than that for which it has been appropriated by law or ordinance. He was fined P1,698.00 or 50% of the sum misapplied. Ysidoro's motion for reconsideration was denied by the Sandiganbayan, thus, on June 8, 2010, he sought recourse before the Supreme Court (SC).

Issue/s:

1. Whether or not Mayor Ysidoro approved a diversion of the subject goods to a different public purpose than originally intended;
2. Whether or not the goods approved for diversion were in the nature of savings that could be used to augment the other authorized expenditures of the municipality; and
3. Whether or not good faith is a valid defense for technical malversation.

Held:

The SC affirmed the decision of the Sandiganbayan. Among others, the SC ruled as follows:

One. The crime of technical malversation as penalized under Article 220 of the Revised Penal Code has three elements: a) that the offender is an accountable public officer; b) that he applies public funds or property under his administration to some public use; and c) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance. Ysidoro claims that he could not be held liable for the offense under its third element because the four sacks of rice and two boxes of sardines he gave the CSAP beneficiaries were not appropriated by law or ordinance for a specific purpose.

But the evidence shows that on November 8, 2000 the Sangguniang Bayan of Leyte enacted Resolution 00-133 appropriating the annual general fund for 2001. This appropriation was based on the executive budget which allocated P100,000.00 for the SFP and P113,957.64 for the Comprehensive and Integrated Delivery of Social Services which covers the CSAP housing projects. The creation of the two items shows the Sanggunian's intention to appropriate separate funds for SFP and the CSAP in the annual budget.

Since the municipality bought the subject goods using SFP funds, then those goods should be used for SFPs needs, observing the rules prescribed for identifying the qualified beneficiaries of its feeding programs. The target clientele of the SFP according to its manual are: 1) the moderately and severely underweight pre-school children aged 36 months to 72 months; and 2) the families of six members whose total monthly income is P3,675.00 and below. This rule provides assurance that the SFP would cater only to the malnourished among its people who are in urgent need of the government's limited resources.

Ysidoro disregarded the guidelines when he approved the distribution of the goods to those providing free labor for the rebuilding of their own homes. This is technical malversation. If Ysidoro could not legally distribute the construction materials appropriated for the CSAP housing beneficiaries to the SFP malnourished clients neither could he distribute the food intended for the latter to CSAP beneficiaries.

Two. Ysidoro claims that the subject goods already constituted savings of the SFP and that, therefore, the same could already be diverted to the CSAP beneficiaries. He relies on *Abdulla v. People* which states that funds classified as savings are not considered appropriated by law or ordinance and can be used for other public purposes. The Court cannot accept Ysidoro's argument.

The subject goods could not be regarded as savings. The SFP is a continuing program that ran throughout the year. Consequently, no one could say in mid-June 2001 that SFP had already finished its project, leaving funds or goods that it no longer needed. The fact that Polinio had already distributed the food items needed by the SFP beneficiaries for the second quarter of 2001 does not mean that the remaining food items in its storeroom constituted unneeded savings. Since the requirements of hungry mouths are hard to predict to the last sack of rice or can of sardines, the view that the subject goods were no longer needed for the remainder of the year was quite premature.

In any case, the Local Government Code provides that an ordinance has to be enacted to validly apply funds, already appropriated for a determined public purpose, to some other purpose. Thus:

SEC. 336. Use of Appropriated Funds and Savings. Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the sanggunian concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings in other items within the same expense class of their respective appropriations.

The power of the purse is vested in the local legislative body. By requiring an ordinance, the law gives the Sanggunian the power to determine whether savings have accrued and to authorize the augmentation of other items on the budget with those savings.

X X X

Four. Ysidoro insists that he acted in good faith since, first, the idea of using the SFP goods for the CSAP beneficiaries came, not from him, but from Garcia and Polinio; and, second, he consulted the accounting department if the goods could be distributed to those beneficiaries. Having no criminal intent, he argues that he cannot be convicted of the crime.

But criminal intent is not an element of technical malversation. The law punishes the act of diverting public property earmarked by law or ordinance for a particular public purpose to another public purpose. The offense is *mala prohibita*, meaning that the prohibited act is not inherently immoral but becomes a criminal offense because positive law forbids its commission based on considerations of public policy, order, and convenience. It is the commission of an act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. Hence, malice or criminal intent is completely irrelevant.

Dura lex sed lex. Ysidoro's act, no matter how noble or miniscule the amount diverted, constitutes the crime of technical malversation. The law and this Court, however, recognize that his offense is not grave, warranting a mere fine.

GARCIA VS. OFFICE OF THE OMBUDSMAN³³
(G.R. No. 197567, November 19, 2014, First Division)

- PROBABLE CAUSE; ELEMENTS OF VIOLATION OF SECTION 3 (e) OF REPUBLIC ACT (RA) NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); ABSENCE OF ALLOTMENT FOR PROJECT; FULL PAYMENT OF UNCOMPLETED PROJECT. - *Probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. To engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.*

The elements of the crime of Violation of Section 3 (e), RA 3019 are as follows: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

x x x

Respondents, who were all public officers at the time of the alleged commission of the crime – particularly, as provincial officials of Bataan discharging administrative functions (first element) – apparently acted with manifest partiality, evident bad faith – or, at the very least, gross inexcusable negligence – when they issued the pertinent documents and certifications that led to the diversion of public funds to a project that had no proper allotment, i.e., the mini-theater project (second element). The absence of such allotment not only renders invalid the release of funds therefor but also taints the legality of the project's appropriation as well as the Province's contract with V.F. Construction. x x x

x x x

In addition, the Court observes the same degree of negligence on the part of respondents in seemingly attesting to the project's 100% completion when such was not the case. The erroneous certification rendered the disbursements made by the Province suspect as V.F. Construction had still to fulfill its contractual obligations to the Province and yet were able to receive full payment.

Considering that the illegal diversion of public funds for the mini theater project would undermine the execution of other projects legitimately supported by proper allotments, it is quite obvious that undue injury on the part of the Province and its residents would be caused. Likewise, considering that V.F. Construction had already received full payment for a project that had yet to be completed, it also appears that a private party was given unwarranted benefits by respondents in the discharge of their functions (third element).

³³ Governor Enrique T. Garcia, Jr., Petitioner, vs. Office Of The Ombudsman, Leonardo B. Roman, Romeo L. Mendiola, Pastor P. Vichuaco, Aurora J. Tiambeng, and Numeriano G. Medina, Respondents; G.R. No. 197567, November 19, 2014, First Division; G.R. No. 197567, November 19, 2014, First Division.

- MISPLACED RELIANCE ON ARIAS DOCTRINE. – x x x when a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the Arias doctrine is unavailing.

Here, it cannot be denied that the absence of an allotment for the project already rendered all related documents/transactions irregular on their face. By this fact alone, respondents ought to have known that something was amiss. x x x

- A CHARGE OF MALVERSATION OF PUBLIC FUNDS CANNOT RESULT TO A FINDING OF GUILT FOR TECHNICAL MALVERSATION, AND VICE-VERSA. - *First, while Garcia insists upon the sufficiency of his evidence to indict respondents for Technical Malversation, the Court cannot pass upon this issue, considering that the Complaint-Affidavit filed before the Ombudsman originally charged respondents not with Technical Malversation under Article 220 of the RPC, but with Malversation of Public Funds through Falsification of Public Documents, defined and penalized under Article 217, in relation to Article 171 of the RPC, a complex crime. It bears stressing that the elements of Malversation of Public Funds are distinctly different from those of Technical Malversation. In the crime of Malversation of Public Funds, the offender misappropriates public funds for his own personal use or allows any other person to take such public funds for the latter's personal use. On the other hand, in Technical Malversation, the public officer applies public funds under his administration not for his or another's personal use, but to a public use other than that for which the fund was appropriated by law or ordinance. Technical Malversation does not include, or is not necessarily included in the crime of Malversation of Public Funds.*

Since the acts supposedly committed by respondents constituting the crime of Technical Malversation were not alleged in the Complaint Affidavit and the crime for which respondents raised their respective defenses was not Technical Malversation, the petition must perforce be denied on this score. Otherwise, the Court would be sanctioning a violation of respondents' constitutionally-guaranteed right to be informed of the nature and cause of the accusation against them, so as to deny them a reasonable opportunity to suitably prepare their defense.

- MALVERSATION OF PUBLIC FUNDS REQUIRES DIVERSION OF FUNDS FOR PERSONAL PURPOSE. - *Finally, with respect to the charge of Malversation of Public Funds through Falsification of Public Documents, the Court observes that there lies no evidence which would give a prima facie indication that the funds disbursed for the project were misappropriated for any personal use. The COA Memo shows that the Province's funds were used for a public purpose, i.e., the mini-theater project, albeit without any allotment issued therefor. Garcia also fails to convince the Court that the Province's funds were diverted to some personal purpose. Failing in which, the Court cannot pronounce that the Ombudsman committed a grave abuse of discretion in dismissing such charge.*

Facts:

Charges of Malversation of Public Funds through Falsification of Public Documents under Article 217 in relation to Article 171 of the Revised Penal Code (RPC), and violation of Section 3, paragraphs (a) and (e) of Republic Act (RA) No. 3019 or the "Anti-Graft and Corrupt Practices Act," *inter alia*, were filed by then incumbent Governor Enrique T. Garcia before the Ombudsman against the former Governor Leonardo B. Roman, the former Governor's Executive Assistant (EA) Romeo L. Mendiola, the former Provincial Treasurer (PT) Pastor P. Vichuaco, the former Provincial Budget Officer (PBO) Aurora J. Tiambeng, then incumbent Provincial Accountant (PA) Numeriano G. Medina, then incumbent Provincial Engineer (PE) Amelia R. De Pano, Assistant Provincial Engineer (APE) Angelito A. Rodriguez, Engineer Noel G. Jimenez, and Architect Bernardo T. Capistrano. The owner of V. F. Construction, Noel Valdecanas, was likewise charged.

The case involved payments made for the construction of a mini theatre at the Bataan State College – Abucay Campus as funded by the Provincial Government. It was alleged, among others, that the contract for the project was executed in November 2003. Thereafter, in February 2004, Governor Roman signed and issued a Certificate of Acceptance stating that the project was "100% completed in accordance with plans and specification[s]" which was, in turn, based on the Accomplishment Report and Certification issued by PE De Pano, APE Rodriguez, Engineer Jimenez, and Architect Capistrano. Valdecanas, the owner of V.F. Construction also signed the said Accomplishment Report and further executed an Affidavit attesting to the 100% completion of the subject project.

By virtue of a project's purported completion, payments were made in favor of V.F. Construction. Two checks for the payments were signed by Governor Roman and PT Vichuaco. The Disbursement Vouchers (DVs) were issued by PE De Pano, PA Medina, and PT Vichuaco. The Allotment and Obligation Slip (ALOBS) was issued by PE De Pano, PBO Tiambeng, and PA Medina. In the same ALOBS, the PBO certified as to the existence of appropriation for the project. The Governor's EA prepared all the supporting documents for the payment of the project for approval by the Governor.

Nevertheless, subsequently, upon inspection of the project as authorized by the new Governor, Garcia, it was discovered that the same was not actually completed, and remained unfinished. Hence, Governor Garcia filed a Complaint against the Respondents.

Former Governor Roman alleged that the Complaint was fuelled by political hostility, and that the project was a legitimate project, not a “ghost project,” for which substantial work has actually been done. He further alleged that he signed the DVs based on the Accomplishment Report and Certification issued by his technical officials, as well as the Affidavit issued by Valdecanas, the owner of the construction company, attesting to the 100% completion of the subject project. Governor Roman pointed out that he had no hand in the preparation of such documents. The Governor’s EA similarly contended that he was not involved in the preparation and execution of the same documents.

PT Vichuaco admitted signing the DVs and checks but denied knowledge that the project was not completed. He cited reliance upon the signatures of the PE De Pano and PA Medina, in their official capacities, in the DVs. He contended that he would not have signed the DVs had he known that the project was not fully completed.

PA Medina, in turn, admitted having signed the DVs and ALOBS by virtue of the Accomplishment Report and Certification issued which are the supporting documents for the purpose. He denied knowledge that the project was not fully completed. He also claimed that the project was covered by an appropriation.

PBO Tiambeng asserted that she signed the ALOBS on the premise that it was covered by appropriation, and that signing the ALOBS is a ministerial duty on her part once the corresponding appropriation is established.

The PE De Pano, APE Rodriguez, Engineer Jimenez, and Architect Capistrano alleged that they relied upon the review conducted by the other provincial engineers when they issued the Accomplishment Report and Certification.

Valdecanas, the owner of the construction company, denied all the allegations against him and asserted that it was PA Medina who borrowed his accreditation, participated in the bidding, and implemented the project, and that all his signatures in the questioned documents were falsified.

In May 2006, the Ombudsman found probable cause against PE De Pano, APE Rodriguez, Engineer Jimenez, and Architect Capistrano for Falsification of Public Documents. The Ombudsman held that their Accomplishment Report and Certification, which attested to the completion of the project when the fact was otherwise, were the bases for the disbursement of funds.

However, Governor Roman, EA Mendiola, PT Vichuaco, PBO Tiambeng, and PA Medina were spared from indictment on the ground of insufficiency of evidence, citing that their signatures in the documents were not enough to establish conspiracy to warrant their conviction.

The Ombudsman relied on the *Arias* doctrine³⁴ which enunciates that "[a]ll heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations." The presumption of good faith and regularity was likewise applied, which according to the Ombudsman, was not overcome. No disposition was made for the charges against the owner of the construction company.

Governor Garcia filed a Motion for Reconsideration (MR) of the decision of the Ombudsman, citing the Audit Observation Memorandum (AOM) issued in April 2005 by the Commission on Audit (COA) which found that the subject project lacked funding, thus, the contract was void, and the corresponding payments were illegal. The MR was denied. Hence, Garcia filed a Petition for Certiorari to the Supreme Court (SC) contending that the Ombudsman committed grave abuse of discretion in dismissing the charges against the Respondents.

Issue/s:

Whether or not the Ombudsman gravely abused its discretion in dismissing the charges against the Respondents.

Held:

The SC partially granted the Petition affirming the dismissal of the criminal charge for Malversation of Public Funds through Falsification of Public Documents against the Respondents; but reversing and setting aside the dismissal of the criminal charge against respondents for violation of Section 3 (e), Republic Act No. (RA) 3019 or the "Anti-Graft and Corrupt Practices Act", and ordering the Ombudsman to file the necessary Information in the proper court; and dismissing the criminal charge against respondents for Technical Malversation, without prejudice to its proper re-filing.

The SC ruled, among others, as follows:

x x x the Court finds that the Ombudsman gravely abused its discretion when it disregarded the CoA Memo and patently misapplied existing jurisprudence – particularly, the *Arias* case – in ruling that there was no

³⁴ *Arias v Sandiganbayan*, 259 Phil. 796 (1989).

probable cause for the crime of Violation of Section 3 (e), RA 3019. Accordingly, respondents should be indicted for such. However, the same does not hold true for the other crimes of Technical Malversation and Malversation of Public Funds through Falsification of Public Documents for reasons that will be hereinafter discussed.

Probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. To engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.

The elements of the crime of Violation of Section 3 (e), RA 3019 are as follows: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

Considering the findings contained in the CoA Memo, which the Ombudsman, however, disregarded, it is quite clear that all the foregoing elements are, in all reasonable likelihood, present with respect to respondents' participation in this case.

Respondents, who were all public officers at the time of the alleged commission of the crime – particularly, as provincial officials of Bataan discharging administrative functions (first element) – apparently acted with manifest partiality, evident bad faith – or, at the very least, gross inexcusable negligence – when they issued the pertinent documents and certifications that led to the diversion of public funds to a project that had no proper allotment, i.e., the mini-theater project (second element). The absence of such allotment not only renders invalid the release of funds therefor but also taints the legality of the project's appropriation as well as the Province's contract with V.F. Construction. x x x

To be clear, the nineteen (19) projects mentioned in the CoA Memo were listed under "Annex B" thereof entitled "Schedule of Contracted Projects and Financial Assistance Out of Invalid Appropriations, CY 2004," all of which had no allotments issued. First and foremost on the list is the construction of the mini-theater project. A similar CoA memorandum, AOM No. 2004-26

dated September 6, 2004, which was also ignored by the Ombudsman, contains the same audit results with regard to the lack of a valid allotment for the project. Thus, absent compliance with this basic requirement, the authorizations made by respondents in relation to the project were therefore prima facie tainted with illegality, amounting to either manifest partiality, evident bad faith, or, at the very least, to gross inexcusable negligence. Indeed, it is reasonable to expect that respondents – being the Province’s accountable officers at that time – had knowledge of the procedure on allotments and appropriations. Knowledge of basic procedure is part and parcel of respondents’ shared fiscal responsibility under Section 305 (l) of RA 7160 x x x.

Hence, unless the CoA’s findings are substantially rebutted, the allotment’s absence should have roused respondents’ suspicions, as regards the project’s legality, and, in consequence, prevented them from approving the disbursements therefor. This is especially true for Roman, who, as the Local Chief Executive of the Province at that time, was primarily charged with the issuance of allotments. As such, he was in the position to know if the allotment requirement had, in the first place, been complied with, given that it was a pre-requisite before the project could have been contracted.

In addition, the Court observes the same degree of negligence on the part of respondents in seemingly attesting to the project’s 100% completion when such was not the case. The erroneous certification rendered the disbursements made by the Province suspect as V.F. Construction had still to fulfill its contractual obligations to the Province and yet were able to receive full payment.

Considering that the illegal diversion of public funds for the mini theater project would undermine the execution of other projects legitimately supported by proper allotments, it is quite obvious that undue injury on the part of the Province and its residents would be caused. Likewise, considering that V.F. Construction had already received full payment for a project that had yet to be completed, it also appears that a private party was given unwarranted benefits by respondents in the discharge of their functions (third element).

Thus, with the elements of the crime of Violation of Section 3 (e), RA 3019 herein ostensibly present, the Court hereby holds that the Ombudsman committed grave abuse of discretion when it dismissed said charge against respondents.

x x x

Palpable too is the Ombudsman's grave abuse of discretion by its misplaced reliance on the *Arias* doctrine.

x x x

Simply put, when a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the *Arias* doctrine is unavailing.

Here, it cannot be denied that the absence of an allotment for the project already rendered all related documents/transactions irregular on their face. By this fact alone, respondents ought to have known that something was amiss. x x x

x x x

With these apparent irregularities, it is quite perplexing how the Ombudsman could have applied the *Arias* doctrine in support of its ruling, especially with respect to the charge of Violation of Section 3 (e), RA 3019. Thus, by patently misapplying existing jurisprudence, the Court finds that the Ombudsman also committed a grave abuse of discretion on this score and its ruling, in these aspects, must be reversed and set aside. In fine, the Ombudsman is ordered to file in the proper court the necessary Information against respondents for violating Section 3 (e), RA 3019.

That being said, the Court proceeds to discuss the other charges contained in Garcia's petition.

x x x

First, while Garcia insists upon the sufficiency of his evidence to indict respondents for Technical Malversation, the Court cannot pass upon this issue, considering that the Complaint-Affidavit filed before the Ombudsman originally charged respondents not with Technical Malversation under Article 220 of the RPC, but with Malversation of Public Funds through Falsification of Public Documents, defined and penalized under Article 217, in relation to Article 171 of the RPC, a complex crime. It bears stressing that the elements of Malversation of Public Funds are distinctly different from those of Technical Malversation. In the crime of Malversation of Public Funds, the offender misappropriates public funds for his own personal use or allows any other person to take such public funds for the latter's personal use. On the other hand, in Technical Malversation, the public officer applies public funds under his administration not for his or another's personal use, but to a public use other than that for which the fund was appropriated by

law or ordinance. Technical Malversation does not include, or is not necessarily included in the crime of Malversation of Public Funds.

Since the acts supposedly committed by respondents constituting the crime of Technical Malversation were not alleged in the Complaint Affidavit and the crime for which respondents raised their respective defenses was not Technical Malversation, the petition must perforce be denied on this score. Otherwise, the Court would be sanctioning a violation of respondents' constitutionally-guaranteed right to be informed of the nature and cause of the accusation against them, so as to deny them a reasonable opportunity to suitably prepare their defense.

Finally, with respect to the charge of Malversation of Public Funds through Falsification of Public Documents, the Court observes that there lies no evidence which would give a prima facie indication that the funds disbursed for the project were misappropriated for any personal use. The CoA Memo shows that the Province's funds were used for a public purpose, i.e., the mini-theater project, albeit without any allotment issued therefor. Garcia also fails to convince the Court that the Province's funds were diverted to some personal purpose. Failing in which, the Court cannot pronounce that the Ombudsman committed a grave abuse of discretion in dismissing such charge.

COA VS. PROVINCE OF CEBU³⁵
(G.R. No. 141386, November 29, 2001, En Banc)

- SALARIES OF PUBLIC SCHOOL TEACHERS IN EXTENSION CLASSES MAY BE CHARGED AGAINST SPECIAL EDUCATION FUND (SEF). - *Indeed, the operation and maintenance of public schools is lodged principally with the DECS. This is the reason why only salaries of public school teachers appointed in connection with the establishment and maintenance of extension classes, inter alia, pertain to the supplementary budget of the local school boards. Thus, it should be made clear that not every kind of personnel-related benefits of public school teachers may be charged to the SEF. The SEF may be expended only for the salaries and personnel-related benefits of teachers appointed by the local school boards in connection with the establishment and maintenance of extension classes. Extension classes as referred to mean additional classes needed to accommodate all children of school age desiring to enter in public schools to acquire basic education.*

- COLLEGE SCHOLARSHIP GRANTS MAY NOT BE CHARGED AGAINST SEF. - *With respect, however, to college scholarship grants, a reading of the pertinent laws of the Local Government Code reveals that said grants are not among the projects for which the proceeds of the SEF may be appropriated. It should be noted that Sections 100 (c) and 272 of the Local Government Code substantially reproduced Section 1, of R.A. No. 5447. But, unlike payment of salaries of teachers which falls within the ambit of establishment and maintenance of extension classes and operation and maintenance of public schools, the granting of government scholarship to poor but deserving students was omitted in Sections 100 (c) and 272 of the Local Government Code. Casus omissus pro omisso habendus est. A person, object, or thing omitted from an enumeration in a statute must be held to have been omitted intentionally. It is not for this Court to supply such grant of scholarship where the legislature has omitted it.*

In the same vein, however noble the intention of the province in extending said scholarship to deserving students, we cannot apply the doctrine of necessary implication inasmuch as the grant of scholarship is neither necessary nor indispensable to the operation and maintenance of public schools. Instead, such scholarship grants may be charged to the General Funds of the province.

Facts:

The Governor of the Province of Cebu, as chairman of the local school board (LSB) pursuant to Section 98 of Republic Act (RA) No. 7160, the Local Government Code of 1991 (LGC), appointed teachers to handle extension classes in the public schools. The salaries and benefits of said teachers were charged against the Special Education Fund (SEF). Likewise, college scholarship grants were charged against the SEF.

³⁵ The Commission on Audit of the Province of Cebu, Represented by Provincial Auditor Roy L. Ursal, Petitioner, vs. Province of Cebu, Represented by Governor Pablo P. Garcia, Respondent; G.R. No. 141386, November 29, 2001, En Banc.

Subsequently, in the audit of accounts of the Province for the period January to June 1998 as conducted by the Commission on Audit (COA), Notices of Suspension were issued stating that disbursements for the salaries of teachers of extension classes and scholarship grants are not chargeable to the provincial SEF.

Consequently, the Governor, on behalf of the Province of Cebu, filed a petition for declaratory relief with the Regional Trial Court (RTC). On December 13, 1999, the court declared the questioned expenses as authorized expenditures of the SEF, and accordingly, nullified the COA's audit findings.

Hence, the petition for review was filed by the COA before the Supreme Court (SC).

Issue/s:

Whether or not the salaries and personnel-related benefits of public school teachers appointed by the local chief executive in connection with the establishment and maintenance of extension classes; as well as the expenses for college scholarship grants, may be charged against the SEF.

Held:

The SC affirmed the decision of the RTC with modification, to wit:

WHEREFORE, in view of all the foregoing, the Decision of the Regional Trial Court of Cebu City, Branch 20, in Civil Case No. CEB-24422, is **AFFIRMED** with **MODIFICATION**. **The salaries and personnel-related benefits of the teachers** appointed by the provincial school board of Cebu in connection with the establishment and maintenance of extension classes, **are declared chargeable against the Special Education Fund** of the province. However, the expenses incurred by the provincial government for the **college scholarship grants should not be charged against the Special Education Fund**, but against the General Funds of the province of Cebu. (emphasis supplied)

The SC, pronounced, among others, as follows:

The Special Education Fund was created by virtue of R.A. No. 5447, which is An act creating a special education fund to be constituted from the proceeds of an additional real property tax and a certain portion of the taxes on Virginia-type cigarettes and duties on imported leaf tobacco, defining the activities to be financed, creating school boards for the purpose, and appropriating funds therefrom, which took effect on January 1, 1969. x x x

Under R.A. No. 5447, the SEF may be expended exclusively for the following activities of the DECS -

- (a) **the organization and operation of such number of extension classes as may be needed to accommodate all children of school age desiring to enter Grade I, including the creation of positions of classroom teachers, head teachers and principals for such extension classes x x x;**
- (b) the programming of the construction and repair of elementary school buildings, acquisition of sites, and the construction and repair of workshops and similar buildings and accessories thereof to house laboratory, technical and similar equipment and apparatus needed by public schools offering practical arts, home economics and vocational courses, giving priority to elementary schools on the basis of the actual needs and total requirements of the country x x x;
- (c) **the payment and adjustment of salaries of public school teachers under and by virtue of Republic Act Numbered Five Thousand One Hundred Sixty-Eight and all the benefits in favor of public school teachers provided under Republic Act Numbered Four Thousand Six Hundred Seventy;**
- (d) preparation, printing and/or purchase of textbooks, teacher's guides, forms and pamphlets x x x;
- (e) the purchase and/or improvement, repair and refurbishing of machinery, laboratory, technical and similar equipment and apparatus, including spare parts needed by the Bureau of Vocational Education and secondary schools offering vocational courses;
- (f) the establishment of printing plant to be used exclusively for the printing needs of the Department of Education and the improvement of regional printing plants in the vocational schools;
- (g) the purchase of teaching materials such as work books, atlases, flip charts, science and mathematics teaching aids, and simple laboratory devices for elementary and secondary classes;

- (h) the implementation of the existing program for citizenship development in barrio high schools, folk schools and adult education classes;
- (i) the undertaking of education research, including that of the Board of National Education;
- (j) **the granting of government scholarships to poor but deserving students under Republic Act Numbered Four Thousand Ninety; and**
- (k) the promotion of physical education, such as athletic meets.
(Emphasis supplied)

With the effectivity of the Local Government Code of 1991, petitioner contends that R.A. No. 5447 was repealed, leaving Sections 235, 272 and 100 (c) of the Code to govern the disposition of the SEF, to wit:

SEC. 235. Additional Levy on Real Property for the Special Education Fund (SEF). A province or city or a municipality within the Metropolitan Manila Area, may levy and collect an annual tax of one percent (1%) on the assessed value of real property which shall be in addition to the basic real property tax. The proceeds thereof shall exclusively accrue to the Special Education Fund (SEF).

SEC. 272. Application of Proceeds of the Additional One Percent SEF Tax. The proceeds from the additional one percent (1%) tax on real property accruing to the SEF shall be automatically released to the local school boards: Provided, That, in case of provinces, the proceeds shall be divided equally between the provincial and municipal school boards: **Provided, however, That the proceeds shall be allocated for the operation and maintenance of public schools, construction and repair of school buildings, facilities and equipment, educational research, purchase of books and periodicals, and sports development as determined and approved by the local school board.** (Emphasis supplied)

SEC. 100. Meeting and Quorum; Budget

x x x x x x x x

(c) The annual school board budget shall give priority to the following:

(1) Construction, repair, and maintenance of school buildings and other facilities of public elementary and secondary schools;

(2) Establishment and maintenance of extension classes where necessary; and

(3) Sports activities at the division, district, municipal, and barangay levels. (Emphasis supplied)

Invoking the legal maxim *expressio unius es exclusio alterius*, petitioner alleges that since salaries, personnel-related benefits and scholarship grants are not among those authorized as lawful expenditures of the SEF under the Local Government Code, they should be deemed excluded therefrom.

Moreover, petitioner claims that since what is allowed for local school boards to determine under Section 99 of the Local Government Code is only the annual **supplementary** budgetary needs for the operation and maintenance of public schools, as well as the **supplementary** local cost to meet such needs, the budget of the local school boards for the establishment and maintenance of extension classes should be construed to refer only to the upkeep and maintenance of public school buildings, facilities and similar expenses other than personnel-related benefits. This is because, petitioner argued, the maintenance and operation of public schools pertain principally to the DECS.

The contentions are without merit. It is a basic precept in statutory construction that the intent of the legislature is the controlling factor in the interpretation of a statute. x x x

x x x

Even under the doctrine of necessary implication, the allocation of the SEF for the establishment and maintenance of extension classes logically implies the hiring of teachers who should, as a matter of course be compensated for their services. Every statute is understood, by implication, to contain all such provisions as may be necessary to

effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. Ex necessitate legis. Verily, the services and the corresponding compensation of these teachers are necessary and indispensable to the establishment and maintenance of extension classes.

Indeed, the operation and maintenance of public schools is lodged principally with the DECS. This is the reason why only salaries of public school teachers appointed in connection with the establishment and maintenance of extension classes, inter alia, pertain to the supplementary budget of the local school boards. Thus, it should be made clear that not every kind of personnel-related benefits of public school teachers may be charged to the SEF. The SEF may be expended only for the salaries and personnel-related benefits of teachers appointed by the local school boards in connection with the establishment and maintenance of extension classes. Extension classes as referred to mean additional classes needed to accommodate all children of school age desiring to enter in public schools to acquire basic education.

With respect, however, to college scholarship grants, a reading of the pertinent laws of the Local Government Code reveals that said grants are not among the projects for which the proceeds of the SEF may be appropriated. It should be noted that Sections 100 (c) and 272 of the Local Government Code substantially reproduced Section 1, of R.A. No. 5447. But, unlike payment of salaries of teachers which falls within the ambit of establishment and maintenance of extension classes and operation and maintenance of public schools, the granting of government scholarship to poor but deserving students was omitted in Sections 100 (c) and 272 of the Local Government Code. *Casus omissus pro omisso habendus est*. A person, object, or thing omitted from an enumeration in a statute must be held to have been omitted intentionally. It is not for this Court to supply such grant of scholarship where the legislature has omitted it.

In the same vein, however noble the intention of the province in extending said scholarship to deserving students, we cannot apply the doctrine of necessary implication inasmuch as the grant of scholarship is neither necessary nor indispensable to the operation and maintenance of public schools. Instead, such scholarship grants may be charged to the General Funds of the province.

VILLAREA VS. COA³⁶
(G.R. Nos. 145383-84, August 6, 2003, En Banc)

- GRANT BY LOCAL GOVERNMENT UNITS OF FINANCIAL ASSISTANCE TO THE AUDITING OFFICE OR ALLOWANCES TO AUDITORS IS INVALID. - *By allocating a portion of the local budget for financial assistance to the auditing office of Marikina City, the legislative council of Marikina acted in excess of its powers under the Local Government Code. Consequently, Ordinance No. 21, series of 1995; Ordinance No. 9, series of 1996; and Ordinance No. 200, series of 1996, insofar as these contravene the prohibition contained in Republic Act No. 6758, are declared invalid.*

Petitioner next argues that Section 18 of Republic Act No. 6758 violates the equal protection clause of the Constitution. x x x This clause does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary.

*Indeed, there are valid reasons to treat COA officials differently from other national government officials. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. To be able properly to perform their constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity. As extensively discussed in *Tejada v. Domingo*, the prohibition under Section 18 of Republic Act No. 6758 was designed precisely to serve this purpose. The removal of the temptation and enticement the extra emoluments may provide is designed to be an effective way of vigorously and aggressively enforcing the Constitutional provision mandating the COA to prevent or disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.*

Stated otherwise, the COA personnel who have nothing to look forward to or expect from their assigned offices in terms of extra benefits, would have no reason to accord special treatment to the latter by closing their eyes to irregular or unlawful expenditures or use of funds or property, or conducting a perfunctory audit. The law realizes that such extra benefits could diminish the personnel's seriousness and dedication in the pursuit of their assigned tasks, affect their impartiality and provide a continuing temptation to ingratiate themselves to the government entity, local government unit, government-owned and controlled corporations and government financial institutions, as the case may be. In the end then, they would become ineffective auditors.

- ROUTINARY AUDIT VIS-À-VIS CLAIM FOR DENIAL OF DUE PROCESS. - *Finally, petitioner claims he was denied due process when the Special Audit Team allegedly openly disregarded the procedures set by the Manual on Certificate of Settlement and Balances which requires them to issue to him a Notice of Disallowance. This contention is likewise untenable. During the audit no charges had yet been brought against petitioner and he was not the focus of the investigation. The audit was merely a routine procedure to conduct an examination of the cash and accounts of the City Treasurer of Marikina and to audit selected financial transactions of the city. What is important is that after the audit, petitioner was formally charged and given the opportunity to present evidence and refute the findings of the Special Audit Team.*

³⁶ Atty. Rudy M. Villarea, Petitioner, vs. The Commission on Audit, Respondent; G.R. Nos. 145383-84, August 6, 2003, En Banc.

Facts:

The consolidated Special Civil Actions for Certiorari and Prohibition was filed by Atty. Rudy M. Villarea against the Commission on Audit (COA) challenging the decision finding him guilty of neglect of duty, simple misconduct and violation of reasonable office rules and regulations.

Atty. Villarea assumed the position of Auditor of Marikina on December 1, 1994 and became City Auditor when Marikina became a city on December 6, 1996. Pursuant to Republic Act (RA) No. 7160, the Local Government Code of 1991, the local sanggunian of Marikina enacted Ordinance No. 21, series of 1995; Ordinance No. 9, series of 1996; and Ordinance No. 200, series of 1996, which approved the budget allocations for Marikina for calendar years 1995, 1996 and 1997, respectively. Under the said budgets were allowances and benefits for the COA personnel assigned to Marikina, including Atty. Villarea.

In the course of the audit of the financial transactions of the City of Marikina by a Special Audit Team constituted by the COA, the grant of allowances to COA personnel by the City was discovered and the same was declared to have been received in contravention of Section 18 of RA No. 6758, An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes; COA Memorandum No. 89-584; and COA Chairman's Indorsement dated March 23, 1995.

Section 18 of RA No. 6758 provides:

SECTION 18. Additional Compensation of Commission on Audit Personnel and of Other Agencies. In order to preserve the independence and integrity of the Commission on Audit (COA), its officials and employees are prohibited from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, and government-owned and controlled corporations, and government financial institution, except those compensation paid directly by the COA out of its appropriations and contributions.

Government entities, including government-owned or controlled corporations including financial institutions and local government units are hereby prohibited from assessing or billing other government entities, government-owned or controlled corporations including financial institutions or local government units for services rendered by its officials and employees as part of their regular functions for purposes of paying additional compensation to said officials and employees.

COA Memorandum No. 89-584 states:

To ensure the rationality in the payment and receipt of allowances and other forms of fringe benefits by auditing personnel, it is hereby directed that effective January 2, 1989, the receipt of all forms of additional benefits, honorarium, allowances or other forms of compensation by auditing personnel of such allowances and other fringe benefits shall be considered illegal, and shall subject the employee concerned to administrative disciplinary action.

Finally, COA Chairman's Indorsement of March 23, 1995 partly reads as follows:

Request of Mr. Arnulf E. Lancin, City Auditor, Cagayan de Oro, for authority to collect allowances in the form of honoraria chargeable against local funds, which is denied for want of merit.

Accordingly, in Confidential Report dated June 19, 1997 of the Special Audit Team, it was recommended that the COA personnel should be ordered to refrain from receiving additional fringe benefits, honoraria, allowances and other forms of compensation from the City of Marikina and to refund those previously received. The Confidential Report further cited that under COA Memorandum No. 89-584, the COA may apply appropriate administrative sanctions to the concerned COA personnel.

Consequently, on July 15, 1997, a formal charge was initiated against Atty. Villarea for grave misconduct, gross neglect of duty, and conduct grossly prejudicial to the best interest of the service and/or violation of office rules and regulations.

Atty. Villarea averred in his Answer that he received the benefits under the belief that Section 18 of RA No. 6758 and COA Memorandum No. 89-584 have been repealed and/or superseded by RA No. 7160 which authorizes LGUs to give additional compensation to national government officials.

Nevertheless, per COA Decision No. 98-359 dated August 4, 1998, Atty. Villarea was found guilty of neglect of duty, simple misconduct and violation of reasonable office rules and regulations. He was ordered to pay a fine equivalent to four months' salary and to refund the amounts totalling P227,092.50 which he received from the City of Marikina. In resolving his Motion for Reconsideration, the COA reduced the fine to one month and one days' salary, but affirmed the decision in all other respects.

Hence, Atty. Villarea sought relief from the Supreme Court (SC) and argued that he validly received the allowances, honoraria and benefits by virtue of the ordinances enacted by the sanggunian panlungsod of the City of Marikina, pursuant to Sections 447 and 458 of RA No. 7160 which provide:

SECTION 447. *Powers, Duties, Functions and Compensation.* (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:

- (1) Approve ordinances and pass resolutions necessary for an efficient and effective municipal government, and in this connection shall:

X X X X X X

- (xi) When the finances of the municipal government allow, provide for additional allowances and other benefits to judges, prosecutors, public elementary and high school teachers, and other national government officials stationed in or assigned to the municipality;

X X X X X X

SECTION 458. *Powers, Duties, Functions and Compensation.* (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

- (1) Approve ordinances and pass resolutions necessary for an efficient and effective city government, and in this connection, shall:

X X X X X X

- (xi) When the finances of the city government allow, provide for additional allowances and other benefits to judges, prosecutors, public elementary and high school teachers, and other national government officials stationed in or assigned to the city;

X X X X X X

Particularly, Atty. Villarea claimed that being an employee of the COA stationed in the City of Marikina, he falls under the category “other national government officials,” thus, entitled to whatever additional allowances and benefits the City of Marikina may give such officials.

He further argued that RA No. 6758 and COA Memorandum No. 89-584 were already repealed by RA No. 7160 (the Local Government Code of 1991), which is a later law, by virtue of its repealing clause under Section 534 (f).

Issue/s:

Whether or not the COA Auditor may receive additional fringe benefits, honoraria, allowances and other forms of compensation from the City of Marikina.

Held:

The SC affirmed COA Decision No. 2000-266 finding petitioner guilty of neglect of duty, simple misconduct and violation of reasonable office rules and regulations, and ordering him to pay a fine equivalent to one month and one days’ salary, and to refund the amount he received from the City of Marikina, to be recomputed by the COA in conformity with the decision.

The SC expounded, among others, as follows:

It is significant to note that petitioner cited only paragraph (f) of the Local Government Code’s section on repeal and left out the other provisions that meticulously enumerate specific laws or parts thereof that were repealed or modified. The entire section reads as follows:

SECTION 534. *Repealing Clause.* (a) Batas Pambansa Blg. 337, otherwise known as the Local Government Code, Executive Order No. 112 (1987), and Executive Order No. 319 (1988) are hereby repealed.

(b) Presidential Decree Nos. 684, 1191, 1508 and such other decrees, orders, instructions, memoranda and issuances related to or concerning the barangay are hereby repealed.

(c) The provisions of Sections 2, 3, and 4 of Republic Act No. 1939 regarding hospital fund; Section 3, a (3) and b (2) of Republic Act No. 5447 regarding the Special Education Fund; Presidential Decree No. 144 as amended by Presidential

Decree Nos. 559 and 1741; Presidential Decree No. 231 as amended; Presidential Decree No. 436 as amended by Presidential Decree No. 558; and Presidential Decree Nos. 381, 436, 464, 477, 526, 632, 752, and 1136 are hereby repealed and rendered of no force and effect.

(d) Presidential Decree No. 1594 is hereby repealed insofar as it governs locally-funded projects.

(e) The following provisions are hereby repealed or amended insofar as they are inconsistent with the provisions of this Code: Sections 2, 16 and 29 of Presidential Decree No. 704; Section 12 of Presidential Decree No. 87, as amended; Section 52, 53, 66, 67, 68, 69, 70, 71, 72, 73, and 74 of Presidential Decree No. 463, as amended; and Section 16 of Presidential Decree No. 972, as amended, and

(f) All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly.

Since Republic Act No. 6758 was not expressly repealed by Republic Act No. 7160, has it been impliedly repealed?

Implied repeals are not lightly presumed. The rule is that instead of placing one law against another, in a destructive confrontation, courts must exert every effort to reconcile the statutes. Accordingly, in case of a conflict between Republic Act No. 6758 and the Local Government Code, the proper action is not to uphold one and annul the other, but, if possible, to give effect to both by harmonizing the two.

x x x

In the case at bar, the two statutes can easily be harmonized. Under the Local Government Code, local legislative bodies may provide for additional allowances and other benefits to national government officials stationed or assigned to their municipality or city. This authority, however, is not without limitation, as it does not include the grant of benefits that runs in conflict with other statutes, such as Republic Act No. 6758. The exception stated in these laws must be read together with the Local Government Code, so as to make both the Code and these laws equally effective and mutually complementary.

By allocating a portion of the local budget for financial assistance to the auditing office of Marikina City, the legislative council of Marikina acted in excess of its powers under the Local Government Code. Consequently, Ordinance No. 21, series of 1995; Ordinance No. 9, series of 1996; and Ordinance No. 200, series of 1996, insofar as these contravene the prohibition contained in Republic Act No. 6758, are declared invalid.

Petitioner next argues that Section 18 of Republic Act No. 6758 violates the equal protection clause of the Constitution. Petitioner ignores the well-accepted meaning of the equal protection clause. This clause does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary.

Indeed, there are valid reasons to treat COA officials differently from other national government officials. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. To be able properly to perform their constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity. As extensively discussed in *Tejada v. Domingo*, the prohibition under Section 18 of Republic Act No. 6758 was designed precisely to serve this purpose. The removal of the temptation and enticement the extra emoluments may provide is designed to be an effective way of vigorously and aggressively enforcing the Constitutional provision mandating the COA to prevent or disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

Stated otherwise, the COA personnel who have nothing to look forward to or expect from their assigned offices in terms of extra benefits, would have no reason to accord special treatment to the latter by closing their eyes to irregular or unlawful expenditures or use of funds or property, or conducting a perfunctory audit. The law realizes that such extra benefits could diminish the personnel's seriousness and dedication in the pursuit of their assigned tasks, affect their impartiality and provide a continuing temptation to ingratiate themselves to the government entity, local government unit, government-owned and controlled corporations and government financial institutions, as the case may be. In the end then, they would become ineffective auditors.

Next, petitioner alleges good faith in receiving the amounts from the City of Marikina. This argument is not relevant, considering that petitioner was found guilty of neglect of duty, simple misconduct and violation of reasonable office rules and regulations. These infractions can be committed even if the offender was in good faith.

Finally, petitioner claims he was denied due process when the Special Audit Team allegedly openly disregarded the procedures set by the Manual on Certificate of Settlement and Balances which requires them to issue to him a Notice of Disallowance. This contention is likewise untenable. During the audit no charges had yet been brought against petitioner and he was not the focus of the investigation. The audit was merely a routine procedure to conduct an examination of the cash and accounts of the City Treasurer of Marikina and to audit selected financial transactions of the city. What is important is that after the audit, petitioner was formally charged and given the opportunity to present evidence and refute the findings of the Special Audit Team.

LEYNES VS. COA³⁷
(G.R. No. 143596, December 11, 2003, En Banc)

- LOCAL GOVERNMENT UNITS MAY GRANT ALLOWANCES TO JUDGES (NATIONAL GOVERNMENT OFFICIALS/EMPLOYEES) ASSIGNED IN THEIR LOCALITY AS LONG AS THEIR FINANCES ALLOW IS AUTHORIZED UNDER THE LOCAL GOVERNMENT CODE OF 1991 AND MAY NOT BE PROHIBITED THROUGH A CIRCULAR; A CIRCULAR MUST CONFORM TO THE LAW IT SEEKS TO IMPLEMENT. - *Though LBC No. 53 of the DBM may be considered within the ambit of the President's power of general supervision over LGUs, we rule that Section 3, paragraph (e) thereof is invalid. RA 7160, the Local Government Code of 1991, clearly provides that provincial, city and municipal governments may grant allowances to judges as long as their finances allow. Section 3, paragraph (e) of LBC No. 53, by outrightly prohibiting LGUs from granting allowances to judges whenever such allowances are (1) also granted by the national government or (2) similar to the allowances granted by the national government, violates Section 447(a)(l)(xi) of the Local Government Code of 1991. As already stated, a circular must conform to the law it seeks to implement and should not modify or amend it.*

Moreover, by prohibiting LGUs from granting allowances similar to the allowances granted by the national government, Section 3 (e) of LBC No. 53 practically prohibits LGUs from granting allowances to judges and, in effect, totally nullifies their statutory power to do so. Being unduly restrictive therefore of the statutory power of LGUs to grant allowances to judges and being violative of their autonomy guaranteed by the Constitution, Section 3, paragraph (e) of LBC No. 53 is hereby declared null and void.

NOTE: In Villarea vs. COA (G.R. Nos. 145383-84, August 6, 2003, En Banc) the Supreme Court (SC) ruled that the grant by LGUs of financial assistance to the auditing office or allowances to auditors are invalid. The SC explained, among others, that there are valid reasons to treat COA officials differently from other national government officials. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. To be able properly to perform their constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity.

³⁷ Judge Tomas C. Leynes, Petitioner, vs. The Commission on Audit (COA), Hon. Gregoria S. Ong, Director, COA and Hon. Salvacion Dalisay, Provincial Auditor, Respondents.

Facts:

Petitioner Municipal Trial Court Judge was being granted monthly allowance by the Municipality of Naujan, Oriental Mindoro, on top of the compensation he was receiving from the budget of the Supreme Court (SC). The monthly allowance of P944.00 was received by the Petitioner from the local funds of the municipality since 1984, and said allowance was increased to 1,600.00 in May 1993 as approved by the Sangguniang Bayan and included in the budget of the Municipality.

On February 17, 1994, the Provincial Auditor directed the discontinuance of the payment of the ₱1,600.00 monthly allowance or Representation and Transportation Allowance (RATA) to the Petitioner Judge and required the immediate refund of the amounts previously paid to the latter.

The Auditor opined that the Municipality could not grant RATA to the Petitioner in addition to the RATA he has been receiving from the SC based on the following:

Section 36, Republic Act (RA) No. 7645, General Appropriations Act (GAA) of Fiscal Year (FY) 1993

Representation and Transportation Allowances. The following officials and those of equivalent rank as may be determined by the Department of Budget and Management (DBM) while in the actual performance of their respective functions *are hereby granted monthly commutable representation and transportation allowances payable from the programmed appropriations provided for their respective offices, not exceeding the rates indicated below*

...

National Compensation Circular (NCC) No. 67 dated January 1, 1992

Subject: Representation and Transportation Allowances of National Government Officials and Employees

X X X X X X X X X

4. Funding Source: *In all cases, commutable and reimbursable RATA shall be paid from the amount appropriated for the purpose and other personal services savings of the agency or project from where the officials and employees covered under this Circular draw their salaries. No one shall be allowed to collect RATA from more than one source.* (emphasis supplied)

On appeal, the COA Regional Director upheld the opinion of the Provincial Auditor and further resolved that Resolution No. 101, Series of 1993, of the *Sangguniang Bayan* of Naujan failed to comply with Section 3 of Local Budget Circular (LBC) No. 53 dated September 1, 1993 of the Department of Budget and Management prescribing the

conditions for the grant of allowances to judges and other national officials or employees by the local government units (LGUs), to wit:

Sec. 3 Allowances. — LGUs may grant allowances/additional compensation to the national government officials/employees assigned to their locality at rates authorized by law, rules and regulations and subject to the following preconditions:

- a. That the annual income or finances of the municipality, city or province as certified by the Accountant concerned will allow the grant of the allowances/additional compensation without exceeding the general limitations for personal services under Section 325 of RA 7160;
- b. That the budgetary requirements under Section 324 of RA 7160 including the full requirement of RA 6758 have been satisfied and provided fully in the budget as certified by the Budget Officer and COA representative in the LGU concerned;
- c. That the LGU has fully implemented the devolution of personnel/functions in accordance with the provisions of RA 7160;
- d. That the LGU has already created mandatory positions prescribed in RA 7160; and
- e. That similar allowances/additional compensation are not granted by the national government to the officials/employees assigned to the LGU.

Ultimately, the COA affirmed the decision of the COA Regional Director.

Issue/s:

1. Whether or not the Municipality can validly provide RATA to its Municipal Judge in addition to that paid by the SC.
2. Whether or not the Department of Budget and Management can restrict a municipal government from providing additional allowances and other benefits to national employees stationed or assigned to their municipality for as long as their finances so allow as authorized under the Local Government Code of 1991, RA No. 7160, through the issuance of budget circulars.

Held:

The SC ruled in favor of the Petitioner Judge, and declared that the COA erred in opposing the grant of the ₱1,600.00 monthly allowance by the Municipality to the former.

The SC, expounded, among others, as follows:

Section 447(a)(1)(xi) of RA 7160, the Local Government Code of 1991, provides:

(a)The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants . . . , and shall:

(1) Approve ordinances and pass resolutions necessary for an efficient and effective municipal government, and in this connection shall:

x x x x x x x x x

(xi) *When the finances of the municipal government allow, provide for additional allowances and other benefits to judges, prosecutors, public elementary and high school teachers, and other national government officials stationed in or assigned to the municipality; (emphasis ours)*

x x x

In this case, RA 7160 (the LGC of 1991) is a special law which exclusively deals with local government units (LGUs), outlining their powers and functions in consonance with the constitutionally mandated policy of local autonomy. RA 7645 (the GAA of 1993), on the other hand, was a general law which outlined the share in the national fund of all branches of the national government. RA 7645 therefore, being a general law, could not have, by mere implication, repealed RA 7160. Rather, RA 7160 should be taken as the exception to RA 7645 in the absence of circumstances warranting a contrary conclusion.

The controversy actually centers on the seemingly sweeping provision in NCC No. 67 which states that no one shall be allowed to collect RATA from more than one source. Does this mean that judges cannot receive allowances from LGUs in addition to the RATA from the Supreme Court? For reasons that will hereinafter be discussed, we answer in the negative.

x x x

x x x. Without doubt, NCC No. 67 does not apply to LGUs.

The prohibition in NCC No. 67 is in fact an administrative tool of the DBM to prevent the much-abused practice of multiple allowances, thus standardizing the grant of RATA by national agencies. Thus, the purpose clause of NCC No. 67 reads:

This Circular is being issued to ensure uniformity and consistency of actions on claims for representation and transportation allowance (RATA) which is primarily granted by law to national government officials and employees to cover expenses incurred in the discharge or performance of their duties and responsibilities.

By no stretch of the imagination can NCC No. 67 be construed as nullifying the power of LGUs to grant allowances to judges under the Local Government Code of 1991. It was issued primarily to make the grant of RATA to national officials under the national budget uniform. In other words, it applies only to the national funds administered by the DBM, not the local funds of LGUs.

To rule against the power of LGUs to grant allowances to judges as what respondent COA would like us to do will subvert the principle of local autonomy zealously guaranteed by the Constitution. The Local Government Code of 1991 was specially promulgated by Congress to ensure the autonomy of local governments as mandated by the Constitution. By upholding, in the present case, the power of LGUs to grant allowances to judges and leaving to their discretion the amount of allowances they may want to grant, depending on the availability of local funds, we ensure the genuine and meaningful local autonomy of LGUs.

We now discuss the next contention of respondent COA: that the resolution of the *Sangguniang Bayan* of Naujan granting the P1,600 monthly allowance to petitioner judge was null and void because it failed to comply with LBC No. 53 dated September 1, 1993:

Sec. 3 Allowances. — LGUs may grant allowances/additional compensation to the national government officials/employees assigned to their locality at rates authorized by law, rules and regulations and subject to the following preconditions:

- a. That the annual income or finances of the municipality, city or province as certified by the Accountant concerned will allow the grant of the allowances/additional compensation without exceeding the general limitations for personal services under Section 325 of RA 7160;
- b. That the budgetary requirements under Section 324 of RA 7160 including the full requirement of RA 6758 have been satisfied and provided fully in the budget as certified by the Budget Officer and COA representative in the LGU concerned;
- c. That the LGU has fully implemented the devolution of personnel/functions in accordance with the provisions of RA 7160;
- d. That the LGU has already created mandatory positions prescribed in RA 7160.
- e. That similar allowances/additional compensation are not granted by the national government to the officials/employees assigned to the LGU.

Though LBC No. 53 of the DBM may be considered within the ambit of the President's power of general supervision over LGUs, we rule that Section 3, paragraph (e) thereof is invalid. RA 7160, the Local Government Code of 1991, clearly provides that provincial, city and municipal governments may grant allowances to judges as long as their finances allow. Section 3, paragraph (e) of LBC No. 53, by outrightly prohibiting LGUs from granting allowances to judges whenever such allowances are (1) also granted by the national government or (2) similar to the allowances granted by the national government, violates Section 447(a)(l)(xi) of the Local Government Code of 1991. As already stated, a circular must conform to the law it seeks to implement and should not modify or amend it.

Moreover, by prohibiting LGUs from granting allowances *similar* to the allowances granted by the national government, Section 3 (e) of LBC No. 53 practically prohibits LGUs from granting allowances to judges and, in effect, totally nullifies their statutory power to do so. Being unduly restrictive therefore of the statutory power of LGUs to grant allowances to judges and being violative of their autonomy guaranteed by the Constitution, Section 3, paragraph (e) of LBC No. 53 is hereby declared null and void.

NOTE: In *Villarea vs. COA* (G.R. Nos. 145383-84, August 6, 2003, En Banc), the SC ruled that the grant by LGUs of financial assistance to the auditing office or allowances to auditors are invalid. The SC explained, among others, that there are valid reasons to treat COA officials differently from other national government officials. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. To be able properly to perform their constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity.

ATIENZA VS. VILLAROSA³⁸
(G.R. No. 161081, May 10, 2005, En Banc)

- VICE-GOVERNOR AS APPROVING AUTHORITY OF PURCHASE ORDERS FOR THE SANGGUNIANG PANLALAWIGAN. - *Since it is the Vice-Governor who approves disbursement vouchers and approves the payment for the procurement of the supplies, materials and equipment needed for the operation of the Sangguniang Panlalawigan, then he also has the authority to approve the purchase orders to cause the delivery of the said supplies, materials or equipment.*
- VICE-GOVERNOR AS APPOINTING AUTHORITY OF CASUAL AND JOB ORDER EMPLOYEES OF THE SANGGUNIANG PANLALAWIGAN. - *Thus, while the Governor has the authority to appoint officials and employees whose salaries are paid out of the provincial funds, this does not extend to the officials and employees of the Sangguniang Panlalawigan because such authority is lodged with the Vice-Governor. In the same manner, the authority to appoint casual and job order employees of the Sangguniang Panlalawigan belongs to the Vice-Governor.*

The authority of the Vice-Governor to appoint the officials and employees of the Sangguniang Panlalawigan is anchored on the fact that the salaries of these employees are derived from the appropriation specifically for the said local legislative body. Indeed, the budget source of their salaries is what sets the employees and officials of the Sangguniang Panlalawigan apart from the other employees and officials of the province. Accordingly, the appointing power of the Vice-Governor is limited to those employees of the Sangguniang Panlalawigan, as well as those of the Office of the Vice-Governor, whose salaries are paid out of the funds appropriated for the Sangguniang Panlalawigan. As a corollary, if the salary of an employee or official is charged against the provincial funds, even if this employee reports to the Vice-Governor or is assigned to his office, the Governor retains the authority to appoint the said employee pursuant to Section 465(b)(v) of Rep. Act No. 7160.

Facts:

On June 26, 2002, then Vice-Governor of the Province of Occidental Mindoro Ramon M. Atienza received the Memorandum dated June 25, 2002 issued by then Governor Jose T. Villarosa which prescribed that:

For proper coordination and to ensure efficient and effective local government administration particularly on matters pertaining to supply and property management, effective immediately, all Purchase Orders issued in connection with the procurement of supplies, materials and equipment[s] including fuel, repairs and maintenance needed in the transaction of public business or in the pursuit of any undertaking, project or activity of the

³⁸ Ramon M. Atienza, In His Capacity as Vice-Governor of the Province of Occidental Mindoro, Petitioner, vs. Jose T. Villarosa, In His Capacity as Governor of the Province of Occidental Mindoro, Respondent; G.R. No. 161081, May 10, 2005, En Banc.

Sangguniang Panlalawigan, this province, shall be approved by the undersigned in his capacity as the local chief executive of the province.

The provision of DILG Opinion No. 148-1993 which states that the authority to sign Purchase Orders of supplies, materials and equipment[s] of the Sanggunian belongs to the local chief executive, serves as basis of this memorandum.

For strict compliance.

Vice-Governor Atienza reacted through a letter to the Governor contending as follows:

We are of the opinion that purchase orders for supplies, materials and equipment are included under those as authorized for signature by the Vice-chief executive of the Sanggunian on the basis of the DILG Opinion No. 96-1995 as affirmed by the COA Opinions on June 28, April 11 and February 9, 1994 and coursing it to the Governor for his approval is no longer necessary, the fact that [Secs.] 466 and 468, RA 7160 already provides for the separation of powers between the executive and legislative. Such authority even include everything necessary for the legislative research program of the Sanggunian.

The Governor did not heed the explanation of the Vice-Governor and instead issued Memorandum dated July 1, 2002 which, among others, terminated for being unauthorized, all existing contracts of employment of casual/job order personnel and the reappointment of recommendees entered into by Vice-Governor Atienza.

Subsequently, Governor Villarosa issued another Memorandum on July 3, 2002 reiterating his previous Memoranda dated June 20, 26 and July 1, 2002 and required strict compliance therewith.

Per letter dated July 9, 2002, Vice-Governor Atienza requested the Governor to revisit the directives in his Memoranda and invoked the principle of separation of powers as applied to local government units (LGUs) where the Governor is the head of the executive branch, and the Vice-Governor, the head of the Sangguniang Panlalawigan as the legislative branch. The request was not favorably considered by the Governor who he insisted compliance by the department heads with his memoranda.

Consequently, Vice-Governor Atienza a petition for prohibition before the Court of Appeals (CA) seeking that Governor Villarosa be enjoined from implementing his Memoranda dated June 25, 2002 and July 1, 2002 which were issued with grave abuse of discretion. The petitioner Vice-Governor claimed that said Memoranda excluded him from the use and enjoyment of his office in violation of the pertinent

provisions of Republic Act (RA) No. 7160, or the Local Government Code of 1991 (LGC), and its implementing rules and regulations.

The CA dismissed the petition for prohibition and upheld the authority of the respondent Governor to issue the Memorandum dated June 25, 2002 as it recognized his authority to approve the purchase orders by virtue of Section 344 of the LGC. The CA pointed out that said provision requires the approval of the disbursement voucher by the local chief executive himself whenever local funds are disbursed.

The CA expounded that Section 466(a)(1) of the LGC as relied upon by the petitioner Vice-Governor, “speaks of the authority of the Vice-Governor to sign all *warrants* drawn on the public treasury for all expenditures appropriated for the operation of the *sangguniang panlalawigan*.” The CA declared the provision inapplicable because the approval of purchase orders is different from the power of the Vice-Governor to sign warrants drawn against the public treasury.

It was also declared by the CA that Section 361 of the LGC was likewise inapplicable since “requisitioning, which is provided under Section 361 of RA 7160, is the act of requiring that something be furnished. In the procurement function, it is the submission of written requests for supplies and materials and the like. It could be inferred that, in the scheme of things, approval of purchase requests is different from approval of purchase orders. Thus, the inapplicability of Section 361.”

Further, the CA ruled that the implementation of Memorandum dated July 1, 2002 could no longer be enjoined, being already moot and academic, inasmuch as the employees concerned were already terminated. “The CA pointed out that the subject of the said memorandum could no longer be enjoined or restrained as the termination of the employees had already been effected.”

Consequently, the petitioner Vice-Governor elevated the matter before the Supreme Court (SC).

Issue/s:

1. Whether it is the Vice-Governor or the Governor who is authorized to approve purchase orders issued in connection with the procurement of supplies, materials, equipment, including fuel, repairs and maintenance of the SP.
2. Whether or not the Governor, as the local chief executive, has the authority to terminate or cancel the appointments of casual/job order employees of the Sangguniang Panlalawigan Members and the Office of the Vice-Governor.

Held:

At the outset, the SC noted that the petitioner and respondent ceased to hold their respective offices June 30, 2004 after the newly-elected officials of the province took their oaths of office. Nevertheless, even if the supervening events rendered the case moot, the SC decided to resolve the issues raised “in order to clarify the scope of the respective powers of the Governor and Vice-Governor under the pertinent provisions of the Local Government Code of 1991.”

1. As to who between the Governor and Vice-Governor is authorized to approve purchase orders issued in connection with the procurement of supplies, materials, equipment, including fuel, repairs and maintenance of the *Sangguniang Panlalawigan*, the SC held that the Vice-Governor has the authority.

The SC concluded as follows:

Since it is the Vice-Governor who approves disbursement vouchers and approves the payment for the procurement of the supplies, materials and equipment needed for the operation of the *Sangguniang Panlalawigan*, then he also has the authority to approve the purchase orders to cause the delivery of the said supplies, materials or equipment.

Indeed, the authority granted to the Vice-Governor to sign all warrants drawn on the provincial treasury for all expenditures appropriated for the operation of the *Sangguniang Panlalawigan* as well as to approve disbursement vouchers relating thereto is greater and includes the authority to approve purchase orders for the procurement of the supplies, materials and equipment necessary for the operation of the *Sangguniang Panlalawigan*.

x x x

Under [Republic] Act No. 7160, local legislative power for the province is exercised by the *Sangguniang Panlalawigan* and the Vice-Governor is its presiding officer. Being vested with legislative powers, the *Sangguniang Panlalawigan* enacts ordinances, resolutions and appropriates funds for the general welfare of the province in accordance with the provisions of Rep. Act No. 7160. The same statute vests upon the Vice-Governor the power to:

- (1) Be the presiding officer of the *sangguniang panlalawigan* and sign all warrants drawn on the provincial treasury for all expenditures appropriated for the operation of the *sangguniang panlalawigan*.

x x x

Reliance by the CA on the clause approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed of the above section (Section 344) to rule that it is the Governor who has the authority to approve purchase orders for the supplies, materials or equipment for the operation of the *Sangguniang Panlalawigan* is misplaced. This clause cannot prevail over the more specific clause of the same provision which provides that vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned. The Vice-Governor, as the presiding officer of the *Sangguniang Panlalawigan*, has administrative control of the funds of the said body. Accordingly, it is the Vice-Governor who has the authority to approve disbursement vouchers for expenditures appropriated for the operation of the *Sangguniang Panlalawigan*.

On this point, Section 39 of the Manual on the New Government Accounting System for Local Government Units, prepared by the Commission on Audit (COA), is instructive:

Sec. 39. Approval of Disbursements. Approval of disbursements by the Local Chief Executive (LCE) himself shall be required whenever local funds are disbursed, except for regularly recurring administrative expenses such as: payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, BIR, PHILHEALTH, LBP, DBP, NPO, PS of the DBM and others, where the authority to approve may be delegated. Disbursement vouchers for expenditures appropriated for the operation of the Sanggunian shall be approved by the provincial Vice Governor, the city Vice-Mayor or the municipal Vice-Mayor, as the case may be.

While Rep. Act No. 7160 is silent as to the matter, the authority granted to the Vice-Governor to sign all warrants drawn on the provincial treasury for all expenditures appropriated for the operation of the *Sangguniang Panlalawigan* as well as to approve disbursement vouchers relating thereto necessarily includes the authority to approve purchase orders covering the same applying the doctrine of necessary implication. This doctrine is explained, thus:

No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-

embracing legislation may be inadequate to provide for the unfolding of events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, semper inest et minus*.

x x x

When an authorized person approves a disbursement voucher, he certifies to the correctness of the entries therein, among others: that the expenses incurred were necessary and lawful, the supporting documents are complete and the availability of cash therefor. Further, the person who performed the services or delivered the supplies, materials or equipment is entitled to payment. On the other hand, the terms and conditions for the procurement of supplies, materials or equipment, in particular, are contained in a purchase order. The tenor of a purchase order basically directs the supplier to deliver the articles enumerated and subject to the terms and conditions specified therein. Hence, the express authority to approve disbursement vouchers and, in effect, authorize the payment of money claims for supplies, materials or equipment, necessarily includes the authority to approve purchase orders to cause the delivery of the said supplies, materials or equipment.

2. As to the question of the authority of the Governor to terminate or cancel the appointments of casual/job order employees of the Sangguniang Panlalawigan Members and the Office of the Vice-Governor, the SC declared that the Governor has no such authority.

At the outset, the SC pronounced that the CA erred in holding that the petition has already become moot and academic upon the implementation of Memorandum dated July 1, 2002. The SC reiterated that:

It is recognized that courts will decide a question otherwise moot and academic if it is capable of repetition yet evading review.” Even if the employees whose contractual or job order employment had been terminated by the implementation of the July 1, 2002 Memorandum may no longer be reinstated, still, similar memoranda may be issued by other local chief executives. Hence, it behooves the Court to resolve whether the Governor has the authority to terminate or cancel the appointments of casual/job order employees of the *Sangguniang Panlalawigan* and the Office of the Vice-Governor.

The High Court expounded among others, as follows:

Among the powers granted to the Governor under Section 465 of Rep. Act No. 7160 are:

Sec. 465. The Chief Executive: Powers, Duties, Functions and Compensation. (a) The provincial governor, as the chief executive of the provincial government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the province and its inhabitants pursuant to Section 16 of this Code, the provincial governor shall:

(v) Appoint all officials and employees whose salaries and wages are wholly or mainly paid out of provincial funds and whose appointments are not otherwise provided for in this Code, as well as those he may be authorized by law to appoint.

On the other hand, Section 466 vests on the Vice-Governor the power to, among others:

(2) Subject to civil service law, rules and regulations, appoint all officials and employees of the *sangguniang panlalawigan*, except those whose manner of appointment is specifically provided in this Code.

Thus, while the Governor has the authority to appoint officials and employees whose salaries are paid out of the provincial funds, this does not extend to the officials and employees of the *Sangguniang Panlalawigan* because such authority is lodged with the Vice-Governor.

In the same manner, the authority to appoint casual and job order employees of the *Sangguniang Panlalawigan* belongs to the Vice-Governor.

The authority of the Vice-Governor to appoint the officials and employees of the *Sangguniang Panlalawigan* is anchored on the fact that the salaries of these employees are derived from the appropriation specifically for the said local legislative body. Indeed, the budget source of their salaries is what sets the employees and officials of the *Sangguniang Panlalawigan* apart from the other employees and officials of the province. Accordingly, the appointing power of the Vice-Governor is limited to those employees of the *Sangguniang Panlalawigan*, as well as those of the Office of the Vice-Governor, *whose salaries are paid out of the funds appropriated for the Sangguniang Panlalawigan*. As a corollary, if the salary of an employee or official is charged against the provincial funds, even if this employee reports to the Vice-Governor or is assigned to his office, the Governor retains the authority to appoint the said employee pursuant to Section 465(b)(v) of Rep. Act No. 7160.

However, in this case, it does not appear whether the contractual/job order employees, whose appointments were terminated or cancelled by the Memorandum dated July 1, 2002 issued by the respondent Governor, were paid out of the provincial funds or the funds of the *Sangguniang Panlalawigan*. Nonetheless, the validity of the said memorandum cannot be upheld because it absolutely prohibited the respondent Vice-Governor from exercising his authority to appoint the employees, whether regular or contractual/job order, of the *Sangguniang Panlalawigan* and restricted such authority to one of recommendatory nature only. This clearly constituted an encroachment on the appointment power of the respondent Vice-Governor under Section 466(a)(2) of Rep. Act No. 7160.

VICENCIO VS. VILLAR³⁹
(G.R. No. 182069, July 03, 2012, En Banc)

- NO INHERENT AUTHORITY FOR VICE-MAYOR TO ENTER INTO CONTRACT ON BEHALF OF THE SANGGUNIAN. - *Under this provision [Section 456 of Republic Act No. 7160], therefore, there is no inherent authority on the part of the city vice-mayor to enter into contracts on behalf of the local government unit, unlike that provided for the city mayor. Thus, the authority of the vice-mayor to enter into contracts on behalf of the city was strictly circumscribed by the ordinance granting it. Ordinance No. 15-2003 specifically authorized Vice-Mayor Yambao to enter into contracts for consultancy services. As this is not a power or duty given under the law to the Office of the Vice-Mayor, Ordinance No. 15-2003 cannot be construed as a "continuing authority" for any person who enters the Office of the Vice-Mayor to enter into subsequent, albeit similar, contracts.*

x x x

Ordinance No. 15-2003 is clear and precise and leaves no room for interpretation. It only authorized the then City Vice-Mayor to enter into consultancy contracts in the specific areas of concern. Further, the appropriations for this particular item were limited to the savings for the period June to December 2003. This was an additional limitation to the power granted to Vice-Mayor Yambao to contract on behalf of the city. The fact that any later consultancy contract would necessarily require further appropriations from the city council strengthens the contention that the power granted under Ordinance No. 15-2003 was limited in scope. Hence, petitioner was without authority to enter into the 2005 Consultancy Contracts.

- EXPENDITURES IN VIOLATION OF LAW OR REGULATIONS ARE PERSONAL LIABILITY OF THE RESPONSIBLE OFFICIAL OR EMPLOYEE; GOOD FAITH DOES NOT EXCULPATE ERRING OFFICIAL OR EMPLOYEE FROM LIABILITY. - *Section 103 of P.D. 1445 declares that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. The public official's personal liability arises only if the expenditure of government funds was made in violation of law. In this case, petitioner's act of entering into a contract on behalf of the local government unit without the requisite authority therefor was in violation of the Local Government Code. While petitioner may have relied on the opinion of the City Legal Officer, such reliance only serves to buttress his good faith. It does not, however, exculpate him from his personal liability under P.D. 1445.*

³⁹ Arnold D. Vicencio, Petitioner, vs. Hon. Reynaldo A. Villar and Hon. Juanito G. Espino, Jr., in their Capacity as Acting Chairman and Commissioner, Respectively, of The Hon. Commission on Audit, and Elizabeth Zosa, Respondents; G.R. No. 182069, July 03, 2012, En Banc.

Facts:

On 30 October 2003, the Sangguniang Panglungsod ng Malabon (SPM) enacted City Ordinance No. 15-2003, entitled "An Ordinance Granting Authority to the City Vice-Mayor, Hon. Jay Jay Yambao, to Negotiate and Enter into Contract for Consultancy Services for Consultants in the Sanggunian Secretariat Tasked to Function in their Respective Areas of Concern x x x." Consultancy contracts dated December 9, 2003 and March 1, 2004 were executed by virtue of said authority.

However, after the May 2004 elections, Mr. Arnold Vicencio was elected as the City Vice-Mayor of Malabon, and consequently became the Presiding Officer of the SPM and the head of the Sanggunian Secretariat. In order to augment and upgrade the performance capability of the legislative machinery of the City, Vice-Mayor Vicencio deemed that the hiring of consultants would be necessary. He sought the opinion of the City Legal Officer of Malabon as to the necessity for the SPM to ratify the newly-executed consultancy contract considering the authority granted to the City Vice-Mayor to enter into contract for consultancy services under the earlier enacted Ordinance No. 15-2003. The City Legal Officer, through letter dated 26 July 2004, opined that ratification was no longer necessary, provided that the services to be contracted were those stipulated in the ordinance.

Relatedly, considering that the amount of P792,000 was earmarked for consultancy services under the Legislative Secretariat under Ordinance No. 01-2005 covering the fiscal year 2005 annual appropriation of the City, Vice-Mayor Vicencio executed on February 1, 2005 Contracts for Consultancy Services with three consultants (Ms. Jennifer S. Catindig, Atty. Rodolfo C. delos Santos, and Mr. Marvin T. Amiana). The consultants rendered their services and were accordingly paid.

Consequently, however, Audit Observation Memorandum (AOM) No. 2005-12-019 dated December 19, 2005 was issued by the Supervising Auditor of the City, Ms. Atenie F. Padilla, disallowing the amount P384,980 as an improper disbursement. The AOM contained the following findings:

- City Ordinance No. 15-2003 dated October 30, 2003 was used as basis of authority in hiring consultants. Analysis of the said City Ordinance revealed that it specifically authorized the former Vice-Mayor, Hon. Mark Allan Jay G. Yambao to enter into a contract for consultancy services in the Sangguniang Secretariat covering the period June to December 2003 only. Said ordinance does not give authority to the incumbent City Vice-Mayor Arnold D. Vicencio to hire consultants for CY 2005.
- Progress accomplishment report for the month, to determine the services rendered were not attached to the disbursement vouchers.

- No information as to what method had been made by BAC in the hiring of individual consultants whether through the selection from several registered professionals who offered consulting services or through direct hiring without the intervention of the BAC.
- Copies of the approved contracts together with supporting documents were not submitted to the City Auditor's Office within five (5) days from execution of the contract for review and evaluation contrary to COA Circular No. 76-34 dated July 15, 1976, thus the City Auditor's Office was precluded to conduct timely review/evaluation to inform management of whatever deficiencies noted so that immediate remedial measures could be properly taken.

On 12 May 2006, Notice of Disallowance (ND) No. 06-009-101 (05) was issued by Elizabeth S. Zosa based on an evaluation of the AOM issued by Ms. Padilla. Hence, the following persons were found liable for the disallowed amount relative to the hiring of the three consultants and were directed to immediately settle the disallowance:

- (1) Vice-Mayor Vicencio, in his capacity as City Vice-Mayor, for certifying that the expenses/cash advances were necessary, lawful and incurred under his direct supervision and for approving the transaction;
- (2) Mr. Eustaquio M. Angeles, in his capacity as Officer-in-Charge, City Accountant, for certifying to the completeness and propriety of the supporting documents of the expenditures; and
- (3) Ms. Catindig, Atty. Delos Santos, and Mr. Amiana, as payees.

Vice-Mayor Vicencio appealed to the Adjudication and Settlement Board (ASB) of the Commission on Audit (COA) which denied the appeal and affirmed the ND. On the other hand, the ASB granted the appeal of the Officer-in-Charge, City Accountant, Mr. Estaquio Angeles and excluded him from liability. Vice-Mayor Vicencio wrote the COA Chair seeking the reversal of the decision of the ASB, and his letter was treated as an appeal by the Commission Proper, but which was later on denied.

Thus, on 28 March 2008, Vice-Mayor Vicencio filed a petition for certiorari before the Supreme Court (SC) alleging grave abuse of discretion on the part of the Commission Proper for upholding the ASB decision affirming the ND.

In the course of the proceedings before the SC, the respondents contended that the consultancy contracts entered into by the petitioner Vice-Mayor were not consistent with Ordinance No. 15-2003, thus, not valid, since the said ordinance particularly authorized the expenditure of funds for the compensation of consultants only from June to December 2003.

Petitioner, on the other hand, argued that he had the authority to execute the consultancy contracts by virtue of Ordinance No. 15-2003. He claimed that the ordinance was ambiguous, thus, there was a need to interpret its provisions by looking into the intent of the law. He also pointed out that the Ombudsman already dismissed the administrative and criminal Complaints for violation of Republic Act No. 6713 and for Usurpation of Authority, previously filed against him covering the same transactions. He asserted that the Ombudsman found that, while Ordinance No. 15-2003 specifically mentioned then Vice-Mayor Yambao, the intent in passing the law may not be ignored. It was the intention of the city council to authorize the Office of the Vice-Mayor, not just Vice-Mayor Yambao only, to enter into consultancy contracts. Petitioner further averred that the ends of substantial justice and equity would be better served by allowing the disbursement for consultancy services that were already rendered.

Issue/s:

Whether or not authority from the Sanggunian is necessary before the Vice-Mayor as Presiding Officer of the Sanggunian can enter into contracts (for consultancy services in this case).

Held:

The SC denied the petition and affirmed the decision of the COA. At the outset, the SC noted a procedural flaw, then expounded on the substantive aspect of the case, ruling, among others, as follows:

In any case, we find no grave abuse of discretion on the part of the COA in issuing the assailed Decision.

Petitioner contends that the ordinance authorizes the Office of the Vice-Mayor, and not Vice-Mayor Yambao in particular, to enter into consultancy contracts. Notably, it was even Hon. Vice-Mayor Benjamin C. Galauran, who was acting Vice-Mayor at the time, who entered into the 2003 Consultancy Contracts. Petitioner also argues that there is no indication from the preamble of the ordinance, which can be read from the minutes of the SPM meeting, that the ordinance was specifically designed to empower only Vice-Mayor Yambao, or to limit such power to hire for the period June to December 2003 only.

We disagree.

Under Section 456 of R.A. 7160, or the Local Government Code, the following are the powers and duties of a city vice-mayor:

ARTICLE II
The City Vice-Mayor

SECTION 456. Powers, Duties and Compensation. (a) The city vice-mayor shall:

(1) Be the presiding officer of the sangguniang panlungsod and sign all warrants drawn on the city treasury for all expenditures appropriated for the operation of the sangguniang panlungsod;

(2) Subject to civil service law, rules and regulations, appoint all officials and employees of the sangguniang panlungsod, except those whose manner of appointment is specifically provided in this Code;

(3) Assume the office of the city mayor for the unexpired term of the latter in the event of permanent vacancy as provided for in Section 44, Book I of this Code;

(4) Exercise the powers and perform the duties and functions of the city mayor in cases of temporary vacancy as provided for in Section 46, Book I of this Code; and

(5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

(b) The city vice-mayor shall receive a monthly compensation corresponding to Salary Grade twenty-eight (28) for a highly urbanized city and Salary Grade twenty-six (26) for a component city, as prescribed under R.A. No. 6758 and the implementing guidelines issued pursuant thereto.

Under this provision, therefore, there is no inherent authority on the part of the city vice-mayor to enter into contracts on behalf of the local government unit, unlike that provided for the city mayor. Thus, the authority of the vice-mayor to enter into contracts on behalf of the city was strictly circumscribed by the ordinance granting it. Ordinance No. 15-2003 specifically authorized Vice-Mayor Yambao to enter into contracts for consultancy services. As this is not a power or duty given under the law to the Office of the Vice-Mayor, Ordinance No. 15-2003 cannot be construed as a "continuing authority" for any person who enters the Office of the Vice-Mayor to enter into subsequent, albeit similar, contracts.

x x x

Ordinance No. 15-2003 is clear and precise and leaves no room for interpretation. It only authorized the then City Vice-Mayor to enter into consultancy contracts in the specific areas of concern. Further, the appropriations for this particular item were limited to the savings for the period June to December 2003. This was an additional limitation to the power granted to Vice-Mayor Yambao to contract on behalf of the city. The fact that any later consultancy contract would necessarily require further appropriations from the city council strengthens the contention that the power granted under Ordinance No. 15-2003 was limited in scope. Hence, petitioner was without authority to enter into the 2005 Consultancy Contracts.

Where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Thus, the ordinance should be applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. In the instant case, there is no reason to depart from this rule, since the subject ordinance is not at all impossible, absurd, or unjust.

Section 103 of P.D. 1445 declares that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. The public official's personal liability arises only if the expenditure of government funds was made in violation of law. In this case, petitioner's act of entering into a contract on behalf of the local government unit without the requisite authority therefor was in violation of the Local Government Code. While petitioner may have relied on the opinion of the City Legal Officer, such reliance only serves to buttress his good faith. It does not, however, exculpate him from his personal liability under P.D. 1445.

MALONZO VS. ZAMORA⁴⁰
(G.R. No. 137718, July 27, 1999, En Banc)

- REALIGNMENT ALLOWED FOR CURRENT OPERATING EXPENDITURES, BUT NOT WHEN WHAT IS INVOLVED ARE CONTINUING APPROPRIATIONS OR CAPITAL OUTLAYS. - *Rather, the issue is whether petitioners are liable for their actions in regard to said ordinance which actually realigned a portion of the P50 million which was simply denominated in a general manner as Expropriation of Properties and classified under Current Operating Expenditures in the 1998 Annual Budget of Caloocan City. Clearly, these are two distinct amounts separate from each other. That this is the case has likewise been clarified in the pleadings and during the oral argument where petitioners adequately explained that **the P50 million was NOT appropriated for the purpose of purchasing Lot 26 of the Maysilo Estate but rather for expenses incidental to expropriation such as relocation of squatters, appraisal fee, expenses for publication, mobilization fees, and expenses for preliminary studies.** x x x*

x x x

No less than respondents themselves argued, citing Sections 321 and 322 in relation to Section 306 (d) and (e) of the Code, that realignment shall not be allowed when what is involved are continuing appropriations or capital outlays. But this argument becomes clearly inapplicable in view of our disquisition above that the realignment being complained of had nothing to do with the P39,352,047.75 appropriation for the purchase of Lot 26 of the Maysilo Estate which is clearly the one that is classifiable as a capital outlay or a continuing appropriation. The realignment, as we have earlier discussed, pertained to the P50 million which was classified as Current Operating Expenditures. Having been determined as such by the local council upon which legislative discretion is granted, then the statutory proscription does not, therefore, apply and respondents cannot insist that it should. x x x

- NO PROHIBITION TO TAKE UP MATTERS OTHER THAN ADOPTING OR UPDATING HOUSE RULES DURING THE FIRST REGULAR SESSION. - *As to the alleged violation of Sections 50 and 52 of the Code requiring the adoption of house rules and the organization of the council, we believe that the same hardly merits even cursory consideration. We cannot infer the mandate of the Code that no other business may be transacted on the first regular session except to take up the matter of adopting or updating rules. All that the law requires is that on the first regular session the Sanggunian concerned shall adopt or update its existing rules or procedure. There is nothing in the language thereof that restricts the matters to be taken up during the first regular session merely to the adoption or updating of the house rules. If it were the intent of Congress to limit the business of the local council to such matters, then it would have done so in clear and unequivocal terms. But as it is, there is no such intent.*

Moreover, adoption or updating of house rules would necessarily entail work beyond the day of the first regular session. x x x

⁴⁰ Reynaldo O. Malonzo, in His Capacity as City Mayor of Caloocan City, Oscar Malapitan, in His Capacity as Vice-Mayor of Caloocan City, Chito Abel, Benjamin Manlapig, Edgar Erice, Dennis Padilla, Zaldy Dolarte, Luis Tito Varela, Susan Punzalan, Henry Camayo, in their Capacities as Members of the Sangguniang Panlungsod of Caloocan City, Petitioners, vs. Hon. Ronaldo B. Zamora, in His Capacity as Executive Secretary, Hon. Ronaldo V. Puno, in His Capacity as Undersecretary of the Department of the Interior and Local Government, and Eduardo Tibor, Respondents; G.R. No. 137718, July 27, 1999, En Banc.

Facts:

Ordinance No. 0168, s. 1994, was enacted for the expropriation and authorizing the City Mayor to initiate proceedings for the expropriation of Lot 26 of the Maysilo Estate registered in the name of CLT Realty Development Corporation (CLT). The lot was intended for low-cost housing and the construction of an integrated bus terminal, parks and playgrounds, and related support facilities and utilities. The same ordinance appropriated the amount of P35,997,975.00 corresponding to 15% of the fair market value of the lot to serve as deposit in the expropriation.

On August 6, 1997, however, CLT filed a special action for Interpleader with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction before the Caloocan City Regional Trial Court because it was discovered that the Maysilo Estate straddled the City of Caloocan and the Municipality of Malabon, thus, the complainant sought to restrain the defendants City of Caloocan and Municipality of Malabon from assessing and collecting real property taxes from CLT and to interplead and litigate among themselves their conflicting rights to claim such taxes.

Nevertheless, on December 11, 1997, City Ordinance No. 0246, s. 1997, was enacted amending City Ordinance No. 0168, s. 1994, which, among others, increased the appropriated amount in the first ordinance from P35,997,975.00 to P39,352,047.75, considering the current fair market value of the property to be expropriated.

On March 23, 1998, after a voluntary sale of the property in favor of the City was not concluded, a suit for eminent domain against CLT was filed before the Caloocan City Regional Trial Court, to implement the expropriation. However, the Caloocan City Legal Officer informed the City Mayor of the pending interpleader case covering the subject lot and that the same was a prejudicial question that must be resolved first so as not to put the expropriation proceedings in question. He, thus, recommended that the expropriation of the subject property be cancelled and/or abandoned pending the resolution of the court in the earlier case.

Meantime, Vice-Mayor Oscar G. Malapitan per letter dated June 4, 1998 requested Mayor Reynaldo O. Malonzo for the immediate repair and renovation of the offices of the incoming councilors, as well as the hiring of additional personnel and the retention of those currently employed in the offices of the councilors. Malonzo endorsed the request to the City Treasurer who recommended that since the expropriation of the CLT property is discontinued, the intended appropriation for expropriation under current operating expenditures in the amount of P50 million may be reverted for use in a supplemental budget. The Treasurer certified for the reversion of the appropriation since it is not yet obligated, and for its availability for re-appropriation in a supplemental budget.

Per the Treasurer's certification on the availability of funds to accommodate the Vice-Mayor's request, Mayor Malonzo endorsed Supplemental Budget No. 1, s. 1998, to the Sangguniang Panlungsod appropriating the amount of P39,343,028.00. The city council then passed Ordinance No. 0254, s. 1998 entitled "AN ORDINANCE PROVIDING PAYMENTS FOR APPROVED ITEMS IN THE SUPPLEMENTAL BUDGET NO. 1 CALENDAR YEAR 1998 AND APPROPRIATING CORRESPONDING AMOUNT WHICH SHALL BE TAKEN FROM THE GENERAL FUND (REVERSION OF APPROPRIATION-EXPROPRIATION OF PROPERTIES)."

Thereafter, a certain Eduardo Tibor by himself and as a taxpayer, filed on July 15, 1998, an administrative complaint for Dishonesty, Misconduct in Office, and Abuse of Authority against petitioners Malonzo, et al. before the Office of the President (OP). Tibor alleged that petitioners conspired and confederated in willfully violating certain provisions of the Local Government Code of 1991 (LGC) through the passage of Ordinance No. 0254, s. 1998.

On March 15, 1999, the OP rendered its decision with the following decretal portion:

WHEREFORE, herein respondents Mayor Reynaldo Malonzo, Vice-mayor Oscar G. Malapitan and Councilors Chito Abel, Benjamin Manlapig, Edgar Erice, Dennis Padilla, Zaldy Dolatre, Susana Punzalan, Henry Camayo, and Luis Tito Varela, all of Caloocan City, are hereby adjudged guilty of misconduct and each is meted the penalty of SUSPENSION from office for a period of three (3) months without pay to commence upon receipt of this Decision. This Decision is immediately executory.

SO ORDERED.

Without moving for reconsideration of the decision of the OP, petitioners filed before the Supreme Court (SC), the instant Petition for *Certiorari* and Prohibition With Application for Preliminary Injunction and Prayer for Restraining Order, With alternative Prayer for Preliminary Mandatory Injunction, with the following arguments, among others:

1. That in view of the pending interpleader case filed by the CLT, the expropriation proceedings had to be suspended pending final resolution of the boundary dispute between Malabon and Caloocan City. Accordingly, the appropriated amount for the expropriation "under current operating expenses had not been obligated and no security deposit was forthcoming." Also, it was a continuing appropriation at that time and that the circumstances constituted as an unavoidable discontinuance of the purpose for which the appropriation was made which effectively converted the earlier expropriation of P39,352,047.75 into savings as defined by law.

2. That there is no truth in the allegation that Ordinance No. 0254, s. 1998, was passed without complying with Sections 50 and 52 of the LGC requiring that on the first regular session following the election of its members and within 90 days thereafter, the Sanggunian concerned shall adopt or update its existing rules of procedure. Petitioners contend that the minutes of the session held on July 2, 1998 would show that they have taken up the matter of adoption or updating of the house rules and that the council decided to create an *ad hoc* committee to study the rules. They further contend that the rules which were applied in the previous year shall be deemed in force and effect until new ones are adopted.

On the other hand, on behalf of the OP, the Office of the Solicitor General (OSG) contended that the appropriation of P39,352,047.75 in Ordinance No. 0246 was a capital outlay as defined under Article 306 (d) of the LGC and not current operating expenditures. Since it was a capital outlay, the same shall continue and remain valid until fully spent or the project is completed, as provided under Section 322 of said law.

The OSG further asserted further that interpleader case by CLT should not be considered as an unavoidable discontinuance that automatically converted the appropriated amount into savings which could be used for supplemental budget. Accordingly, since the amount should not be considered as savings, no funds were actually available, thus, the passage of Ordinance No. 0254 violated Section 321 of the Code requiring an ordinance providing for a supplemental budget to be supported by funds actually available as certified by the local treasurer or by new revenue sources.

It was also alleged that petitioners violated Sections 50 and 52 of the LGC for having conducted three readings of Ordinance No. 0254 in only one day and on the first day of its session (July 2, 1998) without the Sanggunian having first organized itself and adopted its rules of procedure. The Sanggunian adopted its internal rules of procedure only on July 23, 1998.

Issue/s:

1. Whether or not Ordinance No. 0254, s. 1998, violated Section 322 of the LGC on reversion of unexpended balances of appropriations;
2. Whether or not Ordinance No. 0254, s. 1998, complied with Section 321 of the LGC requiring that changes in the annual budget should be supported by funds actually available; and
3. Whether or not Ordinance No. 0254, s. 1998, was valid considering that prior to its passage there was as yet no formal adoption of rules of procedure by the Sanggunian.

Held:

The SC granted the petition and annulled and set aside the assailed decision of the OP, with the following rulings:

The OPs premise, in our opinion, rests upon an erroneous appreciation of the facts on record. The OP seems to have been confused as to the figures and amounts actually involved. A meticulous analysis of the records would show that there is really no basis to support the OP's contention that the amount of P39,352,047.75 was appropriated under Ordinance No. 0254, S. 1998, since in truth and in fact, what was appropriated in said ordinance was the amount of P39,343,028.00. The allocation of P39,352,047.75 is to be found in the earlier Ordinance No. 0246, S. 1997 which is a separate and distinct ordinance. This point of clarification is indeed very critical and must be emphasized at this juncture because any further discussion would have to depend upon the accuracy of the figures and amounts being discussed. As will be explained below, this faulty appreciation of the facts by the OP caused it to arrive at the wrong conclusion even if it would have correctly interpreted and applied the pertinent statutory provisions.

Section 322 of the Code upon which the OP anchored its opinion that petitioners breached a statutory mandate provides:

SEC 322. *Reversion of Unexpended Balances of Appropriations, Continuing Appropriations.* Unexpended balances of appropriations authorized in the annual appropriations ordinance shall revert to the unappropriated surplus of the general funds at the end of the fiscal year and shall not thereafter be available for expenditure except by subsequent enactment. However, appropriations for capital outlays shall continue and remain valid until fully spent, reverted or the project is completed. Reversions of continuing appropriations shall not be allowed unless obligations therefor have been fully paid or otherwise settled.

Based on the above provision, the OP reached the determination that Ordinance No. 0254, S. 1998 could not have lawfully realigned the amount of P39,352,047.75 which was previously appropriated for the expropriation of Lot 26 of the Maysilo Estate since such appropriation was in the nature of a capital outlay until fully spent, reverted; or the project for which it is earmarked is completed.

The question, however, is not whether the appropriation of P39,352,047.75 could fall under the definitions of continuing appropriation and capital outlays, considering that such amount was not the subject of the realignment made by Ordinance No. 0254, Series of 1998. Rather, the issue is whether petitioners are liable for their actions in regard to said ordinance which actually realigned a portion of the P50 million which was

simply denominated in a general manner as Expropriation of Properties and classified under Current Operating Expenditures in the 1998 Annual Budget of Caloocan City. Clearly, these are two distinct amounts separate from each other. That this is the case has likewise been clarified in the pleadings and during the oral argument where petitioners adequately explained that ***the P50 million was NOT appropriated for the purpose of purchasing Lot 26 of the Maysilo Estate but rather for expenses incidental to expropriation such as relocation of squatters, appraisal fee, expenses for publication, mobilization fees, and expenses for preliminary studies.*** This position appears to us more convincing than that of the interpretation of respondents. The appropriation of P39,352,047.75 under Ordinance No. 0246, S. 1997 is, we believe, still a subsisting appropriation that has never been lumped together with other funds to arrive at the sum of P50 million allocated in the 1998 budget. To be sure, denomination of the P50 million amount as Expropriation of Properties left much to be desired and would have been confused with the appropriation for expropriation under Ordinance No. 0246, S. 1997, but had respondents probed deeper into the actual intention for which said amount was allocated, then they would have reached an accurate characterization of the P50 million.

Bearing in mind, therefore, the fact that it is the P50 million which is now being realigned, the next logical question to ask is whether such amount is capable of being lawfully realigned. To this, we answer in the affirmative.

No less than respondents themselves argued, citing Sections 321 and 322 in relation to Section 306 (d) and (e) of the Code, that **realignment shall not be allowed when what is involved are continuing appropriations or capital outlays. But this argument becomes clearly inapplicable in view of our disquisition above that the realignment being complained of had nothing to do with the P39,352,047.75 appropriation for the purchase of Lot 26 of the Maysilo Estate which is clearly the one that is classifiable as a capital outlay or a continuing appropriation. The realignment, as we have earlier discussed, pertained to the P50 million which was classified as Current Operating Expenditures.** Having been determined as such by the local council upon which legislative discretion is granted, then the statutory proscription does not, therefore, apply and respondents cannot insist that it should. x x x (emphasis supplied)

x x x

As to the alleged violation of Sections 50 and 52 of the Code requiring the adoption of house rules and the organization of the council, we believe that the same hardly merits even cursory consideration. We cannot infer the mandate of the Code that no other business may be transacted on the first regular session except to take up the matter of adopting or updating rules.

All that the law requires is that on the first regular session the *Sanggunian* concerned shall adopt or update its existing rules or procedure. There is nothing in the language thereof that restricts the matters to be taken up during the first regular session merely to the adoption or updating of the house rules. If it were the intent of Congress to limit the business of the local council to such matters, then it would have done so in clear and unequivocal terms. But as it is, there is no such intent.

Moreover, adoption or updating of house rules would necessarily entail work beyond the day of the first regular session. In fact, it took the members of the *Sangguniang Panlungsod* of Caloocan City until July 23, 1998 to complete the task of adopting their house rules. Does this mean that prior thereto, the local council's hands were tied and could not act on any other matter? That would certainly be absurd for it would result in a hiatus and a paralysis in the local legislature's work which could not have been intended by the law. *Interpretatio talis in ambiguis semper frienda est, ut evitatur inconueniens et absurdum.* Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted. We believe that there has been sufficient compliance with the Code when on the first regular session, the *Sanggunian* took up the matter of adopting a set of house rules as duly evidenced by the KATITIKAN NG KARANIWANG PULONG NG SANGGUNIANG PANLUNGSOD NA GINANAP NOONG IKA-2 NG HULYO, 1998 SA BAGONG GUSALI NG PAMAHALAANG LUNGSOD NG CALOOCAN where Item No. 3 thereof specifically mentioned the request for creation of an *ad hoc* committee to study the existing house rules. x x x

ALTRES VS. EMPLEO⁴¹
(G.R. No. 180986, December 10, 2008, En Banc)

- MINISTERIAL DUTY OF CITY ACCOUNTANT TO ISSUE CERTIFICATION OF AVAILABILITY OF FUNDS FOR PAYMENT OF SALARIES AND WAGES OF APPOINTEES. - *The trial court thus erred in relying on Section 344 of the Local Government Code of 1991 in ruling that the ministerial function to issue a certification as to availability of funds for the payment of the wages and salaries of petitioners pertains to the city treasurer. For at the time material to the required issuance of the certification, the appointments issued to petitioners were not yet approved by the CSC, hence, there were yet no services performed to speak of. In other words, there was yet no due and demandable obligation of the local government to petitioners.*

Section 474, subparagraph (b)(4) of the Local Government Code of 1991, on the other hand, requires the city accountant to certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged. By necessary implication, it includes the duty to certify to the availability of funds for the payment of salaries and wages of appointees to positions in the plantilla of the local government unit, as required under Section 1(e)(ii), Rule V of CSC Memorandum Circular Number 40, Series of 1998, a requirement before the CSC considers the approval of the appointments.

In fine, whenever a certification as to availability of funds is required for purposes other than actual payment of an obligation which requires disbursement of money, Section 474(b)(4) of the Local Government Code of 1991 applies, and it is the ministerial duty of the city accountant to issue the certification.

Facts:

Petitioners are appointees of then Iligan City Mayor Franklin M. Quijano whose appointments were issued towards the end of the term of the latter, particularly on May 27, June 1, and June 24, 2004.

⁴¹ Norberto Altres, Evita Bulingan, Evangeline Sastine, Felipe Sasa, Lilibeth Sillar, Ramonito Jayson, Jelo Tucalo, Juan Buca, Jr., Jue Christine Calamba, Romeo Pacquingan, Jr., Cleo Jean Angara, Lovena Oyao, Rodolfo Trinidad, Leonila Sara, Sorina Beldad, Ma. Linda Ninal, Lilia Ponce, Josefina Ongcoy, Adelyn Buctuan, Alma Orbe, Mylene Soliva, Nazarene Lloren, Elizabeth Manseras, Diamond Mohamad, Marydell Cadavos, Elena Dadios, Alvin Castro, Lilibeth Razo, Norma Cepria, Pinido Beley, Julius Haganas, Arthur Cabigon, Cerila Balaba, Liezel Siman, Justina Yumol, Nerlita Cali, Janeth Bicoy, Henry Lacida, Cesario Advincula, Jr., Merlyn Ramos, Virgie Tabada, Bernardita Cangke, Lynie Gumalo, Isabel Adanza, Ernesto Lobaton, Rene Arimas, Fe Salvacion Orbe, Julie Quijano, Juditho Lanit, Gilberto Elimia, Manuel Padayogdog, Henry Besin, Romulo Pasilang, Bartolome Tapoyao, Jr., Ruwena Gorres, Maribeth Rondez, Ferdinand Caorong, Teodomero Coronel, Elizabeth Sagpang, And Juanita Alviola, Petitioners, vs. Camilo G. Empleo, Franklin Maata, Livey Villaren, Raides Caga, Franco Badelles, Ernesto Balat, Grace Saquilabon, Marina Jumalon And George Dacup, Respondents; G.R. No. 180986, December 10, 2008, En Banc.

Relatedly, the *Sangguniang Panglungsod* (SP) issued Resolution No. 04-242 which requested the Civil Service Commission (CSC) Iligan City Field Office to suspend action on appointments to all vacant positions in the plantilla of the city government as of March 19, 2004 until the enactment of a new budget.

The SP likewise issued Resolution No. 04-266 which stated its policy against midnight appointments and directed the City Human Resource Management Office to hold in abeyance the appointments signed or yet to be signed by the Mayor to ensure the propriety of said appointments. The Resolution enjoined the transmission of all appointments to the CSC and provided that non-compliance therewith would be met with administrative action.

Consequently, respondent city accountant Camilo G. Empleo did not issue the certification as to availability of funds for the payment of salaries and wages of the petitioners, as required by Section 1(e)(ii), Rule V of CSC Memorandum Circular (MC) No. 40, series of 1998, which prescribes as follows:

x x x

- e. LGU Appointment. Appointment in local government units for submission to the Commission shall be accompanied, in addition to the common requirements, by the following:

x x x

- ii. Certification by the Municipal/City Provincial Accountant/Budget Officer that funds are available.

Likewise, the other respondents did not sign the petitioners' position description forms (PDFs).

As a result, the CSC Field Office for Lanao del Norte and Iligan City disapproved the appointments issued to the petitioners for lack of certification of availability of funds.

Mayor Quijano appealed to the CSC Regional Office (RO) No. XII, but the appeal was dismissed with the CSC RO asserting that the Commission's function in approving appointments is only ministerial. Hence, non-compliance with a requirement prescribed by civil service laws, rules and regulations would cause the disapproval of the appointment "without [the CSC] delving into the reasons why the requirement was not complied with."

Consequently, petitioners filed a petition for mandamus with the RTC of Iligan City against respondent Empleo or his successor in office for the issuance of a certification of availability of funds for the payment of the salaries and wages of the petitioners, and for the other respondents or their successors in office to sign the PDFs.

The trial court denied the petition for mandamus holding, among others, that the ministerial duty of the city accountant pertains to the certification of availability of budgetary allotment to which expenses and obligations may properly be charged under Section 474(b)(4) of Republic Act No. 7160, the Local Government Code of 1991 (LGC). On the other hand, the city accountant may not be compelled to issue a certification as to availability of funds for the payment of salaries and wages of the petitioners since this ministerial function pertains to the city treasurer pursuant to Section 344 of the LGC. Ultimately, the case was elevated by the petitioners to the Supreme Court (SC) with the petitioners contending that the certification required under CSC MC No. 40, s. 1998 is that of the city accountant under Section 474(b)(4) of the LGC, thus, the mandamus should prosper.

Issue/s:

Whether it is Section 474(b)(4) (which requires certification to be issued by the local accountant) or Section 344 (which requires certification to be issued by the local treasurer) of the LGC which applies to the requirement of certification of availability of funds under Section 1(e)(ii), Rule V of CSC MC No. 40, s. 1998.

Held:

At the outset, the SC pronounced that “the case had been rendered moot and academic by the final disapproval of petitioners’ appointments by the CSC.”

Nevertheless, the Court still ruled on the merits thereof “in order to settle the issue once and for all, given that the contested action is one capable of repetition or susceptible of recurrence.”

In this regard, the SC declared that that it is Section 474(b)(4), not Section 344, of the LGC which applies to the requirement of certification of availability of funds under Section 1(e)(ii), Rule V of CSC MC No. 40, s. 1998. In sum, the SC ruled:

The pertinent portions of Sections 474(b)(4) and 344 of the Local Government Code of 1991 provide:

Section 474. *Qualifications, Powers and Duties.*

x x x x

(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

x x x x

(4) certify to the availability of budgetary allotment to which expenditures and obligations **may be properly charged**. (Emphasis and underscoring supplied)

x x x x

Sec. 344. *Certification and Approval of Vouchers.* No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant **has obligated said appropriation**, and the local treasurer certifies to the availability of funds for the purpose. x x x (Emphasis and underscoring supplied)

Section 344 speaks of actual disbursements of money from the local treasury in payment of *due and demandable* obligations of the local government unit. The disbursements are to be made through the issuance, certification, and approval of vouchers. The full text of Section 344 provides:

Sec. 344. *Certification and Approval of Vouchers.* No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor

agencies such as GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

In cases of special or trust funds, disbursements shall be approved by the administrator of the fund.

In case of temporary absence or incapacity of the department head or chief of office, the officer next-in-rank shall automatically perform his function and he shall be fully responsible therefor. (*Italics and underscoring supplied*)

Voucher, in its ordinary meaning, is a document which shows that services have been performed or expenses incurred. When used in connection with disbursement of money, it implies the existence of an instrument that shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to whom it is issued to payment.

Section 344 of the Local Government Code of 1991 thus applies only when there is already an obligation to pay on the part of the local government unit, precisely because vouchers are issued only when services have been performed or expenses incurred.

The requirement of certification of availability of funds from the city treasurer under Section 344 of the Local Government Code of 1991 is for the purpose of facilitating the approval of vouchers issued for the payment of services already rendered to, and expenses incurred by, the local government unit.

The trial court thus erred in relying on Section 344 of the Local Government Code of 1991 in ruling that the ministerial function to issue a certification as to availability of funds for the payment of the wages and salaries of petitioners pertains to the city treasurer. For at the time material to the required issuance of the certification, the appointments issued to petitioners were not yet approved by the CSC, hence, there were yet no services performed to speak of. In other words, there was yet no due and demandable obligation of the local government to petitioners.

Section 474, subparagraph (b)(4) of the Local Government Code of 1991, on the other hand, requires the city accountant to certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged. By necessary implication, it includes the duty to certify to the availability of funds for the payment of salaries and wages of appointees to positions in the plantilla of the local government unit, as required under Section 1(e)(ii), Rule V of CSC Memorandum Circular Number 40, Series of 1998, a requirement before the CSC considers the approval of the appointments.

In fine, whenever a certification as to availability of funds is required for purposes other than actual payment of an obligation which requires disbursement of money, Section 474(b)(4) of the Local Government Code of 1991 applies, and it is the ministerial duty of the city accountant to issue the certification.

SALUMBIDES VS. OMBUDSMAN⁴²
(G.R. No. 180917, April 23, 2010, En Banc)

- CONDONATION OF AN ELECTIVE OFFICER'S PREVIOUS MISCONDUCT IN VIEW OF REELECTION; CONDONATION DOES NOT APPLY TO CRIMINAL CASE; CONDONATION DOES NOT APPLY TO APPOINTIVE OFFICER. - *More than 60 years ago, the Court in Pascual v. Hon. Provincial Board of Nueva Ecija issued the landmark ruling that prohibits the disciplining of an elective official for a wrongful act committed during his immediately preceding term of office. The Court explained that "[t]he underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."*

The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people elect[e]d a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people.

Ingco v. Sanchez, et al. clarified that the condonation doctrine does not apply to a criminal case. Luciano v. The Provincial Governor, et al., Olivarez v. Judge Villaluz, and Aguinaldo v. Santos echoed the qualified rule that reelection of a public official does not bar prosecution for crimes committed by him prior thereto.

Consistently, the Court has reiterated the doctrine in a string of recent jurisprudence including two cases involving a Senator and a Member of the House of Representatives.

Salalima v. Guingona, Jr. and Mayor Garcia v. Hon. Mojica reinforced the doctrine. The condonation rule was applied even if the administrative complaint was not filed before the reelection of the public official, and even if the alleged misconduct occurred four days before the elections, respectively. Salalima did not distinguish as to the date of filing of the administrative complaint, as long as the alleged misconduct was committed during the prior term, the precise timing or period of which Garcia did not further distinguish, as long as the wrongdoing that gave rise to the public official's culpability was committed prior to the date of reelection.

⁴² Atty. Vicente E. Salumbides, Jr., And Glenda Araña, Petitioners, vs. Office Of The Ombudsman, Ricardo Agon, Ramon Villasanta, Elmer Dizon, Salvador Adul, and Agnes Fabian, Respondents; G.R. No. 180917, April 23, 2010, En Banc

A parallel question was involved in *Civil Service Commission v. Sojor* where the Court found no basis to broaden the scope of the doctrine of condonation:

*Lastly, We do not agree with respondent's contention that his appointment to the position of president of NORSU, despite the pending administrative cases against him, served as a condonation by the BOR of the alleged acts imputed to him. The doctrine this Court laid down in *Salalima v. Guingona, Jr.* and *Aguinaldo v. Santos* are inapplicable to the present circumstances. Respondents in the mentioned cases are elective officials, unlike respondent here who is an appointed official. Indeed, election expresses the sovereign will of the people. Under the principle of vox populi est suprema lex, **the re-election of a public official may, indeed, supersede a pending administrative case. The same cannot be said of a re-appointment to a non-career position.** There is no sovereign will of the people to speak of when the BOR re-appointed respondent Sojor to the post of university president. (emphasis and underscoring supplied)*

Contrary to petitioners' asseveration, the non-application of the condonation doctrine to appointive officials does not violate the right to equal protection of the law.

- **ERRONEOUS OR ILLEGAL ADVICE BY MUNICIPAL LEGAL OFFICER; FAILURE OF MUNICIPAL BUDGET OFFICER TO OBJECT IN WRITING TO IMPROPER USE OF GOVERNMENT FUNDS.** - *Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. In the present case, petitioners fell short of the reasonable diligence required of them, for failing to exercise due care and prudence in ascertaining the legal requirements and fiscal soundness of the projects before stamping their imprimatur and giving their advice to their superior.*

The appellate court correctly ruled that as municipal legal officer, petitioner Salumbides "failed to uphold the law and provide a sound legal assistance and support to the mayor in carrying out the delivery of basic services and provisions of adequate facilities when he advised [the mayor] to proceed with the construction of the subject projects without prior competitive bidding." As pointed out by the Office of the Solicitor General, to absolve Salumbides is tantamount to allowing with impunity the giving of erroneous or illegal advice, when by law he is precisely tasked to advise the mayor on "matters related to upholding the rule of law." Indeed, a legal officer who renders a legal opinion on a course of action without any legal basis becomes no different from a lay person who may approve the same because it appears justified.

As regards petitioner Glenda, the appellate court held that the improper use of government funds upon the direction of the mayor and prior advice by the municipal legal officer did not relieve her of liability for willingly cooperating rather than registering her written objection as municipal budget officer.

Facts:

Vicente Salumbides, Jr. (Salumbides) and Glenda Araña (Glenda) were appointed in July 2001 as Municipal Legal Officer/Administrator and Municipal Budget Officer, respectively, of Tagkawayan, Quezon.

Towards the end of 2001, then Mayor Vicente Salumbides III (Mayor) realized the urgent need to construct a two-classroom building with fence for the Tagkawayan Municipal High School (TMHS) considering that the public school in the poblacion area would no longer admit high school freshmen starting school year 2002-2003.

Upon consultation by the Mayor, Salumbides and Glenda ultimately advised the Mayor to source the funds for the purpose from the Maintenance and Other Operating Expenses – Repair and Maintenance of Facilities (MOOE/RMF) with ₱1,000,000 allocation in the approved Municipal Annual Budget for 2002.

Hence, on January 8, 2002, the Mayor ordered the Municipal Engineer Jose Aquino to proceed with the construction of the school building with fence based on the program of work and bill of materials with a total cost estimate of ₱222,000 as prepared by Aquino. Later, the Mayor included the said projects in the list of projects scheduled for bidding on January 25, 2002 upon the advice of the Municipal Planning and Development Office Herman Jason.

It was established that the construction of the projects started without any approved appropriation and before public bidding. Salumbides contended that the projects were regular and legal considering that an earlier project was "implemented in the same manner, using the same source of fund and for the same reason of urgency" which was allowed "because the building was considered merely temporary as the TMHS is set to be transferred to an 8-hectare lot which the municipal government is presently negotiating to buy."

A proposed Resolution to have the Sangguniang Bayan (SB) ratify the projects and authorize the Mayor to enter into a negotiated procurement was not approved.

Consequently, on May 13, 2002, SB members Ricardo Agon, Ramon Villasanta, Elmer Dizon, Salvador Adul and Agnes Fabian filed a complaint against the Mayor, Salumbides, Glenda, Aquino, Jason and Coleta before the Office of the Ombudsman. Administratively, the Mayor and others were charged with Dishonesty, Grave Misconduct, Gross Neglect of Duty, Conduct Prejudicial to the Best Interest of the Service, and violation of the Commission on Audit (COA) Rules and the Local Government Code.

Nevertheless, the administrative case against the Mayor and Coleta was eventually dropped per Ombudsman Order dated February 1, 2005, approved on April 11, 2005, considering that both were elective officials who were reelected in the 2004 elections which apparently mooted the case.

Eventually, on October 17, 2005, Jason and Aquino were absolved from the case, while Salumbides and Glenda were found guilty of Simple Neglect of Duty by the Office of the Ombudsman, for which they were meted a penalty of suspension from office for a maximum period of six months with a stern warning against a similar repetition.

Considering that their subsequent moves seeking remedies failed, including that with the Court of Appeals (CA), Salumbides and Glenda filed a petition for review before the Supreme Court (SC).

Issue/s:

1. Whether or not the condonation in favor of the Mayor and Colete, as reelected officials, should likewise benefit Salumbides and Glenda; and
2. Whether or not Salumbides and Glenda were correctly adjudged as guilty of simple neglect of duty with a penalty of maximum six (6) months suspension.

Held:

The SC affirmed the decision of the CA upholding the decision of the Office of the Ombudsman, but with modification as to the penalty translating into three (3) months suspension without pay.

At the outset, the SC pronounced, in part, as follows:

For non-compliance with the rule on certification against forum shopping, the petition merits outright dismissal. The verification portion of the petition does not carry a certification against forum shopping.

The Court has distinguished the effects of non-compliance with the requirement of verification and that of certification against forum shopping. A defective verification shall be treated as an unsigned pleading and thus produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied, while the failure to certify against forum shopping shall be cause for dismissal without prejudice, unless otherwise provided, and is not curable by amendment of the initiatory pleading.

On the substantive aspect, the SC ruled, among others, as follows:

Petitioners urge this Court to expand the settled doctrine of condonation to cover coterminous appointive officials who were administratively charged along with the reelected official/appointing authority with infractions allegedly committed during their preceding term.

The Court rejects petitioners' thesis.

More than 60 years ago, the *Court in Pascual v. Hon. Provincial Board of Nueva Ecija* issued the landmark ruling that prohibits the disciplining of an elective official for a wrongful act committed during his immediately preceding term of office. The Court explained that "[t]he underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."

The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people elect[e]d a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct[,] to practically overrule the will of the people. (underscoring supplied)

Lizares v. Hechanova, et al. replicated the doctrine. The Court dismissed the petition in that case for being moot, the therein petitioner "having been duly reelected, is no longer amenable to administrative sanctions."

Ingco v. Sanchez, et al. clarified that the condonation doctrine does not apply to a criminal case. *Luciano v. The Provincial Governor, et al.*, *Olivarez v. Judge Villaluz*, and *Aguinaldo v. Santos* echoed the qualified rule that reelection of a public official does not bar prosecution for crimes committed by him prior thereto.

Consistently, the Court has reiterated the doctrine in a string of recent jurisprudence including two cases involving a Senator and a Member of the House of Representatives.

Salalima v. Guingona, Jr. and Mayor Garcia v. Hon. Mojica reinforced the doctrine. The condonation rule was applied even if the administrative complaint was not filed before the reelection of the public official, and even if the alleged misconduct occurred four days before the elections, respectively. *Salalima* did not distinguish as to the date of filing of the administrative complaint, as long as the alleged misconduct was committed during the prior term, the precise timing or period of which Garcia did not further distinguish, as long as the wrongdoing that gave rise to the public official's culpability was committed prior to the date of reelection.

Petitioners' theory is not novel.

A parallel question was involved in *Civil Service Commission v. Sojor* where the Court found no basis to broaden the scope of the doctrine of condonation:

Lastly, We do not agree with respondent's contention that his appointment to the position of president of NORSU, despite the pending administrative cases against him, served as a condonation by the BOR of the alleged acts imputed to him. The doctrine this Court laid down in *Salalima v. Guingona, Jr. and Aguinaldo v. Santos* are inapplicable to the present circumstances. Respondents in the mentioned cases are elective officials, unlike respondent here who is an appointed official. Indeed, election expresses the sovereign will of the people. Under the principle of *vox populi est suprema lex*, the re-election of a public official may, indeed, supersede a pending administrative case. The same cannot be said of a re-appointment to a non-career position. There is no sovereign will of the people to speak of when the BOR re-appointed respondent Sojor to the post of university president. (emphasis and underscoring supplied)

Contrary to petitioners' asseveration, the non-application of the condonation doctrine to appointive officials does not violate the right to equal protection of the law.

x x x

Asserting want of conspiracy, petitioners implore this Court to sift through the evidence and re-assess the factual findings. This the Court cannot do, for being improper and immaterial.

Under Rule 45 of the Rules of Court, only questions of law may be raised, since the Court is not a trier of facts. As a rule, the Court is not to review evidence on record and assess the probative weight thereof. In the present case, the appellate court affirmed the factual findings of the Office of the Ombudsman, which rendered the factual questions beyond the province of the Court.

Moreover, as correctly observed by respondents, the lack of conspiracy cannot be appreciated in favor of petitioners who were found guilty of simple neglect of duty, for if they conspired to act negligently, their infraction becomes intentional. There can hardly be conspiracy to commit negligence.

Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. In the present case, petitioners fell short of the reasonable diligence required of them, for failing to exercise due care and prudence in ascertaining the legal requirements and fiscal soundness of the projects before stamping their imprimatur and giving their advice to their superior.

The appellate court correctly ruled that as municipal legal officer, petitioner Salumbides "failed to uphold the law and provide a sound legal assistance and support to the mayor in carrying out the delivery of basic services and provisions of adequate facilities when he advised [the mayor] to proceed with the construction of the subject projects without prior competitive bidding." As pointed out by the Office of the Solicitor General, to absolve Salumbides is tantamount to allowing with impunity the giving of erroneous or illegal advice, when by law he is precisely tasked to advise the mayor on "matters related to upholding the rule of law." Indeed, a legal officer who renders a legal opinion on a course of action without any legal basis becomes no different from a lay person who may approve the same because it appears justified.

As regards petitioner Glenda, the appellate court held that the improper use of government funds upon the direction of the mayor and prior advice by the municipal legal officer did not relieve her of liability for willingly cooperating rather than registering her written objection as municipal budget officer.

Aside from the lack of competitive bidding, the appellate court, pointing to the improper itemization of the expense, held that the funding for the projects should have been taken from the "capital outlays" that refer to the appropriations for the purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of the local government unit. It added that current operating expenditures like

MOOE/RMF refer to appropriations for the purchase of goods and services for the conduct of normal local government operations within the fiscal year.

In *Office of the Ombudsman v. Tongson*, the Court reminded the therein respondents, who were guilty of simple neglect of duty, that government funds must be disbursed only upon compliance with the requirements provided by law and pertinent rules.

Simple neglect of duty is classified as a less grave offense punishable by suspension without pay for one month and one day to six months. Finding no alleged or established circumstance to warrant the imposition of the maximum penalty of six months, the Court finds the imposition of suspension without pay for three months justified.

PAN VS. PEA⁴³
(G.R. No. 174244, February 13, 2009, En Banc)

- REORGANIZATION IN BAD FAITH RESULTS IN INVALID ABOLITION OF POSITIONS, AND VIOLATION OF SECURITY OF TENURE OF SEPARATED PERSONNEL. - *A reorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. It alters the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them to make the bureaucracy more responsive to the needs of the public clientele as authorized by law. It could result in the loss of one's position through removal or abolition of an office. For a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, however, it must pass the test of good faith, otherwise it is void ab initio.*

. . . As a general rule, a reorganization is carried out in good faith if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of a dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall. Be that as it may, if the abolition, which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid abolition takes place and whatever abolition is done, is void ab initio. There is an invalid abolition as where there is merely a change of nomenclature of positions, or where claims of economy are belied by the existence of ample funds.

Facts:

Newly-elected Mayor Marcel Pan initiated a reorganization of the municipal government of Goa, Camarines Sur, allegedly due to the large budgetary deficit of the municipality brought about by a bloated bureaucracy.

Resolution No. 025-98 of the Sangguniang Bayan (SB) authorized the Mayor to partly reorganize the bureaucracy, while a subsequent amending SB Resolution No. 046-98 gave the Mayor full authority to restructure the municipal government. Correspondingly, a Placement Committee was created under Resolution No. 054-98 to oversee the reorganization as far as selection and placement of personnel are concerned vis-a-vis the procedures laid down in Republic Act (RA) No. 6656 (*An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization of 1988*), and its implementing rules and regulations.

⁴³ Mayor Marcel S. Pan, Representing the Municipality of Goa, Camarines Sur as Mayor, Petitioner, vs. Yolanda O. Pea, Marivic P. Enciso, Melinda S. Cantor, Romeo Asor and Edgar A. Enciso, Respondents; G.R. No. 174244, February 13, 2009, En Banc.

Yolanda Pea (Pea), Marivic Enciso (Marivic), Melinda Cantor (Cantor), Romeo Asor (Asor) and Edgar Enciso (Enciso), collectively as Pea, et al., were *permanent* employees assigned at the various departments of the municipal government whose positions were abolished pursuant to the reorganization. Said employees consequently applied for the newly-created positions in the new organization and staffing pattern, — Pea as cashier II; Marivic as local legislative staff or bookbinder; Cantor as revenue collection clerk; Asor as local legislative staff; and Enciso as bookbinder. The Placement Committee did not approve the applications of Pea, et al., and recommended other applicants to the positions.

After due notice and hearing, thirty one (31) employees, including Pea, et al., were separated from the service effective October 30, 1998. Hence, Pea, et al. filed an appeal with the Civil Service Commission (CSC) which, after consideration of the qualifications of the parties involved, which ultimately concluded under Resolution No. 992183 dated September 23, 1999, as follows:

WHEREFORE, the appeal is hereby granted. The Commission rules that the separation of herein appellants, except Aurora Pacis, was in violation of the provisions of Republic Act No. 6656. Accordingly, Yolanda O. Pea, Marivic Enciso, Melinda Cantor, Romeo Asor and Edgar Enciso shall be reinstated or reappointed to their former positions or their equivalent under the new staffing pattern without loss of seniority rights and shall be paid backwages from the time they were separated until their actual reinstatement. Aurora Pacis non-appointment was, however, justified. (Emphasis and underscoring supplied)

The Mayor filed a Motion for Reconsideration adducing additional evidence and grounds to support the decision not to appoint Pea, et al., citing poor job performance; or lack of actual experience; or failure to submit performance evaluation reports to be considered by the Placement Committee; or questionable promotions to their last stated positions. The Mayor also averred that the most affected departments in the reorganization were those where Pea, et al. belonged. Particularly, from twenty-seven (27) employees, the Municipal Treasurer's Office was reduced to nine (9) employees, while the Waterworks operation was trimmed down from eight (8) to two (2) employees.

The CSC denied the motion for reconsideration which, on appeal, was later sustained by the Court of Appeals (CA) which noted that the new positions were filled up by others who are less preferred or qualified in terms of status of appointment, training, education and length of service, instead of the respondents who were holding permanent positions.

Ultimately, Mayor Pan sought recourse before the Supreme Court (SC). He averred that the retained employees after the reorganization are permanent employees holding permanent positions who are equally, if not better, qualified than respondents Pea, et al. He further questioned the conflicting actions of the CSC when it ordered the reinstatement of the respondents even if earlier approved the appointment of the new appointees.

Issue/s:

Whether or not the separation of Pea, et al. pursuant to the reorganization of the municipal government was valid considering the rules under RA No. 6656.

Held:

The SC denied the Mayor's petition, and affirmed the decision of the CA, ruling, among others, as follows:

The issue arising from petitioner's first contention is whether petitioner complied with the provisions of R.A. 6656 in effecting respondents' separation from the service. The second contention raised by petitioner is misplaced as the findings of facts of the CSC pertain to whether the Municipality of Goa undertook a reorganization in good faith, and not whether the qualifications of the appointees are on a par with, or even above par respondents, wherein there lies no dispute.

The petition is bereft of merit.

A reorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. It alters the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them to make the bureaucracy more responsive to the needs of the public clientele as authorized by law. It could result in the loss of one's position through removal or abolition of an office. For a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, however, it must pass the test of good faith, otherwise it is *void ab initio*.

. . . As a general rule, a reorganization is carried out in good faith if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of a dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of

tenure would not be a Chinese wall. Be that as it may, if the abolition, which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid abolition takes place and whatever abolition is done, is void *ab initio*. There is an invalid abolition as where there is merely a change of nomenclature of positions, or where claims of economy are belied by the existence of ample funds. (Underscoring supplied)

Section 2 of R.A. No. 6656 cites certain circumstances showing bad faith in the removal of employees as a result of any reorganization, thus:

Sec. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exist when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of the reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:**

- a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
- b) **Where an office is abolished and another performing substantially the same functions is created;**
- c) **Where incumbents are replaced by those *less qualified* in terms of status of appointment, performance and merit;**
- d) **Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;**
- e) Where the removal violates the order of separation provided in Section 3 hereof. (Emphasis, italics and underscoring supplied)

And Section 3 of the same law provides for the order of removal of employees as follows:

Sec. 3. In the separation of personnel pursuant to reorganization, the following order of removal shall be followed:

- (a) Casual employees with less than five (5) years of government service;
- (b) Casual employees with five (5) years or more of government service;
- (c) Employees holding temporary appointments; and
- (d) Employees holding permanent appointments: Provided, That those in the same category as enumerated above, who are least qualified in terms of performance and merit shall be laid first, length of service notwithstanding.

In the case at bar, petitioner claims that there has been a drastic reduction of *plantilla* positions in the new staffing pattern in order to address the LGUs gaping budgetary deficit. Thus, he states that in the municipal treasurer's office and waterworks operations unit where respondents were previously assigned, only 11 new positions were created out of the previous 35 which had been abolished; and that the new staffing pattern had 98 positions only, as compared with the old which had 129.

The CSC, however, highlighted the recreation of six (6) casual positions for clerk II and utility worker I, which positions were previously held by respondents Marivic, Cantor, Asor and Enciso. Petitioner inexplicably never disputed this finding nor proffered any proof that the new positions do not perform the same or substantially the same functions as those of the abolished. And nowhere in the records does it appear that these *recreated* positions were first offered to respondents.

The appointment of casuals to these *recreated* positions violates R.A. 6656, as Section 4 thereof instructs that:

Sec. 4. Officers and employees holding permanent appointments shall be given preference for appointment to the new positions in the approved staffing pattern comparable to their former

positions or in case there are not enough comparable positions, to positions next lower in rank.

No new employees shall be taken until all permanent officers and employees have been appointed, including temporary and casual employees who possess the necessary qualification requirement, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. (Emphasis and underscoring supplied)

In the case of respondent Pea, petitioner claims that the position of waterworks supervisor had been abolished during the reorganization. Yet, petitioner appointed an officer-in-charge in 1999 for its waterworks operations even after a supposed new staffing pattern had been effected in 1998. Notably, this position of waterworks supervisor does not appear in the new staffing pattern of the LGU. Apparently, the Municipality of Goa never intended to do away with such position wholly and permanently as it appointed another person to act as officer-in-charge vested with similar functions.

While the CSC never found the new appointees to be unqualified, and never disapproved nor recalled their appointments as they presumably met all the minimum requirements therefor, there is nothing contradictory in the CSC's course of action as it is limited only to the *non-discretionary* authority of determining whether the personnel appointed meet all the required conditions laid down by law.

Congruently, the CSC can very well order petitioner to reinstate respondents to their former positions (as these were never actually abolished) or to appoint them to comparable positions in the new staffing pattern.

In fine, the reorganization of the government of the Municipality of Goa was not entirely undertaken in the interest of efficiency and austerity but appears to have been marred by other considerations in order to circumvent the constitutional security of tenure of civil service employees like respondents.