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MODESTO AGYAO, JR. v. CIVIL SERVICE COMMISSION
G.R. No. 182591, 18 January 2011, EN BANC (Mendoza, J.)

Petitioner was re-appointed, following the expiration of his previous temporary appointment, to PEZA Director II by the PEZA Director-General de Lima. The appointment was submitted to the Civil Service Commission. The re-appointment was invalidated by the CSC as petitioner lacked the prescribed Career Executive Service Office/Career Service Executive Examination (CESO/CSEE) qualifications. The CSC ruled that the position of PEZA Director II is above the Division Chief level, which falls properly under level 3, or Career Executive Service. Petitioner appealed to the Court of Appeals, which sustained the ruling of the CSC.

ISSUE:

Whether or not PEZA Director II falls under level 3 or Career Executive Service, of the Administrative Code.

RULING:

It has been held in a long line of jurisprudence that for a position to fall under Career Executive Service, the appointing authority must be the President of the Philippines. The Administrative Code makes this classification based on the Constitutional powers granted to the President. As such, any deviation of interpretation would not only be against the prevailing law (i.e. Administrative Code), but also be unconstitutional. The position of PEZA Director II is appointed by the PEZA Director-General, not by the President of the Philippines. Hence, the CESO/CSEE requirements are not needed by the appointee.

ANTONIO LEJANO v. PEOPLE OF THE PHILIPPINES
G.R. Nos. 176389/176864, 18 January 2011, EN BANC (Abad, J.)

In 2010 the Court reversed the judgment of the Court of Appeals (CA) and acquitted the accused in this case, Hubert Jeffrey P. Webb, Antonio Lejano, Michael A. Gatchalian, Hospicio Fernandez, Miguel Rodriguez, Peter Estrada, and Gerardo Biong of the charges against them on the ground of lack of proof of their guilt beyond reasonable doubt.

Complainant Lauro G. Vizconde, an immediate relative of the victims, asked the Court to reconsider its decision, claiming that it "denied the prosecution due process of law; seriously misappreciated the facts; unreasonably regarded Alfaro as lacking credibility; issued a tainted and erroneous decision; decided the case in a manner that resulted in the miscarriage of justice; or committed grave abuse in its treatment of the evidence and prosecution witnesses."

ISSUE:

Whether the judgment of acquittal may be reconsidered

RULING:

As a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy. To reconsider a judgment of acquittal places the accused twice in jeopardy of being punished for the crime of which he has already been absolved.

There is reason for this provision of the Constitution. In criminal cases, the full power of the State is ranged against the accused. If there is no limit to attempts to prosecute the accused for the same offense after he has been acquitted, the infinite power and capacity of the State for a sustained and repeated litigation would eventually overwhelm the accused in terms of resources, stamina, and the will to fight.

On occasions, a motion for reconsideration after an acquittal is possible. But the grounds are exceptional and narrow as when the court that absolved the accused gravely abused its discretion, resulting in loss of jurisdiction, or when a mistrial has occurred. In any of such cases, the State may assail the decision by special civil action of certiorari under Rule 65.

Although complainant Vizconde invoked the exceptions, he has been unable to bring his pleas for reconsideration under such exceptions. He has not specified the violations of due process or acts constituting grave abuse of discretion that the Court supposedly committed.

DANTE V. LIBAN, et al. v. RICHARD GORDON
G.R. No. 175352, 18 January 2011, EN BANC (Leonardo-De Castro, J.)

Liban, et al. filed with the Supreme Court a Petition to Declare Richard J. Gordon as Having Forfeited His Seat in the Senate for having been elected Chairman of the Philippine National Red Cross (PNRC) Board of Governors during his incumbency as Senator in violation of Sec. 3, Article VI of the Constitution. It was advanced by Liban, et al. that the PNRC is a GOCC. Formerly, the Court held that the office of the PNRC Chairman is NOT a government office or an office in a GOCC for purposes of the prohibition in Sec. 13, Article VI of the 1987 Constitution. Therefore, Gordon did not forfeit his legislative seat. The Court, however, held further that the PNRC Charter (R.A 95) is void insofar as it creates the PNRC as a private corporation which the Congress cannot create. Hence, it directed the PNRC to incorporate under the Corporation Code and register with the Securities and Exchange Commission.

ISSUE:

What is the nature of PNRC?

RULING:

The PNRC's structure is sui generis. Although the PNRC is neither a subdivision, agency, or instrumentality of the government, nor a GOCC or a subsidiary thereof, such a conclusion does not ipso facto imply that the PNRC is a "private corporation" within the contemplation of the provision of the Constitution that must be organized under the Corporation Code. In sum, the PNRC enjoys a special status as an important ally and auxiliary of the government in the humanitarian field in accordance with its commitments under international law. This Court cannot all of a sudden refuse to recognize its existence, especially since the issue of the constitutionality of the PNRC Charter was never raised by the parties.

GREGORIO R. VIGILAR, et al. v. ARNULFO D. AQUINO
G.R. No. 180388, 18 January 2011, EN BANC (Sereno, J.)

Respondent was invited to bid for a dike project in Pampanga. Respondent eventually won the bid, and finished constructing the dike. However, petitioners who are government officials of the DPWH, refused to pay petitioner the contract price. Petitioners refuse because the contract is void for violation of P.D. 1445, for absence of an appropriation. Respondent brought suit in the RTC, which petitioners sought to dismiss, raising the non-suability of the state, as well as non-exhaustion of administrative remedies. The lower court ruled for the validity of the contract and ordered payment for the project. Upon appeal, the Court of Appeals reversed the ruling of the lower court and declared the contract invalid. However, the CA ordered the Commission on Audit to determine the value of the services rendered by respondent, and compensate him based on *quantum meruit*.

ISSUE:

Whether the Court of Appeals erred in holding that the Doctrine of Non-Suability of the State has no application in this case

RULING:

No. This Court has long established in Ministerio v. CFI of Cebu, and recently reiterated in Heirs of Pidacan v. ATO, that the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice to a citizen.

As this Court enunciated in EPG Construction:

> To our mind, it would be the apex of injustice and highly inequitable to defeat respondent's right to be duly compensated for actual work performed and services rendered, where both the government and the public have for years received and accepted benefits from the project and reaped the fruits of respondent's honest toil and labor.
>
> x x x x x x x x x
>
> Under these circumstances, respondent may not validly invoke the Royal Prerogative of Dishonesty and conveniently hide under the State's cloak of invincibility against suit, considering that this principle yields to certain settled exceptions. True enough, the rule, in any case, is not absolute for it does not say that the state may not be sued under any circumstance.
>
> x x x x x x x x x

Although the Amigable and Ministerio cases generously tackled the issue of the State's immunity from suit vis a vis the payment of just compensation for expropriated property, this Court nonetheless finds the doctrine enunciated in the aforementioned cases applicable to the instant controversy, considering that the ends of justice would be subverted if we were to uphold, in this particular instance, the State's immunity from suit.

To be sure, this Court — as the staunch guardian of the citizens' rights and welfare — cannot sanction an injustice so patent on its face, and allow itself to be an instrument in the perpetration

thereof. Justice and equity sternly demand that the State's cloak of invincibility against suit be shred in this particular instance, and that petitioners-contractors be duly compensated — on the basis of quantum meruit — for construction done on the public works housing project.

MOISES TINIO, JR., *et al.* v. NATIONAL POWER CORPORATION
G.R. Nos. 160923/G.R. No. 161093, 24 January 2011, Second Division (Peralta, J.)

The National Power Corporation (NPC) is a government-owned and controlled corporation created and existing by virtue of Republic Act No. 6395, as amended by Presidential Decree No. 938. The main purpose of the NPC, as stated in its charter, is to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis. In order to accomplish its objectives, the NPC is granted the power, among others, to exercise the right of eminent domain.

The NPC filed a complaint for eminent domain with the RTC of Urdaneta against the Tinios for the purpose of expropriating the said land in order to construct and maintain its San Roque Multi-Purpose Project. However, prior to filing its complaint, it took possession of the subject land by virtue of a Permit to Enter signed by Moises Tinio. During the pre-trial conference the only issue left for determination was the just compensation to be paid to the Tinios.

Appointed Commissioners were then appointed to appraise the value. The Court ordered the NPC to pay the Tinios 12,850,400.00 plus legal interest until fully paid. NPC filed a motion for reconsideration but the RTC denied it. The CA modified the RTC's decision and changed the just compensation to P2,343,900 with legal interest of 6 percent per annum.

The Tinios argue that the CA erred in arriving at a lower amount of just compensation than that arrived at by the RTC on the ground that before the NPC made improvements on the subject property, the same was already classified as industrial or commercial land. The Tinios claim that in 1997, the NPC declared its properties in Barangay San Roque, San Manuel, Pangasinan, as commercial lands with a value of P250.00 per square meter. They aver that the subject lot is within the vicinity of the NPC properties. As such, any increase in the value of the NPC properties should also redound to the benefit of the lands which are located within the same locality.

ISSUE:

Is the CA correct in its determination of just compensation based on its findings on the time of taking of the subject property and the nature and character of the subject property at the time of such taking?

RULING:

Yes. A perusal of the disputed decision of the CA would clearly show that the appellate court's determination of just compensation is based on its finding that 12,710 square meters of the subject property was considered residential and that the remaining 40,000 square meter portion thereof was classified as agricultural land at the time of taking of the said lot. This finding is based on a certification dated March 10, 1998 issued by the Municipal Assessor of San Manuel, Pangasinan, attesting to the fact that the disputed property was indeed partly residential and largely agricultural prior to its possession by the NPC.

It is settled that the nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner.

Hence, the argument of the Tinios that the subject property should benefit from the subsequent classification of its adjoining properties as industrial lands is, likewise, untenable. The Court, in a number of cases, has enunciated the principle that it would be injustice on the part of the expropriator where the owner would be given undue incremental advantages arising from the use to which the government devotes the property expropriated.

SERGIO G. AMORA, JR. v. COMMISSION ON ELECTIONS and ARNIELO S. OLANDRIA
G.R. No. 192280, 25 January 2011, EN BANC (Nachura, J.)

Petitioner Amora filed his Certificate of Candidacy for Mayor of Candijay, Bohol. At that time, Amora was the incumbent Mayor of Candijay and had been twice elected to the post in 2007 and in 2007. Olandria, one of the candidates for councilor in the same municipality, filed before the COMELEC a Petition for Disqualification against Amora. Olandria alleged that Amoras COC was not properly sworn contrary to the requirements of the Omnibus Election Code (OEC) and the 2004 Rules on Notarial Practice. Olandria pointed out that, in executing his COC, Amora merely presented his Community Tax Certificate (CTC) to the notary public, Atty. Oriculo Granada (Atty. Granada), instead of presenting competent evidence of his identity. Consequently, Amora's COC had no force and effect and should be considered as not filed.

ISSUE:

Whether an improperly sworn COC is equivalent to possession of a ground for disqualification

RULING:

No. In this case, it was grave abuse of discretion to uphold Olandria's claim that an improperly sworn COC is equivalent to possession of a ground for disqualification.

Not by any stretch of the imagination can we infer this as an additional ground for disqualification from the specific wording of the OEC in Section 68, which reads:

> SEC. 68. Disqualifications. Any candidate who, in an action or protest in which he is party is declared by final decision of a competent court guilty of, or found by the Commission of having: (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86, and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the elections laws.

and of Section 40 of the LGC, which provides:

> SEC. 40. Disqualifications. The following persons are disqualified from running for any elective local position:
>
> > (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or nonpolitical cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

It is quite obvious that the Olandria petition is not based on any of the grounds for disqualification as enumerated in the foregoing statutory provisions. Nowhere therein does it specify that a defective notarization is a ground for the disqualification of a candidate. Yet, the COMELEC would uphold that petition upon the outlandish claim that it is a petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification.

The proper characterization of a petition as one for disqualification under the pertinent provisions of laws cannot be made dependent on the designation, correctly or incorrectly, of a petitioner. The absurd interpretation of Olandria, respondent herein, is not controlling; the COMELEC should have dismissed his petition outright.

OFFICE OF THE OMBUDSMAN v. COURT OF APPEALS and DINAH C. BARRIGA
G.R. No. 172224, 26 January 2011, Second Division (Carpio, J.)

Pua, a Municipal Councilor of Carmen, Cebu, filed a complaint with the Office of the Deputy Ombudsman for Visayas, alleging that Villamor, Municipal Mayor; Bebelia C. Bontia (Bontia), Municipal Treasurer; and respondent Dinah C. Barriga (Barriga), Municipal Accountant, all public officials of Carmen, Cebu, entered into several irregular and anomalous transactions in their official capacity. These transactions pertained to the handling of the trust fund of the Municipality of Carmen, Cebu in the Central Visayas Water and Sanitation Project. Villamor and Barriga denied Pua's allegations.

Subsequently, the Deputy Ombudsman for Visayas found Barriga guilty of misconduct and she was suspended from service for 6 months. The case had become moot and academic with respect to Villamor and Bontia because Villamor was no longer the incumbent mayor of Carmen, Cebu and Bontia had already been dismissed from government service.

Upon review, petitioner Office of the Ombudsman modified the decision and found Barriga guilty of conduct prejudicial to the best interest of the service and imposed on her the penalty of suspension for one year. The motion for reconsideration was denied and the petition for review with the Court of Appeals was denied for lack of merit.

The Office of the Ombudsman then directed the municipal mayor of Carmen, Cebu to implement the decision. Barriga filed a petition for review with the CA but it was denied. The case went up to the Supreme Court which denied the petition. The motion for reconsideration and a second motion for reconsideration were also denied.

The Office of the Ombudsman advised the mayor again to implement the decision. Barriga then requested that the implementation of the penalty of one-year suspension be held in abeyance pending the issuance of the entry of judgment. This was denied. While Barriga's petition for review was with the CA, the Supreme Court already issued the entry of judgment and Barriga's suspension from service was implemented by the mayor. Meanwhile, Barriga's earlier appeal to the CA was dismissed but upon motion for reconsideration, the orders of the Office of the Ombudsman were declared null and void. The CA explained that the acts of petitioner went beyond mere recommendation but rather imposed upon the mayor to implement the order of suspension which run counter to its authority. The appellate court said that the immediate implementation of the Office of the Ombdusman's order was premature pending resolution of the appeal. Since Republic Act No. 6770 or the Ombudsman Act of 1989 gives parties the right to appeal then such right also generally carries with it the right to stay these decisions pending appeal. Thus, the CA concluded that the acts of petitioner cannot be permitted nor tolerated.

ISSUE:

Did the Court of Appeals gravely abused its discretion in nullifying the orders of the Office of the Ombudsman to the municipal mayor of Carmen, Cebu for the immediate implementation of the penalty of suspension from service of respondent Barriga even though the case was pending on appeal?

RULING:

Yes. An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphasis supplied)

It is clear from the provision that when a public official has been found guilty of an administrative charge by the Office of the Ombudsman and the penalty imposed is suspension for more than a month, just like in the present case, an appeal may be made to the CA. However, such appeal shall not stop the decision from being executory and the implementation of the decision follows as a matter of course.

OFFICE OF THE OMBUDSMAN v. NIETO A. RACHO
G.R. No. 185685, 31 January 2011, Second Division (Mendoza, J.)

DYHP Balita Action Team reported to Deputy Ombudsman for the Visayas a concerned citizen's complaint regarding the unexplained wealth of Racho, then Chief of the Special Investigation Division of the Bureau of Internal Revenue, BPI Cebu and PCI Bank. The Ombudsman conducted an investigation and found that Racho did not declare his bank deposits in his SALN so the Ombudsman filed a Complaint for Falsification of Public Document and Dishonesty against Racho. Subsequently, the Graft Prosecution Officer did not give weight to the bank documents because they were mere photocopies so he dismissed the complaint for dishonesty due to insufficiency of evidence. On review, Director Virginia Palanca decreed that Racho's act of not declaring said bank deposits in his SALN constituted falsification and dishonesty. She found Racho guilty of the administrative charges against him and imposed the penalty of dismissal from service with forfeiture of all benefits and perpetual disqualification to hold public office.

The case was brought up to the CA where Racho explained that he was not the sole owner of the bank deposits. To support his position he presented the Joint Affidavit of his brothers and nephew which stated that they intended to put up a business. Also, through a Special Power of Attorney, they designated Racho as the trustee of their investments in the business venture they were intending to put up and that they authorized him to deposit their money in the herein questioned bank accounts. The CA ordered a reinvestigation. However, after its investigation, the Office of the Ombudsman found no reason to deviate from its decision to declare Racho guilty. Racho filed a petition for review with the CA. The CA opined that in charges of dishonesty, intention is an important element in its commission. In this case, it found that Racho never denied the existence of the bank accounts and even attempted to explain the situation. Thus, there was lack of intent to conceal information.

ISSUE:

Whether Racho's non-disclosure of the bank deposits in his SALN constitutes dishonesty

RULING:

Yes. By mandate of law, every public official or government employee is required to make a complete disclosure of his assets, liabilities and net worth in order to suppress any questionable accumulation of wealth because the latter usually results from non-disclosure of such matters. Hence, a public official or employee who has acquired money or property manifestly disproportionate to his salary or his other lawful income shall be prima facie presumed to have illegally acquired it.

It should be understood that what the law seeks to curtail is *acquisition of unexplained wealth*. Where the source of the undisclosed wealth can be properly accounted, then it is explained wealth which the law does not penalize.

In this case, Racho not only failed to disclose his bank accounts containing substantial deposits but he also failed to satisfactorily explain the accumulation of his wealth or even identify the sources of such accumulated wealth. The documents that Racho presented, like those purportedly showing that his brothers and nephew were financially capable of sending or contributing large amounts of money for their business, do not prove that they did contribute or remit money for their supposed joint business venture.

The Court, thus, holds that the CA erred in finding him guilty of simple neglect of duty only. As defined, simple neglect of duty is the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. In this case, the discrepancies in the statement of Racho's assets are not the results of mere carelessness. On the contrary, there is substantial evidence pointing to a conclusion that Racho is guilty of dishonesty because of his unmistakable intent to cover up the true source of his questioned bank deposits.

BAYAN MUNA v. ALBERTO ROMULO
G.R. No. 159618, 1 February 2011, EN BANC (Velasco, Jr., J.)

On 2003, then Ambassador Ricciardone sent US Embassy Note to DFA proposing the terms of the non-surrender bilateral agreement bet USA and RP. The RP, represented by then DFA Sec. Ople, agreed with the US proposals. Such Agreement provides that current or former government officials or employees or military personnel of one party present in the territory of the other shall not be surrendered to any international tribunal, absent the express consent of the first party, and unless such tribunal has been established by the UN Security Council. Bayan Muna imputes grave abuse of discretion to respondents and prays that the Agreement be struck down as unconstitutional.

ISSUES:

1. Whether the Agreement was contracted validly
2. Whether the Agreement, which has not been submitted to the Senate for concurrence, contravenes the Rome Statute and other treaties

RULING:

1. Yes. Under the Doctrine of Incorporation, as expressed in Art II of the 1987 Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land. An exchange of notes falls into the category of inter-governmental agreements, which is an internationally accepted form of international agreement. Hence, the Non-Surrender Bilateral Agreement in the exchange note is a recognized mode of concluding a legally binding international written contract among nations.

2. No. An act of the executive branch with a foreign government must be afforded great respect. This authority of the President to enter into executive agreements without the concurrence of legislators is provided by the inviolable doctrine of separation of powers among the legislative, executive and judicial branches of the government. Thus, absent any clear contravention of the law, the courts should exercise utmost caution in declaring any executive agreement invalid.

THE BOARD OF TRUSTEES OF THE GOVERNMENT SERVICE INSURANCE SYSTEM, *et al.* v. ALBERT M. VELASCO, *et al.*
G.R. No. 170463, 2 February 2011, Second Division (Carpio, J.)

Petitioners charged respondents administratively with grave misconduct for their alleged participation in the demonstration held by some GSIS employees, and placed them under preventive suspension for 90 days.

Respondents asked that they be allowed to avail of certain employee privileges but were denied because of their pending administrative case.

Petitioner promulgated Resolutions 372 and 197 disqualifying employees with pending administrative case from step increment and other benefits and privileges. Respondents claimed that the denial of the employee benefits due them on the ground of their pending administrative cases violates their right to be presumed innocent and that they are being punished without hearing.

In its 24 September 2004 Decision, the trial court granted respondents' petition for prohibition, restraining petitioners from implementing the above resolutions.

ISSUE:

Whether the employees are entitled to the benefits

RULING:

We declare the assailed provisions on step increment in GSIS Board Resolution Nos. 197 and 372 VOID.

Preventive suspension pending investigation is not a penalty. It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated.

Therefore, on the matter of step increment, if an employee who was suspended as a penalty will be treated like an employee on approved vacation leave without pay, then it is only fair and reasonable to apply the same rules to an employee who was preventively suspended, more so considering that preventive suspension is not a penalty. If an employee is preventively suspended, the employee is not rendering actual service and this will also effectively interrupt the continuity of his government service. Consequently, an employee who was preventively suspended will still be entitled to step increment after serving the time of his preventive suspension even if the pending administrative case against him has not yet been resolved or dismissed. The grant of step increment will only be delayed for the same number of days, which must not exceed 90 days, that an official or employee was serving the preventive suspension.

The trial court was correct in declaring that respondents had the right to be presumed innocent until proven guilty. This means that an employee who has a pending administrative case filed against him is given the benefit of the doubt and is considered innocent until the contrary is proven.

In this case, respondents were placed under preventive suspension for 90 days beginning on 23 May 2002. Their preventive suspension ended on 21 August 2002. Therefore, after serving the period of their preventive suspension and without the administrative case being finally resolved, respondents should have been reinstated and, after serving the same number of days of their suspension, entitled to the grant of step increment.

On a final note, social legislation like the circular on the grant of step increment, being remedial in character, should be liberally construed and administered in favor of the persons to be benefited. The liberal approach aims to achieve humanitarian purposes of the law in order that the efficiency, security and well-being of government employees may be enhanced.

LAND BANK OF THE PHILIPPINES v. MAGIN V. FERRER, *et al.*
G.R. No. 172230, 2 February 2011, Second Division (Mendoza, J.)

In their petition, the Ferrers alleged that they were the absolute owners *pro-indiviso* of a parcel of agricultural land with an area of 11.7297 hectares located in Bagong Bayan, San Jose, Nueva Ecija. It was one of the parcels of land they inherited from their deceased mother, Liberata Villarosa, who died *ab intestato* on January 23, 1968. It was also among the properties covered in the Deed of Extra-Judicial Partition executed by and between them; their deceased grandfather, Gonzalo F. Villarosa; their deceased aunt, Matilde Villarosa, and Rafael Villarosa.

The Ferrers further alleged that they found out that an Emancipation Patent covering 3.5773 hectares of the subject agricultural land was secretly issued in the name of Alfredo Carbonel, one of its occupants, without payment of just compensation. The LBP then fixed the just compensation at a very low price of P132,685.67 or approximately P12,050.00 per hectare in violation of the guidelines in R.A. No. 6657, otherwise known as "*The Comprehensive Agrarian Reform Law*." They asserted that the just compensation of the subject agricultural land should at least be computed at P250,000.00 per hectare, or the total sum of P2,930,000.00 for the entire 11.7297 hectares considering that it was irrigated and strategically located.

On the other hand, the LBP and the DAR were of the position that the subject agricultural property had been placed under the coverage of the Operation Land Transfer *(OLT)* Program and, therefore, the provisions of P.D. No. 27 (*Emancipation Decree of Tenants*) and/or Executive Order *(E.O.)* No. 228 (*Declaring Full Land Ownership to Qualified Farmer-Beneficiaries covered by PD 27; Determining the Value of Remaining Unvalued Rice and Corn Lands subject of PD 27; and Providing for the Manner of Payment By the Farmer Beneficiary and Mode of Compensation to the Landowner*) should apply. Thus, they insisted that the value of the subject agricultural land be in accordance with P.D. No. 27.

The RTC rendered a decision fixing the just compensation for plaintiffs' 4.6203 hectares of land at P208,000.00 per hectare or a total of P961, 022.50. The CA affirmed the RTC's decision.

ISSUE:

Whether the Court of Appeals erred in ruling that RA 6657, rather than P.D. No. 27/E.O. No. 228, is the law that should apply in the determination of just compensation for the subject agricultural land

RULING:

In the case of Land Bank of the Philippines v. Hon. Eli G. C. Natividad, 497 Phil 738 (2005). It was ruled that:

> Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in Paris v. Alfeche.

Section 17 of RA 6657 which is particularly relevant, providing as it does the guideposts for the determination of just compensation, reads as follows:

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

It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.

The CA was, therefore, correct in ruling that the agrarian reform process in this particular case was still incomplete because the just compensation due to the Ferrers had yet to be settled. Since R.A. No. 6657 was already in effectivity before the completion of the process, the just compensation should be determined and the process concluded under this law.

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY v. HEIRS OF ESTANISLAO MIÑOZA, *et al.*
G.R. No. 186045, 2 February 2011, Second Division (Peralta, J.)

A Complaint for Reconveyance, Cancellation of Defendants Title, Issuance of New Title to Plaintiffs and Damages was filed by Leila M. Hermosisima (Leila) for herself and on behalf of the other heirs of the late Estanislao Mioza. The complaint alleged that Leilas late great grandfather, Estanislao Mioza, was the registered owner of Cadastral Lot Nos. 986 and 991-A, located at Banilad Estate, Cebu City, per TCT Nos. RT-6101 (T-10534) and RT-6102 (T10026). In the late 1940s, the National Airports Corporation (NAC) embarked in an expansion project of the Lahug Airport. For said purpose, the NAC acquired several properties which surrounded the airport either through negotiated sale or through expropriation. Among the properties that were acquired by the NAC through a negotiated sale were Lot Nos. 986 and 991-A.

Leila claimed that their predecessors-in-interest executed a Deed of Sale conveying the subject lots to the NAC on the assurance made by the latter that they (Leilas predecessors-in-interest) can buy the properties back if the lots are no longer needed. Consequently, they sold Lot No. 986 to the NAC for only ₱157.20 and Lot No. 991-A for ₱105.40. However, the expansion project did not push through. More than forty years after the sale, plaintiffs informed the NACs successor-in-interest, the Mactan-Cebu International Airport Authority (MCIAA), that they were exercising the buy-back option of the agreement, but the MCIAA refused to allow the repurchase on the ground that the sale was in fact unconditional.

Before the MCIAA could present evidence in support of its case, a Motion for Intervention,-with an attached Complainant-in-Intervention, was filed before the Regional Trial Court (RTC) of Cebu City, Branch 22, by the heirs of Filomeno T. Mioza, represented by Laureano M. Mioza; the heirs of Pedro T, Mioza, represented by Leoncio J. Mioza; and the Heirs of Florencia T. Mioza, represented by Antonio M. Urbiztondo (Intervenors), who claimed to be the true, legal, and legitimate heirs of the late Estanislao Mioza. The intervenors alleged in their complaint (1) that the plaintiffs in the main case are not related to the late spouses Estanislao Mioza and Inocencia Togono whose true and legitimate children were: Filomeno, Pedro, and Florencia, all surnamed Mioza; (2) that, on January 21, 1958, Adriana, Patricio, and Santiago, executed, in fraud of the intervenors, an Extrajudicial Settlement of the Estate of the late spouses Estanislao Mioza and Inocencia Togono and adjudicated unto themselves the estate of the deceased spouses; and (3) that, on February 15, 1958, the same Adriana, Patricio, and Santiago, fraudulently, deceitfully, and in bad faith, sold Lot Nos. 986 and 991-A to the NAC.

The RTC of Cebu City, Branch 22, issued an Order denying the Motion for Intervention. On appeal to the CA, the CA ruled in favor of the intervenors and ratiocinated that contrary to the findings of the trial court, the determination of the true heirs of the late Estanislao Mioza is not only a collateral, but the focal issue of the case, for if the intervenors can prove that they are indeed the true heirs of Estanislao Mioza, there would be no more need to determine whether the right to buy back the subject lots exists or not as the MCIAA would not have acquired rights to the subject lots in the first place.

ISSUE:

Whether the CA erred in ruling in favor of the intervenors

RULING:

Yes. In the case at bar, the intervenors are claiming that they are the legitimate heirs of Estanislao Mioza and Inocencia Togono and not the original plaintiffs represented by Leila Hermosisima. True, if their allegations were later proven to be valid claims, the intervenors would surely have a legal interest in the matter in litigation. Nonetheless, this Court has ruled that the interest contemplated by law must be actual, substantial, material, direct and immediate, and not simply contingent or expectant. It must be of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. Otherwise, if persons not parties to the action were allowed to intervene, proceedings would become unnecessarily complicated, expensive and interminable.

Moreover, the intervenors contentions that Leilas predecessors-in-interest executed, in fraud of the intervenors, an extra judicial settlement of the estate of the late spouses Estanislao Mioza and Inocencia Togono and adjudicated unto themselves the estate of the deceased spouses, and that subsequently, her predecessors-in-interest fraudulently and deceitfully sold the subject lots to the NAC, would unnecessarily complicate and change the nature of the proceedings.

In addition to resolving who the true and legitimate heirs of Estanislao Mioza and Inocencia Togono are, the parties would also present additional evidence in support of this new allegation of fraud, deceit, and bad faith and resolve issues of conflicting claims of ownership, authenticity of certificates of titles, and regularity in their acquisition.Verily, this would definitely cause unjust delay in the adjudication of the rights claimed by the original parties, which primarily hinges only on the issue of whether or not the heirs represented by Leila have a right to repurchase the subject properties from the MCIAA.

Verily, the allegation of fraud and deceit is an independent controversy between the original parties and the intervenors. In general, an independent controversy cannot be injected into a suit by intervention, hence, such intervention will not be allowed where it would enlarge the issues in the action and expand the scope of the remedies. It is not proper where there are certain facts giving the intervenors case an aspect peculiar to himself and differentiating it clearly from that of the original parties; the proper course is for the would-be intervenor to litigate his claim in a separate suit. Intervention is not intended to change the nature and character of the action itself, or to stop or delay the placid operation of the machinery of the trial. The remedy of intervention is not proper where it will have the effect of retarding the principal suit or delaying the trial of the action.

To be sure, not only will the intervenors rights be fully protected in a separate proceeding, it would best determine the rights of the parties in relation to the subject properties and the issue of who the legitimate heirs of Estanislao Mioza and Inocencia Togono, would be laid to rest.

IN MATTER OF THE CHARGES OF PLAGIRISM, ETC. AGAINST ASSOCIATE JUSTICE MARIANO C. DEL CASTILLO
A.M. No. 10-7-17-SC, 8 February 2011, ENBANC (Per Curiam)

On April 28, 2010, the Supreme Court issued a decision which dismissed a petition filed by the Malaya Lolas Organization in the case of Vinuya vs Romulo. Atty. Herminio Harry Roque Jr., counsel for Vinuya et al, questioned the said decision. He raised, among others, that the ponente in said case, Justice Mariano del Castillo, plagiarized three books when the honorable Justice "twisted the true intents" of these books to support the assailed decision. These books were:

a. *A Fiduciary Theory of Jus Cogens* by Evan J. Criddle and Evan Fox-Descent, Yale Journal of International Law (2009);

b. *Breaking the Silence: Rape as an International Crime* by Mark Ellis, Case Western Reserve Journal of International Law (2006); and

c. *Enforcing Erga Omnes Obligations* by Christian J. Tams, Cambridge University Press (2005).

As such, Justice del Castillo is guilty of plagiarism, misconduct, and at least inexcusable negligence.

Interestingly, even the three foreign authors mentioned above, stated that their works were used inappropriately by Justice Del Castillo and that the assailed decision is different from what their works advocated.

ISSUE:

Whether or not there is plagiarism

RULING:

No. Even if there is (as emphasized by the Supreme Court in its ruling on the Motion for Reconsideration filed by Vinuya et al in 2011), the rule on plagiarism cannot be applied to judicial bodies.

According to Black's Law Dictionary: Plagiarism is the "deliberate and knowing presentation of another person's original ideas or creative expressions as one's own."

This cannot be the case here because as proved by evidence, in the original drafts of the assailed decision, there was attribution to the three authors but due to errors made by Justice del Castillo's researcher, the attributions were inadvertently deleted. There is therefore no intent by Justice del Castillo to take these foreign works as his own.

But in plagiarism, intent is immaterial.

On this note, the Supreme Court stated that in its past decisions, (i.e. U.P Board of Regents vs CA, 313 SCRA 404), the Supreme Court never indicated that intent is not material in plagiarism. To adopt a strict rule in applying plagiarism in all cases leaves no room for errors. This would be very disadvantageous in cases, like this, where there are reasonable and logical explanations.

On the foreign authors' claim that their works were used inappropriately

According to the Supreme Court, the passages lifted from their works were merely used as background facts in establishing the state on international law at various stages of its development. The Supreme Court went on to state that the foreign authors' works can support conflicting theories. The Supreme Court also stated that since the attributions to said authors were accidentally deleted, it is impossible to conclude that Justice del Castillo twisted the advocacies that the works espouse.

Justice del Castillo is not guilty of misconduct. The error here is in good faith. There was no malice, fraud or corruption.

No Inexcusable Negligence

The error of Justice del Castillo's researcher is not reflective of his gross negligence. The researcher is a highly competent one. The researcher earned scholarly degrees here and abroad from reputable educational institutions. The researcher finished third in her class and 4th in the bar examinations. Her error was merely due to the fact that the software she used, Microsoft Word, lacked features to apprise her that certain important portions of her drafts are being deleted inadvertently. Such error on her part cannot be said to be constitutive of gross negligence nor can it be said that Justice del Castillo was grossly negligent when he assigned the case to her. Further, assigning cases to researchers has been a long standing practice to assist justices in drafting decisions. It must be emphasized though that prior to assignment, the justice has already spelled out his position to the researcher and in every sense, the justice is in control in the writing of the draft.

RUBEN REYNA, *et al.* v. COMMISSION ON AUDIT
G.R. No. 167219, 8 February 2011, EN BANC (Peralta, J.)

Land Bank of the Philippines was engaged in a CATTLE-FINANCING PROGRAM wherein loans were granted to various cooperatives. Land Bank's Ipil Branch went into a massive information campaign offering the program to cooperatives who wish to avail of a loan under the program. Cooperatives who wish to avail of a loan under the program must fill up a Credit Facility Proposal (CFP) which will &e reviewed by the Ipil Branch as mandated by the Field Operations Manual.

One of the conditions stipulated in the CFP is that prior to the release of the loan, a Memorandum of Agreement between the supplier of the cattle, Remad Livestock Corporation (REMAD) and the cooperative shall have been signed.

Petitioners alleged that the terms of the CFP allowed for pre-payments or advancement of the payments prior to the delivery of the cattle by the supplier REMAD. However, by the very contract entered into by the cooperatives and REMAD, or the "Cattle-Breeding and Buy-Back Marketing Agreement"" did not contain a provision authorizing prepayment. Three checks were issued by the Ipil Branch to REMAD to serve as advanced payment for the cattle. REMAD, however, failed to supply the cattle on the dates agreed upon.

In post-audit, the Land Bank Auditor disallowed the amount of P3,115,000.00 on the ground of non-delivery of the cattle and that advance payment was made in violation of bank policies and COA rules and regulations. The auditor also found that nowhere in the documents reviewed disclosed about prepayment scheme with REMAD.

Meanwhile, petitioners were also made respondents in a complaint filed by the COA Regional Office No. IX, Zamboanga City, before the Office of the Ombudsman for gross negligence, violation of reasonable office rules and regulations, conduct prejudicial to the interest of the bank and giving unwarranted benefits to persons, causing undue injury in violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

The COA rendered a decision affirming the rulings of the Auditor and the Regional Office.

Petitioners argue that the Commission on Audit (COA) committed grave abuse of discretion amounting to lack of jurisdiction in declaring the prepayment stipulation in the contract between Land Bank and Remad Livestock Corporation (REMAD) proscribed by the State Audit Code of the Philippines.

ISSUE:

Whether the COA is correct in declaring the prepayment stipulation in the contract proscribed by the State Audit Code of the Philippines

RULING:

The Supreme Court did not give merit to petitioner's argument. It emphasized that the COA Auditor noted that "nowhere in the documents reviewed disclosed about prepayment scheme with REMAD."

It is well settled that findings of fact of quasi-judicial agencies, such as the COA, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their jurisdiction. If the prepayment scheme was in fact authorized, petitioners should have produced the document to prove such fact as alleged by them in the present petition.

However, the Supreme Court was at a loss as to whether the prepayment scheme was authorized as its review of "Annex I," the document to which petitioners base their authority to make advance payments, does not contain such a stipulation or provision. In addition, the Supreme Court noted that much reliance was made by petitioners on their allegation that the terms of the Credit Facility Proposal allowed for prepayments or advancement of the payments prior to the delivery of the cattle by the supplier REMAD. It appears, however, that a CFP, even if admittedly a pro forma contract and emanating from the Land Bank main office, is merely a facility proposal and not the contract of loan between Land Bank and the cooperatives. It is in the loan contract that the parties embody the terms and conditions of a transaction. If there is any agreement to release the loan in advance to REMAD as a form of prepayment scheme, such a stipulation should exist in the loan contract. There is, nevertheless, no proof of such stipulation as petitioners had failed to attach the CFPs or the loan contracts relating to the present petition.

Based on the foregoing, the COA was not faulted for finding that petitioners facilitated the commission of the irregular transaction.

MARIANO OUANO *et al.* v. REPUBLIC OF THE PHILIPPINES *et al.* / MACTAN-CEBU INTERNATIONAL AIRPORT (MCIAA) v. RICARDO L. INOCIAN, *et al.*
G.R. Nos. 168770 & 168812, 9 February 2011, First Division (Velasco, Jr., *J.*)

The following are two (2) consolidated cases whereby the respective owners and successors-in-interest. They pray for the reconveyance of their respective properties subjected to expropriation in favor of the government for the expansion of Lahug Airport for public use. Their claim for reconveyance is based on the alleged promise of the National Airport Corporation (NAC), Mactan-Cebu International Airport Authority's (MCIAA) predecessor agency, that should the Lahug Airport expansion project do not push through or once the Lahug Airport closes or its operations transferred to Mactan-Cebu Airport, they are assured the right to repurchase their land.

When the Lahug Airport was closed and transferred its operations with MCIAA, the latter refused to honor the said agreement. Hence, Ouanos and Inocians filed their respective complaints against the latter. MCIAA averred that the claim of the Ouanos and the Inocians regarding the alleged verbal assurance of the NAC negotiating team that they can reacquire their landholdings is already barred by the Statute of Frauds. Hence, this petition was filed.

ISSUE:

Whether or not the Ouanos and Inocians have the right to repurchase their properties pursuant to the verbal agreement with the government's negotiating team assuring them of its reacquisition should the public purpose for which the properties were used ceases.

RULING:

Yes. The taking of a private land in expropriation proceedings is always conditioned on its continued devotion to its public purpose. As a necessary corollary, once the purpose is terminated or peremptorily abandoned, then the former owner, if he so desires, may seek its reversion, subject of course to the return, at the very least, of the just compensation received.

Given the foregoing disquisitions, equity and justice demand the reconveyance by MCIAA of the litigated lands in question to the Ouanos and Inocians. In the same token, justice and fair play also dictate that the Ouanos and Inocian return to MCIAA what they received as just compensation for the expropriation of their respective properties plus legal interest to be computed from default, which in this case should run from the time MCIAA complies with the reconveyance obligation. They must likewise pay MCIAA the necessary expenses it might have incurred in sustaining their respective lots and the monetary value of its services in managing the lots in question to the extent that they, as private owners, were benefited thereby.

MA. MERCEDITAS N. GUTIERREZ v. THE HOUSE OF REPRESENTATIVES COMMITTEE ON JUSTICE, *et al.*
G.R. No. 193459, 15 February 2011, EN BANC (Carpio-Morales, J.)

Two impeachment complaints were filed against Ombudsman Gutierrez, both were based betrayal of public trust and culpable violation of the Constitution. The House Plenary referred the two complaints to the House of Representative Committee on Justice. After hearing, the House of Representative Committee on Justice issued a Resolution finding both complaints sufficient in form and substance. Consequently, Ombudsman Gutierrez contended that the issued the Resolution violated the one-year bar provision under Article XI, Section 3, paragraph 5 of the Constitution.

ISSUE:

Whether the HR Committee on Justice violated the one-year bar provision when it issued the Resolution

RULING:

No. Article XI, Section 3, paragraph (5) of the Constitution provides that, no impeachment proceedings shall be initiated against the same official more than once within a period of one year. The act of initiating the complaint means the filing of the impeachment complaint and the referral by the House Plenary to the Committee on Justice. Once an impeachment complaint has been initiated, another impeachment complaint may not be filed against the same official within a one year period. Therefore, the one-year period ban is reckoned not from the filing of the first complaint, but on the date it is referred to the House Committee on Justice. Hence, in this case, the HR Committee did not violate the oneyear bar provision of the Constitution when it accepted the second impeachment complaint after the first impeachment complaint was filed.

Also, it was held that the HR committee did not abuse its discretion in finding the complaints sufficient in form in substance. The Impeachment Rules are clear in echoing the constitutional requirements and providing that there must be a verified complaint or resolution, and that the substance requirement is met if there is a recital of facts constituting the offense charged and determinative of the jurisdiction of the committee.

LEAGUE OF CITIES OF THE PHIL., *et al.* v. COMELEC, *et al.*
G.R. Nos. 176951, 177499 &178056, 15 February 2011, EN BANC (Bersamin, J.)

These cases were initiated by the consolidated petitions for prohibition filed by the League of Cities of the Philippines (LCP), City of Iloilo, City of Calbayog, and Jerry P. Treñas, assailing the constitutionality of the sixteen (16) laws, each converting the municipality covered thereby into a component city (Cityhood Laws), and seeking to enjoin the Commission on Elections (COMELEC) from conducting plebiscites pursuant to the subject laws.

In the Decision dated November 18, 2008, the Court En Banc, by a 6-5 vote, granted the petitions and struck down the Cityhood Laws as unconstitutional for violating Sections 10 and 6, Article X, and the equal protection clause.

In another Decision dated December 21, 2009, the Court En Banc, by a vote of 6-4, declared the Cityhood Laws as constitutional.

On August 24, 2010, the Court En Banc, through a Resolution, by a vote of 7-6, resolved the Ad Cautelam Motion for Reconsideration and Motion to Annul the Decision of December 21, 2009.

ISSUES:

1. Whether the Cityhood Bills violate Article X, Section 10 of the Constitution

2. Whether the Cityhood Bills violate Article X, Section 6 and the equal protection clause of the Constitution

RULING:

1. The enactment of the Cityhood Laws is an exercise by Congress of its legislative power. Legislative power is the authority, under the Constitution, to make laws, and to alter and repeal them. The Constitution, as the expression of the will of the people in their original, sovereign, and unlimited capacity, has vested this power in the Congress of the Philippines.

The LGC is a creation of Congress through its law-making powers. Congress has the power to alter or modify it as it did when it enacted R.A. No. 9009. Such power of amendment of laws was again exercised when Congress enacted the Cityhood Laws. When Congress enacted the LGC in 1991, it provided for quantifiable indicators of economic viability for the creation of local government units—income, population, and land area.

However, Congress deemed it wiser to exempt respondent municipalities from such a belatedly imposed modified income requirement in order to uphold its higher calling of putting flesh and blood to the very intent and thrust of the LGC, which is countryside development and autonomy, especially accounting for these municipalities as engines for economic growth in their respective provinces.

R.A. No. 9009 amended the LGC. But the Cityhood Laws amended R.A. No. 9009 through the exemption clauses found therein. Since the Cityhood Laws explicitly exempted the concerned municipalities from the amendatory R.A. No. 9009, such Cityhood Laws are, therefore, also amendments to the LGC itself.

2. Substantial distinction lies in the capacity and viability of respondent municipalities to become component cities of their respective provinces. Congress, by enacting the Cityhood Laws, recognized this capacity and viability of respondent municipalities to become the State's partners in accelerating economic growth and development in the provincial regions, which is the very thrust of the LGC, manifested by the pendency of their cityhood bills during the 11th Congress and their relentless pursuit for cityhood up to the present.

METROPOLITAN MANILA DEVELOPMENT AUTHORITY, *et al.* v. CONCERNED RESIDENTS OF MANILA BAY, etc., *et al.*
G.R. Nos. 171947-48, 15 February 2011, EN BANC (Velasco, J.)

The Supreme Court rendered a Decision in G.R. Nos. 171947-48 ordering petitioners to clean up, rehabilitate and preserve Manila Bay in their different capacities.

The Manila Bay Advisory Committee was created to receive and evaluate the quarterly progressive reports on the activities undertaken by the agencies in accordance with said decision and to monitor the execution phase.

In the absence of specific completion periods, the Committee recommended that time frames be set for the agencies to perform their assigned tasks.

ISSUE:

Whether the recommendation by the Committee is an encroachment over the powers and functions of the Executive Branch headed by the President of the Philippines.

RULING:

The issuance of subsequent resolutions by the Court is simply an exercise of judicial power under Art. VIII of the Constitution, because the execution of the Decision is but an integral part of the adjudicative function of the Court. None of the agencies ever questioned the power of the Court to implement the December 18, 2008 Decision nor has any of them raised the alleged encroachment by the Court over executive functions.

With the final and executory judgment in *MMDA*, the writ of continuing mandamus issued in *MMDA* means that until petitioner-agencies have shown full compliance with the Courts orders, the Court exercises continuing jurisdiction over them until full execution of the judgment.

While additional activities are required of the agencies like submission of plans of action, data or status reports, these directives are but part and parcel of the execution stage of a final decision under Rule 39 of the Rules of Court.

AIR TRANSPORTATION OFFICE v. SPOUSES DAVID AND ELISEA RAMOS
G.R. No. 159402, 23 February 2011, Third Division (Bersamin, J.)

Respondent Spouses discovered that a portion of their registered land in Baguio City was being used as part of the runway and running shoulder of the Loakan Airport being operated by petitioner Air Transportation Office (ATO). The respondents agreed after negotiations to convey the affected portion by deed of sale to the ATO in consideration of the amount of P778,150.00. However, the ATO failed to pay despite repeated verbal and written demands.

Thus, the respondents filed an action for collection against the ATO and some of its officials in the RTC. In their answer, the ATO and its co-defendants invoked as an affirmative defense the issuance of Proclamation No. 1358, whereby President Marcos had reserved certain parcels of land that included the respondents affected portion for use of the Loakan Airport. They asserted that the RTC had no jurisdiction to entertain the action without the States consent considering that the deed of sale had been entered into in the performance of governmental functions.

The RTC held in favor of the Spouses, ordering the ATO to pay the plaintiffs Spouses the amount of P778,150.00 being the value of the parcel of land appropriated by the defendant ATO as embodied in the Deed of Sale, plus an annual interest of 12% from August 11, 1995, the date of the Deed of Sale until fully paid; (2) The amount of P150,000.00 by way of moral damages and P150,000.00 as exemplary damages; (3) the amount of P50,000.00 by way of attorneys fees plus P15,000.00 representing the 10, more or less, court appearances of plaintiffs counsel; (4) The costs of this suit.

On appeal, the CA affirmed the RTCs decision with modification deleting the awarded cost, and reducing the moral and exemplary damage to P30,000.00 each, and attorneys fees is lowered to P10,000.00.

ISSUE:

Whether the ATO could be sued without the State's consent

RULING:

An unincorporated government agency without any separate juridical personality of its own enjoys immunity from suit because it is invested with an inherent power of sovereignty. Accordingly, a claim for damages against the agency cannot prosper; otherwise, the doctrine of sovereign immunity is violated. However, the need to distinguish between an unincorporated government agency performing governmental function and one performing proprietary functions has arisen. The immunity has been upheld in favor of the former because its function is governmental or incidental to such function; it has not been upheld in favor of the latter whose function was not in pursuit of a necessary function of government but was essentially a business. National Airports Corporation v. Teodoro, Sr. and Phil. Airlines Inc., 91 Phil. 203 (1952).

Civil Aeronautics Administration vs. Court of Appeals (167 SCRA 28 [1988]),the Supreme Court, reiterating the pronouncements laid down in Teodoro, declared that the CAA (predecessor of ATO) is an agency not immune from suit, it being engaged in functions pertaining to a private entity.

The Civil Aeronautics Administration comes under the category of a private entity. Although not a body corporate it was created, like the National Airports Corporation, not to maintain a necessary function of government, but to run what is essentially a business, even if revenues be not its prime objective but rather the promotion of travel and the convenience of the travelling public. It is engaged in an enterprise which, far from being the exclusive prerogative of state, may, more than the construction of public roads, be undertaken by private concerns. National Airports Corp. v. Teodoro, 91 Phil. 203 (1952).

The CA thereby correctly appreciated the juridical character of the ATO as an agency of the Government not performing a purely governmental or sovereign function, but was instead involved in the management and maintenance of the Loakan Airport, an activity that was not the exclusive prerogative of the State in its sovereign capacity. Hence, the ATO had no claim to the States immunity from suit. We uphold the CAs aforequoted holding.

The doctrine of sovereign immunity cannot be successfully invoked to defeat a valid claim for compensation arising from the taking without just compensation and without the proper expropriation proceedings being first resorted to of the plaintiffs property.Republic v. Sandiganbayan, G.R. No. 90478, Nov. 2, 1991.

REPUBLIC OF THE PHILIPPINES v. CITY GOVERNMENT OF MANDALUYONG
G.R. No. 184879, 23 February 2011, First Division (Perez, J.)

In a joint resolution, the City Assessors of Mandaluyong City, Quezon City, Makati City and Pasay City fixed the current and market value of EDSA MRT III at US$655 Million or ₱32.75 Billion, and which will be divided proportionately according to distance traversed among these cities. Subsequently, the Office of the City Assessor of Mandaluyong issued Tax Declaration No. D-013-06267 in the name of MRTC, fixing the market value of the railways, train cars, three (3) stations and miscellaneous expenses at ₱5,974,365,000.00 and the assessed value at ₱4,779,492,000.00. The said Office of the City Assessor of Mandaluyong City demanded payment of real property taxes due under the aforesaid tax declaration.

The computation of real property tax of MRTC was pegged at ₱317,250,730.23 from the taxable year 2000 until August 2001. Two (2) years later or on August 2003, another demand was made on MRTC placing the deficiency real estate tax due to the City of Mandaluyong at ₱769,784,981.52.

Initially, a Notice of Delinquency was sent to MRTC wherein the assessed deficiency real property tax amounted to ₱12,843,928.79, however the City Treasurer of Mandaluyong issued another Notice of Delinquency rectifying the first notice by increasing the deficiency real property tax to ₱1,306,617,522.96. On the same day, the City Treasurer issued and served a Warrant of Levy upon MRTC with the corresponding Notices of Levy upon the City Assessor and the Registrar of Deeds of Mandaluyong City.

Petitioner Republic filed a case for Declaration of Nullity of Real Property Tax Assessment and Warrant of Levy with a prayer for a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction before the Regional Trial Court (RTC Branch 208), Branch 208, Mandaluyong City, docketed as Civil Case No. MC05-2882. Republic alleged that since Metro Rail had transferred to the DOTC the actual use, possession and operation of the EDSA MRT III System, Metro Rail or MRTC does not have actual or beneficial use and possession of the EDSA MRT III properties as to subject it to payment of real estate taxes. On the other hand, notwithstanding the transfer to DOTC of the actual use, possession and operation of the EDSA MRT III, petitioner Republic is not liable because local government units are legally proscribed from imposing taxes of any kind on it under Section 133(o) of Republic Act No. 7160. Likewise, under Section 234 of the same law, petitioner is exempted from payment of real property tax.

The RTC Branch 208 denied the applications for TRO. Consequently, a public auction was conducted. For lack of bidders, the real properties were forfeited in favor of the City of Mandaluyong for the price of ₱1,483,700,100.18. The RTC Branch 208 issued an order denying the application for issuance of a writ of preliminary injunction. A motion for reconsideration was filed but it was eventually denied on 9 March 2007. The issue on the validity of tax assessment however is pending before that court. Petitioner Republic filed a petition for certiorari before the Court of Appeals challenging the denial of both the TRO and injunction by RTC Branch 208.

Meanwhile, respondent manifested before the Court of Appeals that due to the failure of MRTC to exercise the right of redemption, the City Treasurer of Mandaluyong executed a Final Deed of Sale in favor of the purchaser in the auction sale. Subsequently, Tax Declaration No. D-013-06267 in MRTC's name was cancelled and Tax Declaration No. D-013-10636 was issued in its place.

Respondent filed an ex parte petition praying for the issuance of a writ of possession before RTC Branch 213 of Mandaluyong and docketed as LRC Case No. MC-08-460. Petitioner Republic countered that the instant petition does not fall within the cases when a writ of possession may be issued. Moreover, petitioner argued that the pendency of Civil Case No. MC05-2882 assailing the validity of the tax assessment and the subsequent auction sale of the properties pre-empts the issuance of said writ.

Subsequently, the RTC Branch 213, through Judge Carlos A. Valenzuela, granted the petition for the issuance of a writ of possession. A subsequent motion for reconsideration filed by petitioner was denied for lack of merit.

ISSUE:

Whether the issuance of the writ of possession was proper

RULING:

No. This case is, ultimately, between a local government's power to tax and the national government's privilege of tax exemption. That issue needs full hearing and deliberation, as indeed, the issue pends before the RTC, at first instance. Such trial of facts and issues must proceed. It should not be pre-empted by the present petition that deals with precisely the herein respondent's intended end result.

A writ of possession is a mere incident in the transfer of title. In the instant case, it stemmed from the exercise of alleged ownership by respondent over EDSA MRT III properties by virtue of a tax delinquency sale. The issue of whether the auction sale should be enjoined is still pending before the Court of Appeals. Pending determination, it is premature for respondent to have conducted the auction sale and caused the transfer of title over the real properties to its name.

The denial by the RTC to issue an injunction or TRO does not automatically give respondent the liberty to proceed with the actions sought to be enjoined, especially so in this case where a certiorari petition assailing the denial is still being deliberated in the Court of Appeals. All the more it is premature for the RTC to issue a writ of possession where the ownership of the subject properties is derived from an auction sale, the validity of which is still being threshed out in the Court of Appeals. The RTC should have held in abeyance the issuance of a writ of possession. At this juncture, the writ issued is premature and has no force and effect.

ANTONIO Y. DE JESUS, SR., *et al.* v. SANDIGANBAYAN
G.R. No. 182539-40, 23 February 2011, Second Division (Abad, J.)

The Office of the Ombudsman charged the accused public officers Antonio Y. de Jesus, Sr. (De Jesus, Sr.), Mayor of Anahawan, Southern Leyte, Anatolio A. Ang (Ang), his Vice-Mayor, and Martina S. Apigo (Apigo), the Treasurer, of falsification of public document before the Sandiganbayan in Criminal Case 26764 and all three, along with Antonio de Jesus, Jr. (De Jesus, Jr.), the mayor's son, of violation of Republic Act (R.A.) 3019 before the same court in Criminal Case 26766.

The first information alleged that De Jesus, Sr., Ang, and Apigo (accused local officials) falsified the Requests for Quotation and Abstract of Proposal of Canvass on January 18, 1994 by making it appear that Cuad Lumber and Hinundayan Lumber submitted quotations for the supply of coco lumber, when they did not in fact do so, in violation of Article 171 of the Revised Penal Code. The second information alleges that, taking advantage of their positions, the three municipal officers gave unwarranted advantage to De Jesus, Jr., who operated under the name Anahawan Coco Lumber Supply, by awarding to him the supply of coco lumber worth ₱16,767.00.

On April 12, 2005, after the prosecution rested its case, all three accused filed a motion for leave to file demurrer to evidence, which motion the Sandiganbayan denied. Rather than present evidence, however, they proceeded to file their demurrer, in effect waiving their right to present evidence.[1] The prosecution opposed the demurrer.

On March 7, 2007 the Sandiganbayan rendered judgment, convicting the accused local officials of the crimes charged. It, however, acquitted accused De Jesus, Jr. Upon denial of their motion for reconsideration in a Resolution dated April 16, 2008, the accused public officers came to this Court on petition for review.

ISSUES:

1. Whether the Sandiganbayan erred in finding the accused local officials guilty of the two crimes charged when these referred to only one transaction

2. Whether or not the Sandiganbayan erred in denying the accused local officials the opportunity to present their defense after it denied their demurrer to evidence;

RULING:

1. The accused municipal mayor, vice-mayor, and treasurer point out that, since the two charges involved only one transaction, the Sandiganbayan made a mistake in finding them guilty of both. But, as the Sandiganbayan and the prosecution point out, Section 3 of R.A. 3019 expressly allows the filing of the two charges based on one transaction. Section 3 provides that the crimes described in it are "in addition to acts or omissions of public officials already penalized by existing laws."

2. The accused local officials assail the Sandiganbayan's refusal to allow them to present evidence of their defense after it denied their demurrer to evidence. But, contrary to their claim, the Sandiganbayan did not grant these officials leave to file their demurrer. It in fact denied them that leave without prejudice, however, to their nonetheless filing one subject to the usual risk of denial.]

In receipt of the above, the accused local officials informed the court that they would file a demurrer to evidence even without leave of court. The Sandiganbayan acknowledged the defense's manifestation and ordered the prosecution to comment on or oppose it.

Having denied the accused local officials' demurrer to evidence, the Sandiganbayan was justified in likewise denying their motion to be allowed to present evidence in their defense.

LAND BANK OF THE PHILIPPINES v. JOSEFINA S. LUBRICA
G.R. No. 177190, 23 February 2011, First Division (Ynares-Santiago, J.)

Petitioner Josefina S. Lubrica is the assignee of Federico C. Suntay over certain parcels of agricultural land located at Sta. Lucia, Sablayan, Occidental Mindoro, with an area of 3,682.0285 hectares covered by Transfer Certificate of Title (TCT). In 1972, a portion of the said property with an area of 311.7682 hectares, was placed under the land reform program pursuant to Presidential Decree No. 27 (1972) and Executive Order No. 228 (1987).

The land was thereafter subdivided and distributed to farmer beneficiaries. The Department of Agrarian Reform (DAR) and the LBP fixed the value of the land at P5,056,833.54 which amount was deposited in cash and bonds in favor of Lubrica.

Nenita Suntay-Tañedo and Emilio A.M. Suntay III inherited from Federico Suntay a parcel of agricultural land consisting of two lots, namely, Lot 1 with an area of 45.0760 hectares and Lot 2 containing an area of 165.1571 hectares or a total of 210.2331 hectares. Lot 2 was placed under the coverage of P.D. No. 27 but only 128.7161 hectares was considered by LBP and valued the same at P1,512,575.05.

Petitioners rejected the valuation of their properties, hence the Office of the Provincial Agrarian Reform Adjudicator (PARAD) conducted summary administrative proceedings for determination of just compensation.

ISSUE:

WON the determination of just compensation should be based on the value of the expropriated properties at the time of payment

RULING:

Yes. Petitioners were deprived of their properties without payment of just compensation which, under the law, is a prerequisite before the property can be taken away from its owners.

The transfer of possession and ownership of the land to the government are conditioned upon the receipt by the landowner of the corresponding payment or deposit by the DAR of the compensation with an accessible bank. Until then, title remains with the landowner.

The CARP Law, for its part, conditions the transfer of possession and ownership of the land to the government on receipt by the landowner of the corresponding payment or the deposit by the DAR of the compensation in cash or LBP bonds with an accessible bank. Until then, title also remains with the landowner. No outright change of ownership is contemplated either.

Petitioners were deprived of their properties way back in 1972, yet to date, they have not yet received just compensation. Thus, it would certainly be inequitable to determine just compensation based on the guideline provided by P.D. No. 227 and E.O. No. 228 considering the failure to determine just compensation for a considerable length of time. That just compensation should be determined in accordance with R.A. No. 6657 and not P.D. No. 227 or E.O. No. 228, is important considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample

FERNANDO V. GONZALES v. COMMISSION ON ELECTIONS, *et al.*
G.R. No. 192856, 8 March 2011, EN BANC (Villarama, Jr., J.)

Petitioner Fernando Gonzales and Reno Lim both filed certificates of candidacy for the position of Representative of the 3rd district of Albay in the May 10, 2010 election. Lim was the incumbent Congressman while Gonzales was the former Governor of Albay.

On March 30, 2010 a petiton for disqualification and cancellation of certificate of candidacy was filed by Stephen Bichara on the ground that Gonzales is a Spanish national, being the legitimate child of a spanish father and a filipino mother, and that failed to elect Philippines citizenship upon reaching the age of majority in accordance with the provisions of Commonwealth Act No. 625 and that his certificate of candidacy contains misleading information.

The COMELEC second division disqualified Gonzales in the forthcoming National and Local elections. Gonzales thru counsel, received a copy of the aforesaid resolution on May 11, 2010. Lim petitioned the Provincial Board of Canvassers to consider the votes cast for Gonzales as stray or not counted and/or suspend his proclamation, citing the second division's May 8, 2010 resolution disqualifying Gonzales as a candidate. PBOC dismissed the petition stating that the period for filing a motion for reconsideration of the COMELEC resolution has not yet elapsed, and hence, the same is not yet final and executory. Based on the results of the counting, Gonzales emerged as the winner having garnered a total vote of 96,000 while Lim ranked second with a vote of 68,701 votes. On May 12, 2010, PBOC officially proclaimed Gonzales as the duly elected Representative of the 3rd district of Albay.

ISSUES:

1. Whether Gonzalez was validly proclaimed as the duly elected Representative of the 3rd District of Albay in the May 10, 2010 elections

2. Whether the Comelec has jurisdiction over a Representative which was officially proclaimed as a winner.

RULING:

1. Clearly, the only instance where a petition questioning the qualifications of a candidate for elective office can be filed before election is when the petition is filed under Section 78 of the OEC.

The petition in SPA No. 10-074 (DC) based on the allegation that Gonzalez was not a natural-born Filipino which was filed before the elections, is in the nature of a petition filed under Section 78. The recitals in the petition in said case, however, state that it was filed pursuant to Section 4 (b) of COMELEC Resolution No. 8696 and Section 68 of the OEC to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification. The COMELEC treated the petition as one filed both for disqualification and cancellation of COC, with the effect that Section 68, in relation to Section 3, Rule 25 of the COMELEC Rules of Procedure, is applicable insofar as determining the period for filing the petition.

Since the petition in SPA No. 10-074 (DC) sought to cancel the COC filed by Gonzalez and disqualify him as a candidate on the ground of false representation as to his citizenship, the same should have been filed within twenty-five days from the filing of the COC, pursuant to Section 78 of the OEC.

Gonzales filed his COC on December 1, 2009. Clearly, the petition for disqualification and cancellation of COC filed by Lim on March 30, 2010 was filed out of time. The COMELEC therefore erred in giving due course to the petition.

2. It has long been settled that pursuant to Section 6 of R.A. No. 6646, a final judgment before the election is required for the votes of a disqualified candidate to be considered stray. In the absence of any final judgment of disqualification against Gonzalez, the votes cast in his favor cannot be considered stray. After proclamation, taking of oath and assumption of office by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns were transferred to the HRET as the constitutional body created to pass upon the same. The Court thus does not concur with the COMELECs flawed assertion of jurisdiction premised on its power to suspend the effects of proclamation in cases involving disqualification of candidates based on commission of prohibited acts and election offenses. As we held in Limkaichong, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a members qualification to sit in the House of Representatives.

MA. MERCEDITAS C. GUTIERREZ v. THE HOUSE OF REPRESENTATIVES COMMITTEE ON JUSTICE, *et al.*
G.R. No. 193459, 8 March 2011, EN BANC (Carpio-Morales, J.)

Petitioner filed a Motion for Reconsideration (of the Decision dated 15 February 2011)" dated February 25, 2011 (Motion). Petitioner asserted that the Court sharply deviated from the ruling in Francisco, Jr. v. The House of Representatives. Petitioner argued that the initiation of an impeachment proceeding must be reckoned from the filing of the complaint. She also reiterated her argument that promulgation means publication. She again cites her thesis that Commonwealth Act No. 638, Article 2 of the Civil Code, and the two Tañada v. Tuvera cases mandate that the Impeachment Rules be published for effectivity.

ISSUE:

Whether the Motion for Reconsideration should be granted

RULING:

No. The Supreme Court reiterated its previous ruling that the term "initiate" as used in Section 3, Article XI of the Constitution refers to the filing of the impeachment complaint coupled with Congress' taking initial action on said complaint. The initial action of the House of Representatives on the complaint is the referral of the same to the Committee on Justice.

When the Constitution uses the word "promulgate," it does not necessarily mean to publish in the Official Gazette or in a newspaper of general circulation. Promulgation, as used in Section 3(8), Article XI of the Constitution, suitably takes the meaning of "to make known" as it should be generally understood.

AQUILINO Q. PIMENTEL, *et al.* v. SENATE COMMITTEE OF THE WHOLE
G.R. No. 187714, 8 March 2011, EN BANC (Carpio, J.)

Senator Madrigal introduced P.S. Resolution 706, which directed the Senate Ethics Committee to investigate the alleged double insertion of P200 million by Senator Manny Villar into the C5 Extension Project. Thereafter, the Senate adopted the Rules of the Ethics Committee.

In another privilege speech, Senator Villar stated he will answer the accusations before the Senate, and not with the Ethics Committee. Senator Lacson, then chairperson of the Ethics Committee, then moved that the responsibility of the Ethics Committee be transferred to the Senate as a Committee of the Whole, which was approved by the majority. In the hearings of such Committee, petitioners objected to the application of the Rules of the Ethics Committee to the Senate Committee of the Whole. Senator Pimentel raised the issue on the need to publish the rules of the Senate Committee of the Whole.

ISSUES:

1. Whether the transfer of the complaint against Senator Villar from the Ethics Committee to the Senate Committee of the Whole is violative of Senator Villar's right to equal protection;
2. Whether the adoption of the Rules of the Ethics Committee as Rules of the Senate Committee of the Whole is violative of Senator Villar's right to due process and of the majority quorum requirement under Art. VI, Section 16(2) of the Constitution; and
3. Whether publication of the Rules of the Senate Committee of the Whole is required for their effectivity

RULING:

1. While ordinarily an investigation about one of its members alleged irregular or unethical conduct is within the jurisdiction of the Ethics Committee, the Minority effectively prevented it from pursuing the investigation when they refused to nominate their members to the Ethics Committee. The referral of the investigation to the Committee of the Whole was an extraordinary remedy undertaken by the Ethics Committee and approved by a majority of the members of the Senate, and not violative of the right to equal protection.

2: The adoption by the Senate Committee of the Whole of the Rules of the Ethics Committee does not violate Senator Villar's right to due process. The Constitutional right of the Senate to promulgate its own rules of proceedings has been recognized and affirmed by this Court in Section 16(3), Article VI of the Philippine Constitution, which states: "Each House shall determine the rules of its proceedings."

3. The Constitution does not require publication of the internal rules of the House or Senate. Since rules of the House or the Senate that affect only their members are internal to the House or Senate, such rules need not be published, unless such rules expressly provide for their publication before the rules can take effect. Hence, in this particular case, the Rules of the Senate Committee of the Whole itself provide that the Rules must be published before the Rules can take effect. Thus, even if publication is not required under the Constitution, publication of the Rules of the Senate Committee of the Whole is required because the Rules expressly mandate their publication.

CANDELARIO L. VERZOSA, Jr. v. GUILLERMO N. CARAQUE, *et al.*
G.R. No. 157838, 8 March 2011, EN BANC (Villarama, Jr., J.)

In December 1992, the Cooperative Development Authority (CDA) purchased from Tetra Corporation (Tetra) a total of forty-six (46) units of computer equipment and peripherals in the total amount ofP2,285,279.00. Tetra was chosen from among three qualified bidders (Tetra, Microcircuits and Columbia).The bidding was conducted in accordance with the approved guidelines for bidding and a memo issued by the Office of the President. Petitioner who was then the Executive Director of the CDA approved the purchase.

The Resident Auditor sought the assistance of the Technical Services Office (TSO), COA in the determination of the reasonableness of the prices of the purchased computers. The TSO found that the purchased computers were overpriced/excessive by a total ofP 881,819.00.It was noted that (1) no volume discount was given by the supplier, (2) as early as 1992, there were so much supply of computers in the market so that the prices of computers were relatively low already; and (3) when CDA first offered to buy computers, of the three qualified bidders, Microcircuits offered the lowest bid. The Resident Auditor issued a Notice of Disallowance.

The Notice was appealed by the CDA to the COA Chairman, which upheld the disallowance. It held, among others, that the CDA should not have awarded the contract to Tetra but to the other competing bidders, whose bid is more advantageous to the government.

ISSUE:

Whether or not the COA erred in disallowing the purchase

RULING:

Pursuant to its constitutional mandate to "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, "the COA promulgated the amended Rules under COA Circular No. 85-55-A. With respect to excessive expenditures, price is considered "excessive" if it is more than the 10% allowable price variance between the price paid for the item bought and the price of the same item per canvass of the auditor. In determining whether or not the price is excessive, factors such as supply and demand, government quotations, may be considered.

Records showed that while the respondents found nothing wrong with the CDA criteria used to evaluate the bids, the final technical evaluation report was apparently manipulated to favor Tetra, which offered a Korean-made brand as against Microcircuits which offered a US-made brand said to be more durable, at a lower price. The conduct of public bidding in this case was not made objectively to purchase quality equipment at the least cost to the government. The price difference far exceeded the 10% allowable variance in the unit bought and the same items price.

Findings of quasi-judicial agencies, such as the COA, which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect, but at times even finality, if such findings are supported by substantial evidence. It is only upon a clear showing that the COA acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction that this Court will set aside its decisions or final orders. We find no such

arbitrariness or grave abuse on the part of the COA when it disallowed in audit the amount representing the overprice in the payment by CDA for the purchased computer units and peripherals, since its findings are well-supported by the evidence on record.

JULIAN S. LEBRUDO and REYNALDO L. LEBRUDO v. REMEDIOS LOYOLA
G.R. No. 181370, 9 March 2011, Second Division (Carpio, J.)

Lebrudo alleged that he was approached by Loyola sometime in 1989 to redeem the lot, which was mortgaged by Loyola's mother, Cristina Hugo, to Trinidad Barreto. After Lebrudo redeemed the lot forP250.00 and a cavan o fpalay, Loyola again sought Lebrudo's help in obtaining title to the lot in her name by shouldering all the expenses for the transfer of the title of the lot from her mother, Cristina Hugo. In exchange, Loyola promised to give Lebrudo the one-half portion of the lot. Thereafter, TCT/CLOA No. 998 was issued in favor of Loyola. Loyola then allegedly executed a Sinumpaang Salaysay9dated 28 December 1989, waiving and transferring her rights over the one-half portion of the lot in favor of Lebrudo. To reiterate her commitment, Loyola allegedly executed two more Sinumpaang Salaysay dated 1 December 1992 and 3 December 1992, committing herself to remove her house constructed on the corresponding one-half portion to be allotted to Lebrudo.

Loyola maintained that Lebrudo was the one who approached her and offered to redeem the lot and the release of the CLOA. Loyola denied promising one-half portion of the lot as payment for the transfer, titling and registration of the lot. Loyola explained that the lot was her only property and it was already being occupied by her children and their families. Loyola also denied the genuineness and due execution of the two Sinumpaang Salaysays dated 28 December 1989 and 3 December 1992. The records do not show whether Loyola renounced the Sinumpaang Salaysay dated 1 December 1992

ISSUE:

Whether Lebrudo is entitled to the one-half portion of the lot covered by RA 6657 on the basis of the waiver and transfer of rights embodied in the two *Sinumpaang Salaysay* dated 28 December 1989 and 3 December 1992 allegedly executed by Loyola in his favor

RULING:

Lands awarded to beneficiaries under the Comprehensive Agrarian Reform Program (CARP) may not be sold, transferred or conveyed for a period of 10 years. The law enumerated four exceptions: (1) through hereditary succession; (2) to the government; (3) to the Land Bank of the Philippines (LBP); or (4) to other qualified beneficiaries. In short, during the prohibitory 10-year period, any sale, transfer or conveyance of land reform rights is void, except as allowed by law, in order to prevent a circumvention of agrarian reform laws.

In the present case, Lebrudo insists that he is entitled to one-half portion of the lot awarded to Loyola under the CARP as payment for shouldering all the expenses for the transfer of the title of the lot from Loyola's mother, Cristina Hugo, to Loyola's name. Lebrudo used the two *Sinumpaang Salaysay* executed by Loyola alloting to him the one-half portion of the lot as basis for his claim.

Lebrudo's assertion must fail. The law expressly prohibits any sale, transfer or conveyance by farmer-beneficiaries of their land reform rights within 10 years from the grant by the DAR. The law provides for four exceptions and Lebrudo does not fall under any of the exceptions. In *Maylem v. Ellano*, we held that the waiver of rights and interests over landholdings awarded by the government is invalid for being violative of agrarian reform laws. Clearly, the waiver and transfer of rights to the lot as embodied in the *Sinumpaang Salaysay* executed by Loyola is void for falling under the 10-year prohibitory period specified in RA 6657.

DAVAO FRUITS CORPORATION v. LAND BANK OF THE PHILIPPINES
G.R. Nos. 181566 & 181570, 9 March 2011, Second Division (Carpio, J.)

Davao Fruits Corporation (DFC) voluntarily offered its bamboo plantation for sale to the government under the Comprehensive Agrarian Reform Law of 1988 at not less than P300,000 per hectare.The DAR and LBP computed the value of the property but DFC rejected the valuation. LBP filed a petition for the fixing of just compensation with the RTC sitting as Special Agrarian Court (SAC).DFC moved to dismiss the petition arguing among others that LBP has no authority to sue on behalf of the Republic of the Philippines and question the valuation made by the DAR.

The Special Agrarian Court dismissed LBP's petition, reasoning that the two agencies do not work in harmony with each other and the lack of coordination between the two (2) agencies, which may frustrate the implementation program of the government, sends a wrong message to landowners and CARP beneficiaries. The Court of Appeals set aside the SACs dismissal of LBP's petition for determination of just compensation.

ISSUE:

Whether or not the LBP has the personality to file a petition for determination of just compensation before the SAC

RULING:

The LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of RA 3844 or the Agricultural Reform Code and Section 64 of RA 6657 or the Comprehensive Agrarian Reform Law of 1988. Once an expropriation proceeding for the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins. LBP is not merely a nominal party in the determination of just compensation, but an indispensable participant in such proceedings. As such, LBP possessed the legal personality to institute a petition for determination of just compensation in the SAC. It may agree with the DAR and the land owner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination.

PHILIPPINE AMUSEMENT AND GAMING CORP. v. THE BUREAU OF INTERNAL REVENUE
G.R. Nos. 172087, 15 March 2011, EN BANC (Peralta, J.)

The Philippine Amusement and Gaming Corporation (PAGCOR) was created by P.D. No. 1067-A in 1977. Obviously, it is a government owned and controlled corporation (GOCC).

In 1998, R.A. 8424 or the National Internal Revenue Code of 1997 (NIRC) became effective. Section 27 thereof provides that GOCC's are NOT EXEMPT from paying income taxation but it exempted the following GOCCs:

1. GSIS
2. SSS
3. PHILHEALTH
4. PCSO
5. PAGCOR

But in May 2005, R.A. 9337, a law amending certain provisions of R.A. 8424, was passed. Section 1 thereof *excluded* PAGCOR from the exempt GOCCs hence PAGCOR was subjected to pay income taxation. In September 2005, the Bureau of Internal Revenue issued the implementing rules and regulations (IRR) for R.A. 9337. In the said IRR, it identified PAGCOR as subject to a 10% value added tax (VAT) upon items covered by Section 108 of the NIRC (*Sale of Services and Use or Lease of Properties*).

PAGCOR questions the constitutionality of Section 1 of R.A. 9337 as well as the IRR. PAGCOR avers that the said provision violates the equal protection clause. PAGCOR argues that it is similarly situated with SSS, GSIS, PCSO, and PHILHEALTH, hence it should not be excluded from the exemption.

ISSUE:

Whether PAGCOR should be subjected to income taxation

RULING:

Yes. Section 1 of R.A. 9337 is constitutional. It was the express intent of Congress to exclude PAGCOR from the exempt GOCCs hence PAGCOR is now subject to income taxation.

PAGCOR's contention that the law violated the constitution is not tenable. The equal protection clause provides that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.

The general rule is, ALL GOCC's are subject to income taxation. However, certain classes of GOCC's may be exempt from income taxation based on the following requisites for a valid classification under the principle of equal protection:

1) It must be based on substantial distinctions.

2) It must be germane to the purposes of the law.

3) It must not be limited to existing conditions only.

4) It must apply equally to all members of the class.

When the Supreme Court looked into the records of the deliberations of the lawmakers when R.A. 8424 was being drafted, the SC found out that PAGCOR's exemption was not really based on substantial distinctions. In fact, the lawmakers merely exempted PAGCOR from income taxation upon the request of PAGCOR itself. This was changed however when R.A. 9337 was passed and now PAGCOR is already subject to income taxation.

Anent the issue of the imposition of the 10% VAT against PAGCOR, the BIR had overstepped its authority. Nowhere in R.A. 9337 does it state that PAGCOR is subject to VAT. Therefore, that portion of the IRR issued by the BIR is void. In fact, Section 109 of R.A. 9337 expressly exempts PAGCOR from VAT. Further, PAGCOR's charter exempts it from VAT.

To recapitulate, PAGCOR is subject to income taxation but not to VAT.

UNION LEAF TOBACCO CORP. v. REPUBLIC OF THE PHILIPPINES
G.R. No. 185683, 16 March 2011, Third Division (Carpio-Morales, J.)

Petitioner filed before the Regional Trial Court of Agoo, La Union four applications for land registration covering various parcels of land. Petitioner alleged that it is the absolute owner of those parcels of land, having bought them from various individuals; and that its predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the properties for more than thirty (30) years.

The Republic opposed the applications, citing Article XII, Section 3 of the Constitution which proscribes private corporations or associations from holding, except by lease, alienable lands of the public domain for a period not exceeding twenty five (25) years and not to exceed one thousand (1,000) hectares in area.

After the trial court dismissed without prejudice the applications for failure of petitioner to prove its allegation that it had been in "open, continuous, exclusive and notorious possession and occupation" of the lots, it, on petitioner's move, reopened the applications and allowed the presentation of additional evidence ─ testimonial ─ in support thereof.

By Decision of July 30, 2005, the trial court confirmed petitioners' titles over the properties subject of its applications. In finding for petitioner, the trial court ruled that petitioner had complied with the minimum 30-year uninterrupted possession; that realty taxes have been paid on these properties; and that no interested private individual opposed the applications.

On appeal by the Republic, the Court of Appeals, by Decision of July 30, 2008, reversed the trial court's decision. Petitioner's motion for reconsideration having been denied, it filed a petition for review which, as stated early on, the Court denied by Resolution of March 1, 2010 for failure to show that the appellate court committed any reversible error in its challenged issuances.

In its present motion for reconsideration, petitioner argues in the main that its documentary evidence shows that the government declared and confirmed that the subject properties are alienable and disposable. It particularly points to the Advance Plans and Consolidated Plans which all noted that the subject lands are "inside alienable and disposable area as per project No. 5-A, LC Map No. 2891.

ISSUE:

Whether the lands are inalienable and disposable

RULING:

The Advance Plans and Consolidated Plans are hardly the competent pieces of evidence that the law requires. The notation by a geodetic engineer on the survey plans that properties are alienable and disposable does not suffice to prove these lands' classification.

Republic v. T.A.N. Properties, Inc. directs that

> x x x x [T]he applicant for registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal

custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.

Respondent failed to comply with this directive. This leaves it unnecessary to delve into the testimonies of petitioner's predecessors-in-interest respecting their alleged possession of the subject properties.

PHILIPPINE GUARDIANS BROTHERHOOD, INC., v. COMMISSION ON ELECTIONS
G.R. No. 190529, 22 March 2011, EN BANC (Brion, J.)

For the upcoming May 2010 elections, the COMELEC en banc issued on October 13, 2009 Resolution No. 8679 deleting several party-list groups or organizations from the list of registered national, regional or sectoral parties, organizations or coalitions. Among the party-list organizations affected was PGBI; it was delisted because it failed to get 2% of the votes cast in 2004 and it did not participate in the 2007 elections. PGBI filed its Opposition to Resolution No. 8679, but likewise sought, through its pleading, the admission ad cautelam of its petition for accreditation as a party-list organization under the Party-List System Act. The COMELEC denied PGBIs motion/opposition for lack of merit.

ISSUE:

Whether there is legal basis for delisting PGBI

RULING:

The law is clear the COMELEC may motu proprio or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition if it: (a)fails to participate in the last two (2) preceding elections; or (b)fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. The word or is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word. Thus, the plain, clear and unmistakable language of the law provides for two (2) separate reasons for delisting.

To reiterate, (a) Section 6(8) of RA 7941 provides for two separate grounds for delisting; these grounds cannot be mixed or combined to support delisting; and (b) the disqualification for failure to garner 2% party-list votes in two preceding elections should now be understood to mean failure to qualify for a party-list seat in two preceding elections for the constituency in which it has registered. This is how Section 6(8) of RA 7941 should be understood and applied.

PGBIs situation a party list group or organization that failed to garner 2% in a prior election and immediately thereafter did not participate in the preceding election is something that is not covered by Section 6(8) of RA 7941.From this perspective, it may be an unintended gap in the law and as such is a matter for Congress to address. The Court cannot and do not address matters over which full discretionary authority is given by the Constitution to the legislature; to do so will offend the principle of separation of powers. If a gap indeed exists, then the present case should bring this concern to the legislatures notice.

On the issue of due process, PGBI's right to due process was not violated for it was given an opportunity to seek, as it did seek, a reconsideration of Resolution No. 8679.The essence of due process is simply the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain ones side or the opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential. The requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is absolute lack of notice and hearing.

ABC PARTY LIST v. COMMISSION ON ELECTIONS
G.R. No. 193256, 22 March 2011, EN BANC (Peralta, J.)

On May 25, 2010, private respondent Melanio Mauricio, Jr. filed a petition with the COMELEC for the cancellation of registration and accreditation of petitioner ABC Party-Liston the ground that petitioner is a front for a religious organization; hence, it is disqualified to become a party-list group under Section 6 (1)of Republic Act (R.A.) No. 7941, otherwise known as the Party-List System Act.

On June 16, 2010, the COMELEC, Second Division issued a Resolution dismissing the petition. The dismissal on procedural grounds was grounded on the lack of proper verification of the petition. According to the COMELEC, Second Division, the Verification with Certification Re: Forum Shopping and Special Power of Attorney was not duly notarized in accordance with the 2004 Rules on Notarial Practice, as amended. Sections 1 and 6, Rule II require that the person appearing before a notary public must be known to the notary public or identified by the notary public through competent evidence of identity. In this case, the "Acknowledgment" at the end of the verification did not contain the name of private respondent who supposedly appeared before the notary public, and he was not identified by any competent evidence of identity as required by the rules on notarial practice. The COMELEC, Second Division also dismissed the petition based on substantial grounds, as it found that ABC is not a religious sect, and is, therefore, not disqualified from registration.

However, the COMELEC en banc found that the petitions verification page substantially complied with the 2004 Rules on Notarial Practice, and that the records of the case showed that the Resolution of the Second Division was issued without any hearing, contrary to RA No. 7941, which deprived Mauricio of the opportunity to submit evidence in support of his petition.

In filing this petition, Petitioner contends that the COMELEC en banc no longer had jurisdiction to entertain the petition for cancellation of registration and accreditation of ABC Party-List after it was already proclaimed as one of the winners in the party-list elections of May 10, 2010. Further, petitioner submits that Section 6 of R.A. No. 7941, which states that the COMELEC may motu proprio or upon verified complaint of any interested party remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition, is applicable only to a non-winning party-list group.

ISSUES:

1. Whether or not the Comelec has jurisdiction to hear the case on ABC party lists cancellation of registration

2. Whether or not a cancellation case should be summary

RULING:

1. Section 2 (5), Article IX-C of the Constitution grants the COMELEC the authority to register political parties, organizations or coalitions, and the authority to cancel the registration of the same on legal grounds. The said authority of the COMELEC is reflected in Section 6 of R.A. No. 7941. In the case of the party-list nominees/representatives, it is the HRET, in accordance with Section 17, Article VI of the Constitution, that has jurisdiction over contests relating to their qualifications. Although it is the party-list organization that is voted for in the elections, it is not the organization that sits as and becomes

a member of the House of Representatives, but it is the party-list nominee/representative who sits as a member of the House of Representatives. Thus, the jurisdiction of the HRET over contests relates to the qualifications of a party-list nominee or representative, while the jurisdiction of the COMELEC is over petitions for cancellation of registration of any national, regional or sectoral party, organization or coalition. In sum, the COMELEC en banc had jurisdiction over the petition for cancellation of the registration and accreditation of petitioner ABC Party-List for alleged violation of Section 6 (1) of R.A. No. 7941.

2. Petitioner contends that the COMELEC en banc committed grave abuse of discretion when it singled out this case and directed that it be set for hearing when other cases of the same nature were summarily and motu proprio dismissed by the COMELEC, citing the cases of BANAT v. CIBAC Foundation and BANAT v. 1-Care and APEC. However, in both cases, the proceedings were summary because the registration/qualification/cancellation of the party lists had already been decided in another case

PRESIDENTIAL ANTI-GRAFT COMMISSION, *et al.* v. SALVADOR A. PLEYTO
G.R. No. 176058, 23 March 2011, Second Division (Abad, J.)

The Presidential Anti-Graft Commission (PAGC) received an anonymous letter-complaint from alleged employees of the Department of Public Works and Highways (DPWH). The letter accused DPWH Undersecretary Salvador A. Pleyto of extortion, illicit affairs, and manipulation of DPWH projects.

In the course of the PAGCs investigation, Pleyto submitted his 1999,2000,and 2001SALNs. During the course of the investigation, it was observed that while Pleyto said therein that his wife was a businesswoman, he did not disclose her business interests and financial connections. Thus, Pleyto was charged with PAGC before the Office of the President (OP) for violation of Section 8 of Republic Act (R.A.) 6713,also known as the Code of Conduct and Ethical Standards for Public Officials and Employees" and Section 7 of R.A. 3019 or "The Anti-Graft and Corrupt Practices Act."

PAGC recommended to the OP that Pleyto be dismissed from office with forfeiture of all government financial benefits and disqualification to re-enter government service. The OP approved the recommendation. Pleyto filed a motion for reconsideration but the same was denied. He then raised the matter before the CA which permanently enjoined the PAGC and the OP from implementing their decisions. Hence, this petition.

ISSUE:

Whether the CA erred in not finding Pleytos failure to indicate his spouses business interests in his SALNs a violation of Section 8 of R.A. 6713

RULING:

An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, does not qualify as gross misconduct, and is merely simple negligence.

After threshing out the other issues, this Court found that Pleytos failure to disclose his wife's business interests and financial connections constituted simple negligence, not gross misconduct or dishonesty.

On the front page of petitioners 2002 SALN, it is already clearly stated that his wife is a businesswoman, and it can be logically deduced that she had business interests. Such a statement of his wifes occupation would be inconsistent with the intention to conceal his and his wifes business interests. That petitioner and/or his wife had business interests is thus readily apparent on the face of the SALN; it is just that the missing particulars may be subject of an inquiry or investigation.

An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, does not qualify as gross misconduct, and is merely simple negligence. Thus, at most, petitioner is guilty of negligence for having failed to ascertain that his SALN was accomplished properly, accurately, and in more detail.

Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. Both Section 7 of the Anti-Graft and

Corrupt Practices Act and Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees require the accomplishment and submission of a true, detailed and sworn statement of assets and liabilities.

Petitioner was negligent for failing to comply with his duty to provide a detailed list of his assets and business interests in his SALN. He was also negligent in relying on the family bookkeeper/accountant to fill out his SALN and in signing the same without checking or verifying the entries therein. Petitioners negligence, though, is only simple and not gross, in the absence of bad faith or the intent to mislead or deceive on his part, and in consideration of the fact that his SALNs actually disclose the full extent of his assets and the fact that he and his wife had other business interests.

Gross misconduct and dishonesty are serious charges which warrant the removal or dismissal from service of the erring public officer or employee, together with the accessory penalties, such as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in government service. Hence, a finding that a public officer or employee is administratively liable for such charges must be supported by substantial evidence.

HON. LUIS MARIO M. GENERAL v. HON. ALEJANDRO S. URRO, *et al.*
G.R. No. 191560, 29 March 2011, EN BANC (Brion, J.)

When Roces, a former NAPOLCOM Commissioner, died in September 2007, PGMA appointed the petitioner on July 21, 2008 as acting NAPOLCOM Commissioner in place of Roces. On the same date, PGMA appointed Eduardo U. Escueta (Escueta) as acting NAPOLCOM Commissioner and designated him as NAPOLCOM Vice Chairman.

Later, PGMA appointed Alejandro S. Urro (Urro) in place of the petitioner, Constancia P.de Guzman in place of Celia Leones, and Escuetaas permanent NAPOLCOM Commissioners. In a letter dated March 19, 2010, DILG Head Executive Assistant/Chief-of-Staff Pascual V. Veron Cruz, Jr. issued separate congratulatory letters to the respondents, for being appointed as NAPOLCOM Commissioners. The petitioner then filed the present quo warranto petition questioning the validity of the respondents appointments mainly on the ground that it violates the constitutional prohibition against midnight appointments. On July 30, 2010, Pres. Benigno S. Aquino III, issued Executive Order No. 2 (E.O. No. 2) "Recalling, Withdrawing, and Revoking Appointments Issued by the Previous Administration in Violation of the Constitutional Ban on Midnight Appointments."

The petitioner argues that the appointment issued to him was really a "regular" appointment, and as such, he cannot be removed from office except for cause. Since the appointment paper of respondent Urro, while bearing a date prior to the effectivity of the constitutional ban on appointments, was officially released (per the congratulatory letter dated March 19, 2010 issued to Urro) when the appointment ban was already in effect, then the petitioners appointment, though temporary in nature, should remain effective as no new and valid appointment was effectively made. The petitioner assails the validity of the appointments of respondents De Guzman and Escueta on the same grounds.

Both parties dwelt lengthily on the issue of constitutionality of the respondents appointments in light of E.O. No. 2.

ISSUE:

Whether or not the Court can exercise its power of judicial review

RULING:

When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3)recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the lis mota of the case. Lis mota literally means "the cause of the suit or action. In the present case, the constitutionality of the respondents appointments is not the lis mota of the case. From the submitted pleadings, what is decisive is the determination of whether the petitioner has a cause of action to institute and maintain this present petition: a quo warranto against respondent Urro.

The Court already held that for a petition for quo warranto to be successful, the suing private individual must show a clear right to the contested office. Since the petitioner merely holds an acting appointment (and an expired one at that), he clearly does not have a cause of action to maintain the

present petition. The essence of an acting appointment is its temporariness and its consequent revocability at any time by the appointing authority.

Generally, the power to appoint vested in the President includes the power to make temporary (acting) appointments, unless he is otherwise specifically prohibited by the Constitution or by the law, or where an acting appointment is repugnant to the nature of the office involved. Here, nothing in the enumeration of functions of the members of the NAPOLCOM that would be subverted or defeated by the President's appointment of an acting NAPOLCOM Commissioner pending the selection and qualification of a permanent appointee. Viewed as an institution, a survey of pertinent laws and executive issuances will show that the NAPOLCOM has always remained as an office under or within the Executive Department. Clearly, there is nothing repugnant between the petitioners acting appointment, on one hand, and the nature of the functions of the NAPOLCOM Commissioners or of the NAPOLCOM as an institution, on the other.

Estoppel also clearly militates against the petitioner. From the time he was appointed until apprised of the appointment of Urro, the petitioner discharged the functions of his office without expressing any misgivings on his appointment. He cannot later on be heard to say that the appointment was really a permanent one so that he could not be removed except for cause.

OFFICE OF THE COURT ADMINISTRATOR v. ATTY. MAGDALENA L. LOMETILLO, *et al.*
A.M. No. P-09-2637, 29 March 2011, EN BANC(Per Curiam)

This administrative matter originated from a financial audit conducted by the Office of the Court Administrator (OCA) on the books of accounts of the Office of the Clerk Court, Regional Trial Court, Iloilo City (OCC), covering transactions from November 1993 to February 2004.

The audit was conducted in view of the compulsory retirement of former Clerk of Court, Atty. Magdalena L. Lometillo (Atty. Lometillo), and the designation of Atty. Gerry D. Sumaclub (Atty. Sumaclub) as Officer-In-Charge, without the benefit of a formal turn-over of accountabilities. In OCA Memorandum dated November 24, 2008, certain irregularities unearthed by the OCA Financial Audit Team were reported. The above findings of the OCA Audit Team were refuted by Atty. Lometillo in her Explanation.

ISSUE:

Whether Atty. Lometillo is guilty of gross inefficiency and gross neglect of duty

RULING:

Yes. Atty. Lometillo utterly failed to perform her duties with the degree of diligence and competence expected of a clerk of court. The performance of one's duties in a perfunctory manner is never justified especially when reliance on employees of lower rank projects nothing else but gross inefficiency and incompetence. Next to the judge, the clerk of court is the chief administrative officer charged with preserving the integrity of court proceedings. A number of non-judicial concerns connected with trial and adjudication of cases is handled by the clerk of court, demanding a dynamic performance of duties, with the prompt and proper administration of justice as the constant objective. The nature of the work and of the office mandates that the clerk of court be an individual of competence, honesty and integrity. The Clerks of Court perform a very delicate function as custodian of the court's funds, revenues, records, property and premises. They wear many hats – those of treasurer, accountant, guard and physical plant manager of the court, hence, they are "entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds" and are thus, "liable for any loss, shortage, destruction or impairment of such funds and property.

LAND BANK v. DEPARTMENT OF AGRARIAN REFORM, et al.
G.R. No. 171840. April 4, 2011, Third Division (Villarama, Jr., J.)

Metraco Tele-Hygienic Services Corporation (METRACO) is the registered owner of three parcels of agricultural land with an aggregate area of 33.5917 hectares located at San Antonio, Ramon, Isabela. The lands are fully irrigated by the National Irrigation Administration (NIA) and planted with rice.

In July and December 2000, METRACO voluntarily offered to sell the aforesaid lands under the provisions of Republic Act (R.A.) No. 6657 or the Comprehensive Agrarian Reform Law (CARL) of 1988. Private respondent's assessment was P300,000.00 per hectare. The landowner's offer was referred to petitioner Land Bank of the Philippines (LBP) for valuation. METRACO fixed the just compensation for the subject landholdings.

Since the DAR rejected the valuation made by petitioner, the latter deposited the amount of compensation, which the former accepted without prejudice to reevaluation and eventual payment of just compensation due for its property. DAR then went to the DARAB-Region 02 at San Fermin, Cauayan City, Isabela which held summary proceedings for determination of just compensation.

The DAR found untenable petitioner's position that the basis of valuation should be the guidelines issued under DAR Administrative Order (AO) No. 5, series of 1998 and findings of the ocular inspection. It said that to do so would contravene the Supreme Court's declaration in Land Bank of the Philippines v. Court of Appeals that any formula or guidelines promulgated by the bank is a violation of due process of the Constitution.

When the DAR denied its motion for reconsideration, petitioner instituted before the Special Agrarian Court (SAC) determination of just compensation. The SAC found for DAR, and denied LBP's subsequent motion for reconsideration. The CA affirmed the SAC computation.

ISSUE:

Whether or not the court of appeals erred in affirming the trial court's decision in which a computation and separate compensation was made for certain portions of the subject landholdings not separately compensable under pertinent DAR Policy Regulations Implementing Section 17, in relation to section 49, of the CARP law

RULING:

The petition is partly meritorious.

Under Section 1 of Executive Order No. 405, series of 1990, petitioner LBP is charged with the initial responsibility of determining the value of lands placed under land reform and the just compensation to be paid for their taking. Through a notice of voluntary offer to sell (VOS) submitted by the landowner, accompanied by the required documents, the DAR evaluates the application and determines the land's suitability for agriculture. The LBP likewise reviews the application and the supporting documents and determines the valuation of the land. Thereafter, the DAR issues the Notice of Land Valuation to the landowner. In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a

summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court.

The LBP's valuation of lands covered by CARL is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a Special Agrarian Court, that should make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of R.A. No. 6657 and the applicable DAR regulations.

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

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

In Land Bank of the Philippines v. Celada we held that the above provision is implemented by DAR AO No. 5, series of 1998, thus:

> While SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making powers under Section 49 of RA No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. DAR AO No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. The SAC was at no liberty to disregard the formula which was devised to implement the said provision.

In the case at bar, while the SAC found the formula provided in DAR AO No. 5 applicable in determining the amount of just compensation, it disagreed with petitioner on the correct amount of Selling Price (SP) of palay and valuation of the irrigation canal and road. Petitioner contends that as a result of the erroneous application of DAR AO No. 5 by the SAC and CA, the amount of compensation had tremendously and unduly increased from P4,669,259.92 to P6,293,635.50. The difference of P1,624,375.58 would definitely be hurtful to the State's Agrarian Reform Fund, of which petitioner is a mere custodian or trustee.

Item II of DAR AO No. 5 provides the following guidelines:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:
LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)
Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration
The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:
LV = (CNI x 0.9) + (MV x 0.1)

x x x x

A.7 In all of the above, the computed value using the applicable formula shall in no case exceed the LO's offer in case of VOS.
The LO's offer shall be grossed up from the date of offer up to the date of receipt of CF by LBP from DAR.

A.8 For purposes of this Administrative Order, the date of receipt of CF by LBP from DAR shall mean the date when the CF is determined by the LBP-LVLCO to be complete with all the required documents and valuation inputs duly verified and validated, and ready for final computation/processing.

x x x x

B. Capitalized Net Income (CNI)-- This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%
Expressed in equation form:

$$CNI = \frac{(AGP \times SP) - CO}{0.12}$$

Where: CNI = Capitalized Net Income
AGP = Annual Gross Production corresponding to the latest available 12-months' gross production immediately preceding the date of FI.
SP = The average of the latest available 12-months' selling prices prior to the date of receipt of the CF by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered for the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

x x x x

B.1 Industry data on production, cost of operations and selling price shall be obtained from government/private entities. Such entities shall include, but not [be] limited to, the Department of Agriculture (DA), the Sugar Regulatory Authority (SRA), the Philippine Coconut Authority (PCA) and other private persons/entities knowledgeable in the concerned industry.

B.2 The landowner shall submit a statement of net income derived from the land subject of acquisition. This shall include, among others, total production and cost of operations on a per crop basis, selling price/s (farm gate) and such other data as may be required. These data shall be validated/verified by the Department of Agrarian Reform and Land Bank of the Philippines field personnel. The actual tenants/farmworkers of the subject property will be primary source of information for purposes of verification or, if not available, the tenants/farmworkers of adjoining property.
In case of failure by the landowner to submit the statement within fifteen (15) days from the date of receipt of letter-request as certified by the Municipal Agrarian Reform Office (MARO) or the data stated therein cannot be verified/validated, DAR and LBP may adopt any applicable industry data or, in the absence thereof, conduct an industry study on the specific crop which will be used in determining the production, cost and net income of the subject landholding.

x x x x

D. In the Computation of Market Value per Tax Declaration (MV), the most recent tax Declaration (TD) and Schedule of Unit Market Values (SUMV) issued prior to receipt of CF by LBP shall be considered. The Unit Market Value (UMV) shall be grossed up from the date of its effectivity up to the date of receipt of CF by LBP from DAR for processing, in accordance with item II.A.9.

x x x x

E. Valuation of Improvements (non-crop) shall be undertaken by LBP.
F. The landowner shall not be compensated or paid for improvements introduced by third parties such as the government, farmer-beneficiaries or others.
x x x x

There being no available information on Comparable Sales (CS), the applicable formula is LV = (CNI x 0.90) + (MV per TD x 0.10). To determine the CNI in this case, the LBP gathered the necessary data on annual gross production (AGP), selling price (SP) of palay, net income rate and land use.

As clearly stated in DAR AO No. 5, the SP for purposes of computing the CNI, must be the average of the latest available 12-months selling prices prior to the date of receipt of the claim folder by LBP, to be secured from the DA, Bureau of Agricultural Statistics or other appropriate regulatory bodies. Thus, the selling price of P9.00 submitted by private respondent sourced from the NFA (March-August and September-February without indicating the year) and private buyer (March and October 2001) cannot be used as it was not the average obtained within the period referred to in DAR AO No. 5 (My 2000 to May 2001). Besides, such selling price was gathered from Santiago City and not the Municipality of Ramon where the properties are located, contrary to DAR AO No. 5. Said provision also states that the data from the province or region may be used only in the absence of selling prices from the municipality or barangay.

Compensating the land upon which those improvements were built is consistent with the principle that the equitable distribution and ownership of land sought to be achieved through CARP is undertaken "with due regard to the rights of landowners to *just compensation*" Petitioner's interpretation of Item II.F of DAR AO No. 5 would only lead to absurd and unjust consequences for the landowner whose landholding - a substantial portion thereof — is not being covered by the CARP and yet, the landowner is deprived of its use while the farmer-beneficiaries benefit from the present improvements (irrigation canal and road) on the property taken. Hence, we fully agree with the private respondent in arguing that:

Verily, Petitioner's suggestion that Metraco should not be compensated for the canal and road that are being used by the farmer-tillers notwithstanding that the same are already registered in the name of the Republic of the Philippines is dangerous as it would be tantamount to taking private property without due process of law and without payment of just compensation in violation of the constitution.

We must stress, at this juncture, that the taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding. In a number of cases, we have stated that just compensation in expropriation proceedings represents the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. To compensate is to render something which is equal in value to that taken or received

APO FRUITS CORPORATION v. LAND BANK OF THE PHILIPPINES
G.R. No. 164195. April 5, 2011, EN BANC (Brion, J.)

Petitioners voluntarily offered to sell their lands to the government under Republic Act 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL). Government took petitioners' lands on December 9, 1996. Land Bank valued the properties atP165,484.47 per hectare, but AFC-HPI rejected the offer of that amount. Consequently, on instruction of the Department of Agrarian Reform (DAR), Land Bank deposited for AFC and HPI P26,409,549.86 and P45,481,706.76, respectively, or a total of P71,891,256.62. Upon revaluation of the expropriated properties, Land Bank eventually made additional deposits, placing the total amount paid at P411,769,168.32 (P71,891,256.62 + P339,877,911.70), an increase of nearly five times.

Both petitioners withdrew the amounts. Still, they filed separate complaints for just compensation with the DAR Adjudication Board (DARAB), where it was dismissed, after three years, for lack of jurisdiction. Petitioners filed a case with the RTC for the proper determination of just compensation.

The RTC ruled in favor of petitioners fixing the valuation of petitioners' properties at P103.33/sq.m with 12% interest plus attorney's fees. Respondents appealed to the Third Division of the Supreme Court where the RTC ruling was upheld. Upon motion for reconsideration, the Third Division deleted the award of interest and attorney's fees and entry of judgment was issued. The just compensation of which was only settled on May 9, 2008. Petitioners filed a second motion for reconsideration with respect to denial of award of legal interest and attorney's fees and a motion to refer the second motion to the Court En Banc and was granted accordingly, restoring in toto the ruling of the RTC. Respondent filed their second motion for reconsideration as well for holding of oral arguments with the Motion for Leave to Intervene and to admit for Reconsideration in-Intervention by the Office of the Solicitor General in behalf of the Republic of the Philippines.

ISSUES:

1. Whether or not the "transcendental importance" does not apply to the present case.
2. Whether or not the standard of "transcendental importance" cannot justify the negation of the doctrine of immutability of a final judgment and the abrogation of a vested right in favor of the Government that respondent LBP represents.
3. Whether or not the Honorable Court ignored the deliberations of the 1986 Constitutional Commission showing that just compensation for expropriated agricultural property must be viewed in the context of social justice.

RULING:

1. No. The present case goes beyond the private interests involved; it involves a matter of public interest – the proper application of a basic constitutionally-guaranteed right, namely, the right of a landowner to receive just compensation when the government exercises the power of eminent domain in its agrarian reform program.

Section 9, Article III of the 1987 Constitution expresses the constitutional rule on eminent domain – "Private property shall not be taken for public use without just compensation." While confirming the State's inherent power and right to take private property for public use, this provision at the same time lays down the limitation in the exercise of this power. When it takes property pursuant to

its inherent right and power, the State has the corresponding obligation to pay the owner just compensation for the property taken. For compensation to be considered "just," it must not only be the full and fair equivalent of the property taken; it must also be paid to the landowner without delay.

2. No. The doctrine "transcendental importance," contrary to the assertion it is applicable only to legal standing questions, is justified in negating the doctrine of immutability of judgment. It will be a very myopic reading of the ruling as the context clearly shows that the phrase "transcendental importance" was used only to emphasize the overriding public interest involved in this case. The Supreme Court said in their resolution:

That the issues posed by this case are of transcendental importance is not hard to discern from these discussions. A constitutional limitation, guaranteed under no less than the all-important Bill of Rights, is at stake in this case: how can compensation in an eminent domain case be "just" when the payment for the compensation for property already taken has been unreasonably delayed? To claim, as the assailed Resolution does, that only private interest is involved in this case is to forget that an expropriation involves the government as a necessary actor. It forgets, too, that under eminent domain, the constitutional limits or standards apply to government who carries the burden of showing that these standards have been met. Thus, to simply dismiss the case as a private interest matter is an extremely shortsighted view that this Court should not leave uncorrected.

x x x x

More than the stability of our jurisprudence, the matter before us is of transcendental importance to the nation because of the subject matter involved – agrarian reform, a societal objective of that the government has unceasingly sought to achieve in the past half century.

From this perspective, the court demonstrated that the higher interests of justice are duly served.

3. Yes. In fact, while a proposal was made during the deliberations of the 1986 Constitutional Commission to give a lower market price per square meter for larger tracts of land, the Commission never intended to give agricultural landowners less than just compensation in the expropriation of property for agrarian reform purposes.

[N]othing is inherently contradictory in the public purpose of land reform and the right of landowners to receive just compensation for the expropriation by the State of their properties. That the petitioners are corporations that used to own large tracts of land should not be taken against them. As Mr. Justice Isagani Cruz eloquently put it:

[S]ocial justice – or any justice for that matter – is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.

JEROME JAPSON v. CIVIL SERVICE COMMISSION
G.R. No. 189479. April 12, 2011, EN BANC, (Nachura, J.)

Macario Catipon Jr. (Petitioner), though lacking 1.5 units in Military Science, was allowed to join the graduation ceremonies for B.S. Criminology students of the Baguio Colleges Foundation, with a restriction that he must cure the deficiency before he can be considered a graduate. He joined the Social Security System in 1985. In September, 1993, he took the Civil Service Professional Examination (CSPE) on the belief that the Civil Service Commission still allowed CSPE applicants to substitute length of service government service for any academic deficiency they may have, unaware that in January, 1993, the CSC had issued Civil Service Commission Memorandum Circular No. 42, Series of 1991 and Office Memo. No. 63, Series of 1992 which discontinued the policy. He took the CSPE tests on October 17, 1993, obtained a rating of 80.52% and was later promoted to Senior Analyst and OIC Branch Head of the SSS. He completed his 1.5 units deficiency in Military Science in 1995.

In March, 2003, Jerome Japson (respondent) filed a letter-complaint with the CSC-CAR Regional Director, alleging that Macario made deliberate false entries in his CSPE application, by stating therein that he graduated in 1993, when he actually graduated only in 1995 after removing his deficiency in Military Science. As a non-graduate in 1993, Macario was not qualified to take the CSPE examination, thus Macario was charged with Dishonesty, Falsification of Official documents, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service by the CSC-CAR after preliminary investigation. In his Answer, Macario alleged good faith, lack of malice and honest mistake; he alleged that he was of the honest belief that length of service may substitute academic deficiency in taking the CSPE exam.

The CSC-CAR Regional Director, noting that all the entries in the application form submitted by Macario for the CSPE exam were typewritten, except for the entries on "Year Graduated", "School Where Graduated", and "Degree Finished" ruled that Macario consciously drafted the application form and meticulously prepared it before submitting to the CSC. But the pre-drafted application form showed Macario's confusion as to how the entries should be filled up; in sum, the CSC-CAR Regional Director noted, Macario had tried to show the real state of his educational attainment, mitigating his liability, and did not show a blatant disregard of an established rule or a clear intent to violate the law. Thus, the Regional Director exonerated him on all charges except as to the charge for Conduct Prejudicial to the Best Interest of the Service, where he was found guilty and penalized with suspension of six months and one to one year. Macario appealed to the Civil Service Commission, after his motion for reconsideration was denied by the CSC-CAR Regional Director.

To forestall his impending suspension, Macario filed a Petition for Review to assail the CSC-CAR Regional Director's ruling, which the Court of Appeals denied. It ruled that instead of filing a Petition for Review directly with the CA, Macario should have interposed an appeal to the Civil Service Commission pursuant to Sections 5(A)(1), 43 and 49 of the CSC Uniform Rules on Administrative Cases; by filing the petition directly with the CA, Macario violated the doctrine of exhaustion of administrative remedies; the absence of deliberate intent or willful desire to defy or disregard established rules or norms in the service does not preclude a finding of guilt for conduct prejudicial to the best interest of the service; and that petitioner did not act with prudence and care, but instead was negligent, in the filling up of his CSPE application form and in failing to verify beforehand the requirements for the examination. Macario elevated the case to the Supreme Court. He argues that he filed the petition for review in view of his imminent suspension, and to prevent serious injury and damage to him; that he should be completely exonerated from the charges against him, since conduct prejudicial to the best interest of the service must be accompanied by deliberate intent or a willful desire to defy or disregard established rules or norms in the service – which is absent in his case; and that his career service

professional eligibility should not be revoked in the interest of justice and in the spirit of the policy which promotes and preserves civil service eligibility.

ISSUES:

1. Whether or not Macario violated the doctrine of exhaustion of administrative remedies
2. Whether or not Macario should be held liable for conduct prejudicial to the best interest of the service.

RULING:

The Court denies the Petition.

Our fundamental law, particularly Sections 2 (1) and 3 of Article DC-B, state that –

> Section 2. (1) The civil service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters.
>
> Section 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

Thus, "the CSC, as the central personnel agency of the Government, has jurisdiction over disputes involving the removal and separation of all employees of government branches, subdivisions, instrumentalities and agencies, including government-owned or controlled corporations with original charters. Simply put, it is the sole arbiter of controversies relating to the civil service."

In line with the above provisions of the Constitution and its mandate as the central personnel agency of government and sole arbiter of controversies relating to the civil service, the CSC adopted Memorandum Circular No. 19, series of 1999 (MC 19), or the Revised Uniform Rules on Administrative Cases in the Civil Service, which the CA cited as the basis for its pronouncement. Section 4 thereof provides:

> Section 4. Jurisdiction of the Civil Service Commission. — The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal, including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.

Except as otherwise provided by the Constitution or by law, the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees.

As pointed out by the CA, pursuant to Section 5(A)(1) of MC 19, the Civil Service Commission Proper, or Commission Proper, shall have jurisdiction over decisions of Civil Service Regional Offices

brought before it on petition for review. And under Section 43, "decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen days from receipt thereof."

"Commission Proper" refers to the Civil Service Commission-Central Office.

It is only the decision of the Commission Proper that may be brought to the CA on petition for review, under Section 50 of MC 19, which provides thus:

> Section 50. Petition for Review with the Court of Appeals. – A party may elevate a decision of the Commission before the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Revised Rules of Court.

Thus, we agree with the CA's conclusion that in filing his petition for review directly with it from the CSC-CAR Regional Director, petitioner failed to observe the principle of exhaustion of administrative remedies. As correctly stated by the appellate court, non-exhaustion of administrative remedies renders petitioner's CA petition premature and thus dismissible.

The doctrine of exhaustion of administrative remedies requires that "before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies.

Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case." Indeed, the administrative agency concerned – in this case the Commission Proper – is in the "best position to correct any previous error committed in its forum."

The CA is further justified in refusing to take cognizance of the petition for review, as "[t]he doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence." When petitioner's recourse lies in an appeal to the Commission Proper in accordance with the procedure prescribed in MC 19, the CA may not be faulted for refusing to acknowledge petitioner before it.

We likewise affirm the CA's pronouncement that petitioner was negligent in filling up his CSPE application form and in failing to verify beforehand the specific requirements for the CSPE examination. Petitioner's claim of good faith and absence of deliberate intent or willful desire to defy or disregard the rules relative to the CSPE is not a defense as to exonerate him from the charge of conduct prejudicial to the best interest of the service; under our legal system, ignorance of the law excuses no one from compliance therewith. Moreover, petitioner – as mere applicant for acceptance into the professional

service through the CSPE – cannot expect to be served on a silver platter; the obligation to know what is required for the examination falls on him, and not the CSC or his colleagues in office. As aptly ruled by the appellate court:

> In *Bacaya v. Ramos*, the Supreme Court found respondent judge guilty of both negligence and conduct prejudicial to the best interest of the service when he issued an arrest warrant despite the deletion of the penalty of imprisonment imposed on an accused in a particular criminal case. Respondent judge in the said case claimed that the issuance of the warrant was a mistake, done in good faith and that it has been a practice in his office for the Clerk of Court to study motions and that he would simply sign the prepared order. The Supreme Court rejected his defense and stated that negligence is the failure to observe such care as a reasonably prudent and careful person would use under ordinary circumstances. An act of the will is necessary or deliberate intent to exist; such is not necessary in an act of negligence.

Here, petitioner failed to verify the requirements before filing his application to take the CSPE exam. He simply relied on his prior knowledge of the rules, particularly, that he could substitute his deficiency in Military Science with the length of his government service. He cannot lay blame on the personnel head of the SSS-Bangued, Abra, who allegedly did not inform him of the pertinent rules contained in Civil Service Memorandum Circular No. 42, Series of 1991. For, [if] he were truly a reasonably prudent and careful person, petitioner himself should have verified from the CSC the requirements imposed on prospective examinees. In so doing, he would certainly have been informed of the new CSC policy disallowing substitution of one's length of government service for academic deficiencies. Neither should petitioner have relied on an unnamed Civil Service employee's advice since it was not shown that the latter was authorized to give information regarding the examination nor that said employee was competent and capable of giving correct information. His failure to verify the actual CSPE requirements which a reasonably prudent and careful person would have done constitutes negligence. Though his failure was not a deliberate act of the will, such is not necessary in an act of negligence and, as in Bacaya, negligence is not inconsistent with a finding of guilt for conduct prejudicial to the best interest of the service.

The corresponding penalty for conduct prejudicial to the best interest of the service may be imposed upon an erring public officer as long as the questioned act or conduct taints the image and integrity of the office; and the act need not be related to or connected with the public officer's official functions. Under our civil service laws, there is no concrete description of what specific acts constitute conduct prejudicial to the best interest of the service, but the following acts or omissions have been treated as such: misappropriation of public funds; abandonment of office; failure to report back to work without prior notice; failure to safekeep public records and property; making false entries in public documents; falsification of court orders; a judge's act of brandishing a gun, and threatening the complainants during a traffic altercation; a court interpreter's participation in the execution of a document conveying complainant's property which resulted in a quarrel in the latter's family; selling fake Unified Vehicular Volume Program exemption cards to his officemates during office hours; a CA employee's forging of receipts to avoid her private contractual obligations; a Government Service Insurance System (GSIS) employee's act of repeatedly changing his IP address, which caused network problems within his office and allowed him to gain access to the entire GSIS network, thus putting the system in a vulnerable state of security;11 a public prosecutor's act of signing a motion to dismiss that was not prepared by him, but by a judge; and a teacher's act of directly selling a book to her students in violation of the Code of Ethics for Professional Teachers.

In petitioner's case, his act of making false entries in his CSPE application undoubtedly constitutes conduct prejudicial to the best interest of the service; the absence of a willful or deliberate intent to falsify or make dishonest entries in his application is immaterial, for conduct grossly prejudicial to the best interest of the service "may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules."

Finally, the Court cannot consider petitioner's plea that "in the interest of justice and in the spirit of the policy which promotes and preserves civil service eligibility," his career service professional eligibility should not be revoked. The act of using a fake or spurious civil service eligibility for one's benefit not only amounts to violation of the civil service examinations or CSPE; it also results in prejudice to the government and the public in general. It is a transgression of the law which has no place in the public service. "Assumption of public office is impressed with the paramount public interest that requires the highest standards of ethical conduct. A person aspiring for public office must observe honesty, candor, and faithful compliance with the law. Nothing less is expected."

CAYETANO *v.* COMELEC
G.R. No. 193846, April 12, 2011, EN BANC (Nachura, J.)

In the automated national and local elections held on May 10, 2010, petitioner and private respondent were candidates for the position of Mayor of Taguig City. Petitioner was proclaimed the winner thereof, receiving a total of 95,865 votes as against the 93,445 votes received by private respondent.

The private respondent filed an Election Protest against petitioner before the COMELEC for allegedly committing election frauds and irregularities which translated to the latter's ostensible win as Mayor of Taguig City. On the whole, private respondent claims that he is the actual winner of the mayoralty elections in Taguig City.

In the petitioner's Answer with Counter-Protest and Counterclaim, she raised, among others, the affirmative defense of insufficiency in form and content of the Election Protest and prayed for the immediate dismissal thereof. However, it was denied by the COMELEC.

ISSUE:

Whether or not the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to dismiss the protest of private respondent for insufficiency in form and content.

RULING:

The petition is denied.

The general rule is that a decision or an order of a COMELEC Division cannot be elevated directly to this Court through a special civil action for certiorari. Furthermore, a motion to reconsider a decision, resolution, order, or ruling of a COMELEC Division shall be elevated to the COMELEC En Banc. However, a motion to reconsider an interlocutory order of a COMELEC Division shall be resolved by the division which issued the interlocutory order, except when all the members of the division decide to refer the matter to the COMELEC En Banc. Thus, in general, interlocutory orders of a COMELEC Division are not appealable, nor can they be proper subject of a petition for certiorari. This does not mean that the aggrieved party is without recourse if a COMELEC Division denies the motion for reconsideration. The aggrieved party can still assign as error the interlocutory order if in the course of the proceedings he decides to appeal the main case to the COMELEC En Banc. The exception enunciated is when the interlocutory order of a COMELEC Division is a patent nullity because of absence of jurisdiction to issue the interlocutory order, as where a COMELEC Division issued a temporary restraining order without a time limit, or where a COMELEC Division admitted an answer with counter-protest which was filed beyond the reglementary period.

The Court has no jurisdiction to review an order, whether final or interlocutory, even a final resolution of a division of the COMELEC. Stated otherwise, the Court can only review via certiorari a decision, order, or ruling of the COMELEC en banc. In short, the final order of the COMELEC (Second Division) denying the affirmative defenses of petitioner cannot be questioned before this Court even via a petition for certiorari. Although the rule admits of exceptions as when the issuance of the assailed interlocutory order is a patent nullity because of the absence of jurisdiction to issue the same. However, none of the circumstances permitting an exception to the rule occurs in this instance.

In addition to that, certiorari will not lie in this case. The issuance of a special writ of certiorari has two prerequisites: (1) a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (2) there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

Although it is not the duty of the Court to point petitioner, or all litigants for that matter, to the appropriate remedy which she should have taken. The aggrieved party can still assign as error the interlocutory order if in the course of the proceedings he decides to appeal the main case to the COMELEC En Banc. moreover, the protest filed by private respondent and the counter-protest filed by petitioner remain pending before the COMELEC, which should afford petitioner ample opportunity to ventilate her grievances. Thereafter, the COMELEC should decide these cases with dispatch. THEREFORE, the petition is dismissed.

PHILIPPINE CHARITY SWEEPSTAKES OFFICE and MARTIN v. LAPID
G.R. No. 191940, April 12, 2011, EN BANC (Mendoza, J.)

An administrative complaint was filed against the Respondent for allegedly confronting, badmouthing and shouting invectives at Mr. Guemo, in the presence of other employees and seeking assistance from the PSCO. The PCSO Board of Directors found her guilty of discourtesy in the course of official duties and grave misconduct and imposed on her the penalty of dismissal from service.

On appeal with the CSC, the Commission dismissed the respondent's appeal for being moot and academic. Moreover, they ruled that the respondent is a casual employee which means that she is not entitled to security of tenure. However, the CA reversed the decision of the Commission by reinstating the respondent in the service until the expiration of her casual employment.

ISSUE:

Whether or not the CA gravely erred in granting the respondent's petition, in effect, reversing the CSC's resolutions.

RULING:

The petition is denied.

A new ruling recognizes that casual employees are covered by the security of tenure and cannot be terminated within the period of his employment except for cause. Despite this new ruling, it is not the intention of the Court to make the status of a casual employee at par with that of a regular employee, who enjoys permanence of employment. The rule is still that casual employment will cease automatically at the end of the period unless renewed as stated in the Plantilla of Casual Employment. Casual employees may also be terminated anytime though subject to certain conditions or qualifications. Thus, they may be laid-off anytime before the expiration of the employment period provided any of the following occurs:(1) when their services are no longer needed; (2) funds are no longer available; (3) the project has already been completed/finished; or (4) their performance are below par.

Equally important, they are entitled to due process especially if they are to be removed for more serious causes or for causes other than the reasons mentioned in CSC Form No. 001. The reason for this is that their termination from the service could carry a penalty affecting their rights and future employment in the government.

In the case at bench, the CSC itself found that Lapid was denied due process as she was never formally charged with the administrative offenses of Discourtesy in the Course of Official Duties and Grave Misconduct, for which she was dismissed from the service. To somehow remedy the situation, the petitioners mentioned in their Memorandum before the CA that there was no reason anymore to pursue the administrative charge against Lapid and to investigate further as this was superseded by Memorandum dated September 14, 2005 recommending the termination of respondent Lapid's casual employment. They pointed out that this was precisely the reason why no Formal Charge was issued. Clearly, the action of petitioners clearly violated Lapid's basic rights as a casual employee.

Therefore, the petition is denied and the respondent is allowed to continue rendering services as teller of PCSO and is also entitled to payment of backwages.

REPUBLIC OF THE PHILIPPINES v. SANDIGANBAYAN, et al.
G.R. No. 166859, G.R. No. 169203 & G.R. No. 180702, April 12, 2011, EN BANC (Bersamin, *J.*)

The Republic commenced a civil case in the Sandiganbayan by complaint, impleading as defendants respondent Eduardo M. Cojuangco, Jr. (Cojuangco) and 61 individual defendants.

More than three years later, on August 23, 1991, the Republic once more amended the complaint apparently to avert the nullification of the writs of sequestration issued against properties of Cojuangco, and impleaded in addition to Cojuangco, President Marcos, and First Lady Imelda R. Marcos nine other individuals, namely: Edgardo J. Angara, Jose C. Concepcion, Avelino V. Cruz, Eduardo U. Escueta, Paraja G. Hayudini, Juan Ponce Enrile, Teodoro D. Regala, and Rogelio Vinluan, collectively, the ACCRA lawyers, and Danilo Ursua, and 71 corporations.

On March 24, 1999, the Sandiganbayan allowed the subdivision of the complaint into eight complaints, each pertaining to distinct transactions and properties and impleading as defendants only the parties alleged to have participated in the relevant transactions or to have owned the specific properties involved.

This was in order to recover ill-gotten wealth in relation with the coco levy fund. The defendants all were connected to the use and distribution of the said coco levy funds.

Cojuangco, *et al.* moved for the modification of the resolution, praying for the deletion of the conditions for allegedly restricting their rights. The Republic also sought reconsideration of the resolution.

Eventually, on June 24, 2005, the Sandiganbayan denied both motions, but reduced the restrictions.

ISSUE:

Whether or not coconut levy funds are public funds. the SMC shares, which were acquired by respondents Cojuangco, Jr. and the Cojuangco companies with the use of coconut levy funds - in violation of respondent Cojuangco, Jr.'s fiduciary obligation - are, necessarily, public in character and should be reconveyed to the government.

RULING:

The first official issuance of President Aquino, which was made on February 28, 1986, or just two days after the EDSA Revolution, was Executive Order (E.O.) No. 1, which created the Presidential Commission on Good Government (PCGG). Ostensibly, E.O. No. 1 was the first issuance in light of the EDSA Revolution having come about mainly to address the pillage of the nation's wealth by President Marcos, his family, and cronies.

E.O. No. 1 contained only two WHEREAS Clauses, to wit:

> WHEREAS, vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;

WHEREAS, there is an urgent need to recover all ill-gotten wealth;

Paragraph (4) of E.O. No. 2 further required that the wealth, to be ill-gotten, must be "acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines."

Although E.O. No. 1 and the other issuances dealing with ill-gotten wealth (i.e., E.O. No. 2, E.O. No. 14, and E.O. No. 14-A) only identified the subject matter of ill-gotten wealth and the persons who could amass ill-gotten wealth and did not include an explicit definition of ill-gotten wealth, we can still discern the meaning and concept of ill-gotten wealth from the WHEREAS Clauses themselves of E.O. No. 1, in that ill-gotten wealth consisted of the "vast resources of the government" amassed by "former President Ferdinand E. Marcos, his immediate family, relatives and close associates both here and abroad." It is clear, therefore, that ill-gotten wealth would not include all the properties of President Marcos, his immediate family, relatives, and close associates but only the part that originated from the "vast resources of the government."

In time and unavoidably, the Supreme Court elaborated on the meaning and concept of ill-gotten wealth. In Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government, or BASECO, for the sake of brevity, the Court held that:

> xxx until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.

The BASECO definition of ill-gotten wealth was reiterated in Presidential Commission on Good Government v. Lucio C. Tan, where the Court said:

> On this point, we find it relevant to define "ill-gotten wealth." In Bataan Shipyard and Engineering Co., Inc., this Court described "ill-gotten wealth" as follows:
>
> > "Ill-gotten wealth is that acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdiction."

Concerning respondents' shares of stock here, there is no evidence presented by petitioner that they belong to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions. Nor is there evidence that respondents, taking undue advantage of their

connections or relationship with former President Marcos or his family, relatives and close associates, were able to acquire those shares of stock.

Incidentally, in its 1998 ruling in Chavez v. Presidential Commission on Good Government, the Court rendered an identical definition of ill-gotten wealth, viz:

> xxx. We may also add that `ill-gotten wealth', by its very nature, assumes a public character. Based on the aforementioned Executive Orders, `ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influence or relationships, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." Clearly, the assets and properties referred to supposedly originated from the government itself. To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.

All these judicial pronouncements demand two concurring elements to be present before assets or properties were considered as ill-gotten wealth, namely: (a) they must have "originated from the government itself," and (b) they must have been taken by former President Marcos, his immediate family, relatives, and close associates by illegal means.

But settling the sources and the kinds of assets and property covered by E.O. No. 1 and related issuances did not complete the definition of ill-gotten wealth. The further requirement was that the assets and property should have been amassed by former President Marcos, his immediate family, relatives, and close associates both here and abroad. In this regard, identifying former President Marcos, his immediate family, and relatives was not difficult, but identifying other persons who might be the close associates of former President Marcos presented an inherent difficulty, because it was not fair and just to include within the term close associates everyone who had had any association with President Marcos, his immediate family, and relatives.

Again, through several rulings, the Court became the arbiter to determine who were the close associates within the coverage of E.O. No. 1.

In Republic v. Migriño, the Court held that respondents Migriño, et al. were not necessarily among the persons covered by the term close subordinate or close associate of former President Marcos by reason alone of their having served as government officials or employees during the Marcos administration, viz:

> It does not suffice, as in this case, that the respondent is or was a government official or employee during the administration of former Pres. Marcos. There must be a prima facie showing that the respondent unlawfully accumulated wealth by virtue of his close association or relation with former Pres. Marcos and/or his wife. This is so because

otherwise the respondent's case will fall under existing general laws and procedures on the matter. x x x

It is well to point out, consequently, that the distinction laid down by E.O. No. 1 and its related issuances, and expounded by relevant judicial pronouncements unavoidably required competent evidentiary substantiation made in appropriate judicial proceedings to determine: (a) whether the assets or properties involved had come from the vast resources of government, and (b) whether the individuals owning or holding such assets or properties were close associates of President Marcos. The requirement of competent evidentiary substantiation made in appropriate judicial proceedings was imposed because the factual premises for the reconveyance of the assets or properties in favor of the government due to their being ill-gotten wealth could not be simply assumed. Indeed, in BASECO, the Court made this clear enough by emphatically observing:

6. Government's Right and Duty to Recover All Ill-gotten Wealth

There can be no debate about the validity and eminent propriety of the Government's plan "to recover all ill-gotten wealth."

Neither can there be any debate about the proposition that assuming the above described factual premises of the Executive Orders and Proclamation No. 3 to be true, to be demonstrable by competent evidence, the recovery from Marcos, his family and his minions of the assets and properties involved, is not only a right but a duty on the part of Government.

But however plain and valid that right and duty may be, still a balance must be sought with the equally compelling necessity that a proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise which are deemed pillars of a free society such as ours, and to which all members of that society may without exception lay claim.

xxx Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. Along with these freedoms are included economic freedom and freedom of enterprise within reasonable bounds and under proper control. xxx Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country.

Consequently, the factual premises of the Executive Orders cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated; although there are some who maintain that the fact -- that an immense fortune, and "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad," and they have resorted to all sorts of clever

> schemes and manipulations to disguise and hide their illicit acquisitions -- is within the realm of judicial notice, being of so extensive notoriety as to dispense with proof thereof. Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in Executive Order No. 14.

Accordingly, the Republic should furnish to the Sandiganbayan in proper judicial proceedings the competent evidence proving who were the close associates of President Marcos who had amassed assets and properties that would be rightly considered as ill-gotten wealth.

LEAGUE OF CITIES OF THE PHIL., et al. v. COMELEC, et al.
G.R. No. 176951, 177499 7 & 178056, April 12, 2011, EN BANC (Bersamin, J.)

During the 11th Congress, Congress enacted into law 33 bills converting 33 municipalities into cities. However, Congress did not act on bills converting 24 other municipalities into cities.

During the 12th Congress, Congress enacted into law Republic Act No. 9009 (RA 9009), which took effect on 30 June 2001. RA 9009 amended Section 450 of the Local Government Code by increasing the annual income requirement for conversion of a municipality into a city from P20 million to P100 million. The rationale for the amendment was to restrain, in the words of Senator Aquilino Pimentel, "the mad rush" of municipalities to convert into cities solely to secure a larger share in the Internal Revenue Allotment despite the fact that they are incapable of fiscal independence.

After the effectivity of RA 9009, the House of Representatives of the 12th Congress adopted Joint Resolution No. 29, which sought to exempt from the P100 million income requirement in RA 9009 the 24 municipalities whose cityhood bills were not approved in the 11th Congress. However, the 12th Congress ended without the Senate approving Joint Resolution No. 29.

During the 13th Congress, the House of Representatives re-adopted Joint Resolution No. 29 as Joint Resolution No. 1 and forwarded it to the Senate for approval. However, the Senate again failed to approve the Joint Resolution. Following the advice of Senator Aquilino Pimentel, 16 municipalities filed, through their respective sponsors, individual cityhood bills. The 16 cityhood bills contained a common provision exempting all the 16 municipalities from the P100 million income requirement in RA 9009.

On 22 December 2006, the House of Representatives approved the cityhood bills. The Senate also approved the cityhood bills in February 2007, except that of Naga, Cebu which was passed on 7 June 2007. The cityhood bills lapsed into law (Cityhood Laws) on various dates from March to July 2007 without the President's signature.

The Cityhood Laws direct the COMELEC to hold plebiscites to determine whether the voters in each respondent municipality approve of the conversion of their municipality into a city.

Petitioners filed the present petitions to declare the Cityhood Laws unconstitutional for violation of Section 10, Article X of the Constitution, as well as for violation of the equal protection clause. Petitioners also lament that the wholesale conversion of municipalities into cities will reduce the share of existing cities in the Internal Revenue Allotment because more cities will share the same amount of internal revenue set aside for all cities under Section 285 of the Local Government Code.

ISSUE:

1. Whether the Cityhood Laws violate Section 10, Article X of the Constitution;

2. Whether the Cityhood Laws violate the equal protection clause.

RULING:

We grant the petitions.

The Cityhood Laws violate Sections 6 and 10, Article X of the Constitution, and are thus unconstitutional.

First, applying the P100 million income requirement in RA 9009 to the present case is a prospective, not a retroactive application, because RA 9009 took effect in 2001 while the cityhood bills became law more than five years later.

Second, the Constitution requires that Congress shall prescribe all the criteria for the creation of a city in the Local Government Code and not in any other law, including the Cityhood Laws.

Third, the Cityhood Laws violate Section 6, Article X of the Constitution because they prevent a fair and just distribution of the national taxes to local government units.

Fourth, the criteria prescribed in Section 450 of the Local Government Code, as amended by RA 9009, for converting a municipality into a city are clear, plain and unambiguous, needing no resort to any statutory construction.

Fifth, the intent of members of the 11th Congress to exempt certain municipalities from the coverage of RA 9009 remained an intent and was never written into Section 450 of the Local Government Code.

Sixth, the deliberations of the 11th or 12th Congress on unapproved bills or resolutions are not extrinsic aids in interpreting a law passed in the 13th Congress.

Seventh, even if the exemption in the Cityhood Laws were written in Section 450 of the Local Government Code, the exemption would still be unconstitutional for violation of the equal protection clause.

NAVARRO, et al. v. EXECUTIVE SECRETARY ERMITA
G.R. No. 180050, April 12, 2011, EN BANC (Nachura, *J.*)

Before us are two Motions for Reconsideration of the Decision dated February 10, 2010 − one filed by the Office of the Solicitor General (OSG) in behalf of public respondents, and the other filed by respondent Governor Geraldine Ecleo Villaroman, representing the Province of Dinagat Islands.

The arguments of the movants are similar. The grounds for reconsideration of Governor Villaroman can be subsumed under the grounds for reconsideration of the OSG, which are as follows:

I. The Province of Dinagat Islands was created in accordance with the provisions of the 1987 Constitution and the Local Government Code of 1991. Article 9 of the Implementing Rules and Regulations is merely interpretative of Section 461 of the Local Government Code.
II. The power to create a local government unit is vested with the Legislature. The acts of the Legislature and Executive in enacting into law RA 9355 should be respected as petitioners failed to overcome the presumption of validity or constitutionality.
III. Recent and prevailing jurisprudence considers the operative fact doctrine as a reason for upholding the validity and constitutionality of laws involving the creation of a new local government unit as in the instant case.

As regards the first ground, the movants reiterate the same arguments in their respective Comments that aside from the undisputed compliance with the income requirement, Republic Act (R.A.) No. 9355, creating the Province of Dinagat Islands, has also complied with the population and land area requirements.

The arguments are unmeritorious and have already been passed upon by the Court in its Decision, ruling that R.A. No. 9355 is unconstitutional, since it failed to comply with either the territorial or population requirement contained in Section 461 of R.A. No. 7160, otherwise known as the Local Government Code of 1991.

When the Dinagat Islands was proclaimed a new province on December 3,2006, it had an official population of only 106,951based on the2000 Census of Population conducted by the National Statistics Office (NSO), which population is short of the statutory requirement of 250,000 inhabitants.

Although the Provincial Government of Surigao del Norte conducted a special census of population in Dinagat Islands in 2003, which yielded a population count of 371,000, the result was not certified by the NSO as required by the Local Government Code. Moreover, respondents failed to prove that with the population count of 371,000, the population of the original unit (mother Province of Surigao del Norte) would not be reduced to less than the minimum requirement prescribed by law at the time of the creation of the new province.

Less than a year after the proclamation of the new province, the NSO conducted the2007Census of Population. The NSO certified that as of August 1, 2007,Dinagat Islands had a total population of only120,813,which was still below the minimum requirement of 250,000 inhabitants.

Based on the foregoing, R.A. No. 9355 failed to comply with the population requirement of 250,000 inhabitants as certified by the NSO.

Moreover, the land area of the province failed to comply with the statutory requirement of2,000 square kilometers. R.A. No. 9355 specifically states that the Province of Dinagat Islands contains an approximate land area of802.12 square kilometers. This was not disputed by the respondent Governor of the Province of Dinagat Islands in her Comment. She and the other respondents instead asserted that the province, which is composed of more than one island, is exempted from the land area requirement based on the provision in the Rules and Regulations Implementing the Local Government Code of 1991 (IRR), specifically paragraph 2 of Article 9which states that [t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands. The certificate of compliance issued by the Lands Management Bureau was also based on the exemption under paragraph 2, Article 9 of the IRR.

However, the Court held that paragraph 2 of Article 9 of the IRR is null and void, because the exemption is not found in Section 461 of the Local Government Code. There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.

The movants now argue that the correct interpretation of Section 461 of the Local Government Code is the one stated in the Dissenting Opinion of Associate Justice Antonio Eduardo B. Nachura.

In his Dissenting Opinion, Justice Nachura agrees that R.A. No. 9355 failed to comply with the population requirement. However, he contends that the Province of Dinagat Islands did not fail to comply with the territorial requirement because it is composed of a group of islands; hence, it is exempt from compliance not only with the territorial contiguity requirement, but also with the 2,000-square-kilometer land area criterion in Section 461 of the Local Government Code.

He argues that the whole paragraph on contiguity and land area in paragraph (a) (i) above is the one being referred to in the exemption from the territorial requirement in paragraph (b). Thus, he contends that if the province to be created is composed of islands, like the one in this case, then, its territory need not be contiguous and need not have an area of at least 2,000 square kilometers. He asserts that this is because as the law is worded, contiguity and land area are not two distinct and separate requirements, but they qualify each other. An exemption from one of the two component requirements in paragraph (a) (i) allegedly necessitates an exemption from the other component requirement, because the non-attendance of one results in the absence of a reason for the other component requirement to effect a qualification.

ISSUE:

Whether the correct interpretation of Section 461 of the Local Government Code is the one stated in the Dissenting Opinion of Associate Justice Antonio Eduardo B. Nachura.

RULING:

The Court is not persuaded.

General powers and attributes of local government units Section 7, Chapter 2 (entitled General Powers and Attributes of Local Government Units) of the Local Government Code provides:

SEC. 7. Creation and Conversion. As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income. It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population. It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) Land area. It must be contiguous, unless it comprises two (2) or more islands, or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).

It must be emphasized that Section 7 above, which provides for the general rule in the creation of a local government unit, states in paragraph (c)thereof that the land area must be contiguous and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Therefore, there are two requirements for land area:(1) the land area must be contiguous; and (2) the land area must be sufficient to provide for such basic services and facilities to meet the requirements of its populace. A sufficient land area in the creation of a province is at least 2,000 square kilometers, as provided by Section 461 of the Local Government Code .

Thus, Section 461 of the Local Government Code, providing the requisites for the creation of a province, specifically states the requirement of a contiguous territory of at least two thousand (2,000) square kilometers.

Hence, contrary to the arguments of both movants, the requirement of a contiguous territory and the requirement of a land area of at least 2,000square kilometers are distinct and separate requirements for land area under paragraph (a) (i) of Section 461 and Section 7 (c) of the Local Government Code.

However, paragraph (b) of Section 461 provides two instances of exemption from the requirement of territorial contiguity, thus:

(b)The territory need not be contiguous if it comprises two (2)or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province.

Contrary to the contention of the movants, the exemption above pertains only to the requirement of territorial contiguity. It clearly states that the requirement of territorial contiguity may be dispensed with in the case of a province comprising two or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province.

Nowhere in paragraph (b) is it expressly stated or may it be implied that when a province is composed of two or more islands, or when the territory of a province is separated by a chartered city or cities, such province need not comply with the land area requirement of at least 2,000 square kilometers or the requirement in paragraph (a) (i) of Section 461 of the Local Government Code.

Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated, nor construe its provisions by taking into account questions of expediency, good faith, practical utility and other similar reasons so as to relax non-compliance therewith. Where the law speaks in clear and categorical language, there is no room for interpretation, but only for application.

Moreover, the OSG contends that since the power to create a local government unit is vested with the Legislature, the acts of the Legislature and the Executive branch in enacting into law R.A. No. 9355 should be respected as petitioners failed to overcome the presumption of validity or constitutionality.

The contention lacks merit.

Section 10, Article X of the Constitution states:

> SEC. 10.No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, exception accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected

As the law-making branch of the government, indeed, it was the Legislature that imposed the criteria for the creation of a province as contained in Section 461 of the Local Government Code. No law has yet been passed amending Section 461 of the Local Government Code, so only the criteria stated therein are the bases for the creation of a province. The Constitution clearly mandates that the criteria in the Local Government Code must be followed in the creation of a province; hence, any derogation of or deviation from the criteria prescribed in the Local Government Code violates Section 10, Article X of the Constitution.

Contrary to the contention of the movants, the evidence on record proved that R.A. No. 9355 failed to comply with either the population or territorial requirements prescribed in Section 461 of the Local Government Code for the creation of the Province of Dinagat Islands; hence, the Court declared R.A. No. 9355 unconstitutional.

WHEREFORE, in view of the foregoing, the Motions for Reconsideration of the Decision dated February 10, 2010 are hereby DENIED for lack of merit.

PRESIDENTIAL AD-HOC FACT FINDING COMMITTEE ON BEHEST LOANS, etc. v. HONORABLE ANIANO A. DESIERTO, et al.
G.R. No. 135715. April 13, 2011, Second Division, (Carpio-Morales, J.)

President Ramos issued a Memorandum Order No.61 directing the Committee to include in its investigation, inventory and study all non-performing loans which shall embrace both behest and non-behest loans. The Committee reported that the Philippines Seeds, Inc. was one of the 21 corporations which obtained behest loans. In his instructions, handwritten on the cover of the aforementioned report, President Ramos directed Committee Chairman Magtanggol C. Guingundo to proceed with administrative and judicial actions against the 21 firms in this batch with positive findings as soon as possible. The Committee filed with the Ombudsman a sworn complaint against the Directors of PSI and the Directors of the Development Bank of the Philip pines who approved the loans for the violation of par. E & G of Sec.3 of R.A. 30 19. In its Resolution, the Ombudsman dismissed the complaint on the ground of prescription. Relying on the case of People vs. Dinsay, a case decided by the C.A.

ISSUE:

Whether or not the public respondent Ombudsman gravely abused his discretion in holding that the prescriptive period in this case should be counted from the date of the grant of the behest loans involved and not from the date of discovery of the same by the Committee.

RULING:

Petition granted.

We agree with the Ombudsman that Sec. 15 of Art. 11 of the Constitution apply to civil actions for recovery of ill-gotten wealth and not to criminal actions such as the complaint against the respected firms. This is clear from the proceedings of the Constitutional Commission of 1986. The upshot of the discussion is the prosecution of offense arising from, relating or incident to or involving ill-gotten wealth contemplated in Sec.15 Art.11 of the Constitution may be barred by prescription. The applicable rule in the computation of the prescriptive period is Sec.2 of Act. No.326 in the special law violated. It stated that if the commission of the crime is known, the prescriptive period shall commence to run on the day it was committed. In the case at bar, the Ombudsman forthwith dismissed the complaint without even requiring the respondents to submit their counter-affidavits and solely on the basis of dates the alleged behest loans were granted or the dates of the commission of the alleged offense was committed. Since the computation of the prescriptive period for the filing of the criminal actions should commence from the discovery of the offense, the Ombudsman clearly acted with grave abuse of discretion in dismissing outright the case.

PHILIPPINE NATIONAL RAILWAYS v. KANLAON CONSTRUCTION ENTERPRISES, CO., INC.
G.R. No. 182967. April 6, 2011, Second Division (Carpio, *J.*)

PNR and Kanlaon entered into contracts for the repair of three PNR station buildings and passenger shelters, By November 1990, Kanlaon alleged that it had already completed the three projects. On 30 June 1994, Kanlaon sent a demand letter to PNR requesting for the release of the retention money in the amount of P333,894.07.

PNR denied Kanlaon's demand because of the Notices of Suspension issued by the Commission on Audit (COA).

Kanlaon filed a complaint for collection of sum of money plus damages against PNR. In its amended complaint dated 17 August 1995, Kanlaon impleaded the COA.

In its answer, PNR admitted the existence of the three contracts but alleged that Kanlaon did not comply with the conditions of the contract. PNR also alleged that Kanlaon did not complete the projects and that PNR did not have any unpaid balance. PNR added that it had a valid ground to refuse the release of the retention money because of the COA orders suspending the release of payment to Kanlaon.

The RTC ruled in favour of Kanlaon. The CA affirmed the trial court's decision.

ISSUE:

Whether or not Kanlaon may recover from PNR.

RULING:

The Court notes that one of the reasons the COA issued the Notices of Suspension was because the contracts did not contain a Certificate of Availability of Funds as required under Sections 85 and 86 of Presidential Decree No. 1445. Kanlaon does not dispute the absence of a Certificate of Availability of Funds.

The Administrative Code of 1987, a more recent law, also contains the same provisions. Sections 46, 47, and 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987 provide:

SECTION 46. Appropriation Before Entering into Contract. –

1. No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; and

2. Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriations account.

> SECTION 47. Certificate Showing Appropriation to Meet Contract. -- Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.
>
> SECTION 48. Void Contract and Liability of Officer. -- Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties. (Emphasis supplied)

Thus, the Administrative Code of 1987 expressly prohibits the entering into contracts involving the expenditure of public funds unless two prior requirements are satisfied. First, there must be an appropriation law authorizing the expenditure required in the contract. Second, there must be attached to the contract a certification by the proper accounting official and auditor that funds have been appropriated by law and such funds are available. Failure to comply with any of these two requirements renders the contract void.

In several cases, the Court had the occasion to apply these provisions of the Administrative Code of 1987 and the Government Auditing Code of the Philippines. In these cases, the Court clearly ruled that the two requirements - the existence of appropriation and the attachment of the certification - are "conditions *sine qua non* for the execution of government contracts."

The law expressly declares void a contract that fails to comply with the two requirements, namely, an appropriation law funding the contract and a certification of appropriation and fund availability. The clear purpose of these requirements is to insure that government contracts are never signed unless supported by the corresponding appropriation law and fund availability.

The three contracts between PNR and Kanlaon do not comply with the requirement of a certification of appropriation and fund availability. Even if a certification of appropriation is not applicable to PNR if the funds used are internally generated, still a certificate of fund availability is required. Thus, the three contracts between PNR and Kanlaon are void.

However, Kanlaon is not left without recourse. The law itself affords it the remedy. Section 48 of the Administrative Code of 1987 provides that "the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties." Kanlaon could go after the officers who signed the contract and hold them personally liable.

YAP v. THENAMARIS SHIPS MANAGEMENT AND INTERMARE MARITIME AGENCIES, INC.
G.R. No. 179532, May 30, 2011, Second Division (Nachura, J.)

Petitioner was employed as an electrician of the vessel, M/T SEASCOUT by Intermare Maritime Agencies, Inc. in behalf of its principal, Vulture Shipping Limited. The contract was for 12 months. On 23 August 2001,Yap boarded M/T SEASCOUT and commenced his job as electrician. However, on or about 08 November 2001, the vessel was sold.

Yap received his seniority bonus, vacation bonus, extra bonus along with the scrapping bonus. However, he insisted that he was entitled to the payment of the unexpired portion of his contract since he was illegally dismissed from employment. He alleged that he opted for immediate transfer but none was made.

Respondents contended that Yap was not illegally dismissed. They further alleged that Yaps contract was validly terminated due to the sale of the vessel and no arrangement was made for Yaps transfer to Thenamaris other vessels.

Thus, Yap brought the issue before the Labor Arbiter (LA) which ruled that petitioner was illegally dismissed; that respondents acted in bad faith when they assured petitioner of re-embarkation but he was not able to board; and that petitioner was entitled to his salaries for the unexpired portion of his contract for a period of nine months (US$12,870.00), P100,000 for moral damages, and P50,000 for exemplary damages with 10% of the same for Attorney's fees.

Respondents sought recourse from the NLRC which modified the award of salaries from that corresponding to nine months to only three months (US$4,290.00) pursuant to Section 10 R.A. No. 8042.

Respondents and petitioner both filed a Motion for Partial Reconsideration.

NLRC affirmed the finding of Illegal Dismissal and Bad Faith on the part of respondent. However, the NLRC reversed its earlier Decision, holding that "there can be no choice to grant only 3 months salary for every year of the unexpired term because there is no full year of unexpired term which this can be applied."

Respondents filed an MR, which the NLRC denied. Undaunted, respondents filed a petition forcertiorari under Rule 65 before the CA.

The CA affirmed the findings and ruling of the LA and the NLRC. However, the CA ruled that the NLRC erred in sustaining the LAs interpretation of Section 10 of R.A. No. 8042. The CA relied on the clause "or for three months for every year of the unexpired term, whichever is less" provided in the 5th paragraph of Section 10 of R.A. No. 8042.

Both parties filed their respective MRs which the CA denied. Thus, this petition.

ISSUE:

1. Whether Section 10 of R.A. 8042, to the extent that it affords an illegally dismissed migrant worker the lesser benefit of "salaries for [the] unexpired portion of his

employment contract for three (3) months for every year of the unexpired term, whichever is less" is constitutional;

2. Assuming that it is, whether the CA gravely erred in granting petitioner only three (3) months backwages when his unexpired term of 9 months is far short of the "every year of the unexpired term" threshold.

RULING:

The petition is impressed with merit.

We have previously declared that the clause "or for three months for every year of the unexpired term, whichever is less" is unconstitutional for being violative of the rights of (OFWs) to equal protection. Moreover, the subject clause does not state any definitive governmental purpose, hence, it also violates petitioner's right to substantive due process.

Generally, an unconstitutional act is not a law. An exception to this is the doctrine of operative fact applied when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. This case should not be included in the exception. It was not the fault of petitioner that he lost his job due to an act of illegal dismissal committed by respondents.

Also, we cannot subscribe to respondents postulation that the tanker allowance of US$130.00 should not be included in the computation of the lump-sum salary. First, fair play, justice, and due process dictate that this Court cannot now, for the first time on appeal, pass upon this question. Second, the allowance was encapsulated in the basic salary clause.

BRGY. CAPTAIN BEDA TORRECAMPO v. METROPOLITAN WATERWORKS AND SEWAGE SYSTEM
G.R. No. 188296, May 30, 2011, Second Division (Carpio, J.)

Torrecampo's constituents approached him to report that personnel and heavy equipment from the DPWH entered a portion of their Barangay to implement the C-5 Road Extension Project over Lot Nos. 42-A-4, 42-A-6 and 42-A-4. Torrecampo Alleged that if the MWSS and the DPWH are allowed to continue and complete the C-5 Road Extension Project, 3 aqueducts of the MWSS supplying water to 8 million Metro Manila residents will be put at great risk. He Insisted that the RIPADA area is a better alternative to subject lots. Torrecampo thus filed the present petition.

This Court required respondents to comment. A status quo order was issued. The hearing regarding the urgent application for ex-parte temporary restraining order and/or writ of preliminary injunction was set on 6 July 2009.

Atty. Villamor, Jr. contended that grave injustice and irreparable injury to would result should the petition be denied, the constitutional right to health would be violated, and that the petition was filed directly with the SC because lower courts are prohibited from issuing restraining orders and injunctions against government infrastructure projects pursuant to R.A 8975.

Asst. Solicitor General Panga, for respondent DPWH, asserts that petitioner's case does not fall under an exception and thus should have followed the principle of hierarchy of courts.

Atty. Agra for respondent MWSS finds as premature the filing of the petition for injunction as there is yet no road expansion project to be implemented, the project has yet to pass prior review by the MWSS; under the premises, there is yet no justiciable controversy.

The Court then required all parties to submit their memoranda, further, the status quo order was lifted since no grave injustice or irreparable injury would arise.

On 12 March 2009, MWSS issued Board Resolution No. 2009-052 and allowed DPWH to use the 60 Meter Right-of-Way for preliminary studies in the implementation of the C-5 Road Extension Project. DPWH entered the said properties of the MWSS on 30 June 2009.

ISSUE:

Whether respondents should be enjoined from commencing with and implementing the C-5 Road Extension Project

RULING:

The petition must fail.

Torrecampo seeks judicial review of a question of Executive policy, a matter outside this Court's jurisdiction. Here, the issue is dependent upon the wisdom, not legality, of a particular measure. Thus, Torrecampo wants this Court to determine whether the Tandang Sora area is a better alternative to the RIPADA area for the C-5 Road Extension Project. Such determination belongs to the Executive branch and cannot be touched upon by this Court.

The exception to this rule applies when there is grave abuse of discretion. In this case, however, the DPWH still has to conduct the proper study to determine whether a road can be safely constructed on land beneath which runs the aqueducts. Without such study, the MWSS, which owns the land, cannot decide whether to allow the DPWH to construct the road. Absent such DPWH study and MWSS decision, no grave abuse of discretion amounting to lack of jurisdiction can be alleged against or attributed to respondents warranting the exercise of this Court's extraordinary certiorari power.

PEOPLE OF THE PHILIPPINES v. LUIS J. MORALES
G.R. No. 166355, May 30, 2011, Third Division (Brion, J.)

The NCC and the Bases Conversion Development Authority (*BCDA*) organized the Philippine Centennial Expo '98 Corporation or Expocorp whose primary purpose was to operate, administer, manage and develop the Philippine Centennial International Exposition 1998 (*Expo `98*).

The Philippine Centennial project was marred by numerous allegations of anomalies, among them, the lack of public biddings. In 1998, Senator Ana Dominique Coseteng delivered a privilege speech in the Senate denouncing these anomalies. Because of this speech, the Senate Blue Ribbon Committee conducted an investigation on the Philippine Centennial project. In 1999, then President Joseph Estrada created the *Ad Hoc* and Independent Citizen's Committee (*AHICC*), also for the purpose of investigating these alleged anomalies. Both the Senate Blue Ribbon Committee and the AHICC recommended to the Office of the Ombudsman that a more exhaustive investigation of the Philippine Centennial project be conducted.

The investigation that followed resulted in the filing in 2001 of an Information by the Ombudsman's Fact-Finding and Investigation Bureau against respondent Luis J. Morales, the acting president of Expocorp at the time relevant to the case. This Information served as basis for Criminal Case No. 27431 that we now consider.

The Information against Morales for violation of Section 3(e) of Republic Act (R.A.) No. 3019.

ISSUE:

Whether or not Morales is a "public officer," under the jurisdiction of the Sandiganbayan.

RULING:

Section 5, Article XIII of the 1973 Constitution defines the jurisdiction of the Sandiganbayan:

> Sec. 5. The [Batasang Pambansa] shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

R.A. No. 8249, which amended Presidential Decree No. 1606, delineated the jurisdiction of the Sandiganbayan as follows:

> Section 4. Section 4 of the same decree is hereby further amended to read as follows:
>
> Sec. 4. Jurisdiction. -- The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
>
> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials

occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the *Sangguniang panlalawigan* and provincial treasurers, assessors, engineers and other provincial department heads;

(b) City mayors, vice-mayors, members of the *sangguniang Panlungsod*, city treasurers, assessors, engineers and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or -controlled corporations, state universities or educational institutions or foundations;

(2) Members of Congress and officials thereof classified as Grade '27' and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

Since Expocorp is a private corporation, not a government-owned or controlled corporation, Morales, as Expocorp's president who now stands charged for violating Section 3(e) of R.A. No. 3019 in this capacity, is beyond the Sandiganbayan's jurisdiction.

UNIVERSAL ROBINA CORP. v. LAGUNA LAKE DEVELOPMENT AUTHORITY
G.R. No. 191427, May 30, 2011, Third Division, (Carpio-Morales, *J.*)

Laguna Lake Development Authority (LLDA), respondent, found that Universal Robina Corporation (URC) failed to comply with government standards provided under Department of Environment and Natural Resources (DENR) Administrative Orders (DAOs) Nos. 34 and 35, series of 1990. After conducting hearings, the LLDA resolved that URC is found to be discharging pollutive wastewater. Petitioner moved to reconsider, however, the LLDA denied petitioner's motion for reconsideration and reiterated its order to pay the penalties. Petitioner challenged by certiorari the orders before the Court of Appeals. The appellant court went on to chide petitioner's petition for certiorari as premature since the law provides for an appeal from decision or orders of the LLDA to the DENR Secretary or the Office of the President, a remedy which should have first been exhausted before invoking judicial intervention.

ISSUE:

Whether petitioner was deprived of due process and lack of any plain, speedy or adequate remedy as grounds which exempted it from complying with the rule on exhaustion of administrative remedies

RULING:

No. The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that Courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed. Petitioner had thus available remedy of appeal to the DENR Secretary. Its contrary arguments to show that an appeal to the DENR Secretary would be an exercise in futility as the latter merely adopts the LLDA's findings is at best, speculative and presumptuous.

The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strictest judicial sense for it is enough that the party is given the chance to be heard before the case against him is decided.

GANNAPAO v. CIVIL SERVICE COMMISSION, et al.
G.R. No. 180141: May 31, 2011, EN BANC (Villarama, Jr., *J.*)

In April 1995, UWTC started operating MMTCs buses. At about the same time, petitioner was allegedly employed by Atty. Gironella, the general manager appointed by the Board of Directors of UWTC, as his personal bodyguard.

Respondents further alleged that upon orders of Atty. Gironella, the buses regularly driven by them were confiscated by a group led by petitioner.Armed with deadly weapons petitioner and his group intimidated and harassed respondents. Barien, et al. thus prayed for the preventive suspension of petitioner, the confiscation of his firearm and his termination.

The complaint passed an investigation with The Inspector General, Internal Affairs Office (TIG-IAO) of the PNP. In his answer, petitioner denied the allegations of the complaint and averred that it was his twin brother, Reynaldo Gannapao, who worked as messenger at UWTC.In a memorandum, it was recommended that the complaint be dismissed.

Subsequently,National Police Commission (NAPOLCOM) Memorandum was issued, and a summary hearing on the complaint was conducted.

Petitioner moved to dismiss the complaint. The same was denied.

PNP Chief Sarmiento rendered his Decision finding petitioner guilty as charged and suspending him for three months from the police service without pay.

Petitioners MR was likewise denied, thus, he elevated the case to the NAPOLCOM National Appellate Board.His appeal, however, was dismissed.

Aggrieved, petitioner brought his case to the DILG but his appeal was denied.

Petitioner then appealed to the CSC, it was dismissed but the penalty of suspension was increased to dismissal from service.

Petitioner thus filed with the CA a Petition for Review but it was later on denied because petitioner cannot claim denial of due process since he was given ample opportunity to present his side.

CA denied petitioners motion for reconsideration. Hence, this petition.

ISSUE:

1. Whether petitioner was denied due process,
2. Whether the CA correctly affirmed the CSCs decision modifying the penalty from suspension to dismissal from service.

RULING:

The petition must fail.

Due Process As Opportunity To Be Heard

We have held that due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain ones side or an opportunity to seek a reconsideration of the action or ruling complained of.As long as a party was given the opportunity to defend his interests in due course, he was not denied due process. Here, it is clear that petitioner was afforded due process since he was given his fair opportunity to present his case. As a matter of fact, petitioner actively participated in the proceedings thus negating his contention that he was unfairly deprived of his chance to present his case.

Moonlighting As Bodyguard, Grave Offense, Dismissal Was Proper

We hold that the CA did not err in affirming the CSC ruling which modified the penalty imposed by the PNP Director General as affirmed by the DILG Secretary, from three months suspension to dismissal. Under Memorandum Circular No. 93-024(Guidelines in the Application of Penalties in Police Administrative Cases), the following acts of any member of the PNP are considered Grave Offenses:

> x x x .The following are Grave Offenses: x x x x Serious Irregularities in the Performance of Duties. This is incurred by any member of the PNP who shall:
>
> > x x x x c. act as bodyguard or security guard for the person or property of any public official, or private person unless approved by the proper authorities concerned.
>
> x x x x The CSC found that petitioner indeed worked for Atty. Gironella as the latters bodyguard-- at least during the relevant period, from April 1995 up to December 1995 when Barien, et al. filed their verified complaint before the Inspectorate Division

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), et al. v. MAYORDOMO
G.R. No. 191218. May 31, 2011, EN BANC (Mendoza, *J.*)

Arwin T. Mayordomo *(Mayordomo)* was employed as Accounts Management Specialist of the GSIS Fund Management Accounting Department *(FMAD),* responsible for the preparation of financial statements.

Sometime in September 2004, Ignacio L. Liscano, then GSIS Information Technology Officer (ITO) III called the attention of Joseph Sta., another ITO, about a network conflict in his personal computer. Sta. Romana conducted a network scan to identify the source of the problem. During the scan, he discovered that another personal computer within the GSIS computer network was also using the internet protocol (IP) address of Liscano's computer. This other computer was eventually identified as the one assigned to Mayordomo with username "ATMAYORDOMO."

Sta. Romana immediately restored the correct IP address assigned to Mayordomo's personal computer. Until this restoration, Liscano was deprived of access to the GSIS computer network and prevented from performing his work as ITO. Mayordomo was verbally reminded that he had no authority to change his IP address and warned that doing so would result in network problems.

On February 9, 2005, in the course of another network scan, Sta. Romana again encountered the username "ATMAYORDOMO." This time, an IP address, belonging to the range of the GSIS Remote Access Server (RAS), was simulated and used. Knowing that the RAS would provide an exclusive external trafficking route to the GSIS computer system and realizing that Mayordomo could have gained access to the entire GSIS network including its restricted resources, Sta. Romana lost no time in reporting the matter to Rolando O. Tiu, Vice-President of the Resources Administration Office. Before the IT network personnel could take any action, however, Mayordomo restored his assigned IP address.

The next day, the username "ATMAYORDOMO" appeared again in the scan, this time using two (2) IP addresses of the RAS (143.44.6.1 and 143.44.6.2). With notice to Tiu, Mayordomo's personal computer was pulled out to have the glitches caused by the unauthorized use of the said IP addresses fixed.

According to GSIS, "[t]he unauthorized changing of IP address gave freedom to respondent to exploit the GSIS network system and gain access to other restricted network resources, including the internet. It also resulted to IP address network conflict which caused unnecessary work to and pressure on ITSG personnel who had to fix the same. Further, as a consequence, Mayordomo's simulation of the RAS IP addresses caused disruption within the GSIS mainframe on-line system affecting both the main and branch offices of the GSIS. His actions likewise prevented authorized outside users from accessing the GSIS network through the RAS IP addresses he simulated."

More than a year later, Mayordomo received a Show-Cause Memorandum from the Investigation Department in connection with his previous acts of changing his IP address. In reply, Mayordomo admitted that he changed his IP address because the one given to him by the ITSG was in conflict with some other IP addresses. The ITSG was not able to address this problem, prompting him to change his IP address to be able to perform his work.

President and General Manager Garcia issued a formal administrative charge against Mayordomo, for Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service. Mayordomo admitted that he changed his IP address but he denied having violated any policy

or guideline on the subject because no policy, regulation or rule pertaining to changing of IP address existed at the time of its commission. It was only on November 10, 2005 when the GSIS adopted a policy against unauthorized changing of IP addresses. Hence, he could not be held liable in view of the constitutional prohibition against *ex post facto laws*.

The GSIS rendered its Decision finding Mayordomo guilty of Grave Misconduct and imposing upon him the penalty of dismissal, with forfeiture of benefits, loss of eligibility and disqualification from government service.

The CSC would not reconsider its decision, so Mayordomo elevated his case to the CA. The CA partially granted his petition and modified the penalty meted out.

ISSUE:

Whether or not Mayordomo is guilty of grave misconduct.

RULING:

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

In this case, the attending facts and the evidence presented, point to no other conclusion than the administrative liability of Mayordomo. The Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the state policy to promote a high standard of ethics in public service, and enjoins public officials and employees to discharge their duties with utmost responsibility, integrity and competence. Section 4 of the Code lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. Thus, any conduct contrary to these standards would qualify as conduct unbecoming of a government employee.

Prudence and good sense could have saved Mayordomo from his current tribulation, but he was unfortunately stubborn to imbibe advice of caution. His claim that he was obliged to change his IP address due to the inaction of the ITSG in resolving the problem with his own IP address, cannot exonerate him from responsibility. Obviously, choosing the RAS IP address to replace his own was way too drastic from sensible conduct expected of a government employee. Surely, there were other available means to improve his situation of alleged hampered performance of duties for failure to access the system due to IP conflict. Certainly, gaining access to the exclusive external trafficking route to the GSIS computer system was not one of them.

The Court has come to a determination that the administrative offense committed by the respondent is not "misconduct." To constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of official duties. The duties of Mayordomo as a member of the GSIS FMAD surely do not involve the modification of IP addresses. The act was considered

unauthorized, precisely because dealing with the GSIS network's IP addresses is strictly reserved for ITSG personnel who are expectedly knowledgeable in this field. In *Manuel v. Calimag, Jr.,* the Court emphatically ruled:

In order to be considered as "misconduct," the act must have a "direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office. Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez*in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x x It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x More specifically, in *Buenaventura v. Benedicto,* an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring `to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.'"

Accordingly, the complained acts of respondent Mayordomo constitute the administrative offense of Conduct Prejudicial to the Best Interest of the Service, which need not be related to or connected with the public officer's official functions. As long as the questioned conduct tarnishes the image and integrity of his/her public office, the corresponding penalty may be meted on the erring public officer or employee. Under the Civil Service law and rules, there is no concrete description of what specific acts constitute the grave offense of Conduct Prejudicial to the Best Interest of the Service. Jurisprudence, however, is instructive on this point. The Court has considered the following acts or omissions, *inter alia*, as *Conduct Prejudicial to the Best Interest of the Service*: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to safe keep public records and property, making false entries in public documents and falsification of court orders. The Court also considered the following acts as conduct prejudicial to the best interest of the service, to wit: a Judge's act of brandishing a gun and threatening the complainants during a traffic altercation; a court interpreter's participation in the execution of a document conveying complainant's property which resulted in a quarrel in the latter's family.

The Court makes clear that when an officer or employee is disciplined, the object sought is not the punishment of that officer or employee, but the improvement of the public service and the preservation of the public's faith and confidence in the government. The respondent is reminded that "the Constitution stresses that a public office is a public trust and public officers 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. These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service."

ISABELO L. GALANG v. LAND BANK OF THE PHILIPPINES
G.R. Nos. 175276 & 175282, May 31, 2011, EN BANC (Villarama, *J.*)

Galang demanded money from four borrowers of the bank, namely, Ceferino Manahan, Gregorio Modelo, Sotero Santos and Feliza de Vera, in return for a reduction of interest rates and condonation of penalty charges on their overdue loans. The complaint further accuses Galang of making unauthorized disbursements for the repair of the company car.

Isabelo L. Galang, the Branch Manager of Land Bank Baliuag, Bulacan was charged with Dishonesty, Misconduct, Conduct Prejudicial to the Best Interest of the Service, Gross Neglect of Duty, Violation of Rules and Regulations, and Receiving for Personal Use a Fee, Gift or Other Valuable Thing in the Course of Official Duties or in Connection Therewith when such Fee is Given by Any Person in the Hope or Expectation of Receiving a Favor or Better Treatment than that Accorded Other Persons or Committing Acts Punishable Under the Anti-Graft Laws.

The charges were initially dismissed for insufficiency of evidence. This was, however, reversed. Petitioners appealed to the Merit System Protection Board (MSPB), which sustained the penalty and denied their motion for reconsideration.

Petitioners appeal to the CSC, which dismissed their petition for lack of merit. Their motion for reconsideration was likewise denied.

The petitioner was able to secure a favourable judgment from the CA, and was eventually reinstated. However, certain benefits, i.e. RATA, PERA, Rice Subsidy, and Meal Allowance, were not furnished to him by Land Bank, so he filed a case against Land Bank.

ISSUE:

Whether or not the trial be allowed to be broadcasted live in radio and television.

RULING:

The Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws define reinstatement as the issuance of an appointment to a person who has been previously appointed to a position in the career service and who has, through no delinquency or misconduct, been separated therefrom, or to the restoration of one who has been exonerated of the administrative charges filed against him.

It is settled that an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years, and not full back salaries from his illegal termination up to his reinstatement.

Pertinent to this case, Republic Act (R.A.) No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, was enacted on July 1, 1989 to integrate certain benefits received by government official and employees into their salaries. Section 12 of said Act provides:

> SEC. 12. *Consolidation of Allowances and Compensation*. - All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and

> hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by the incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Section 17 of the Act, however, exempts incumbent government officials and employees from the operation of Section 12, thus:

> SEC. 17. *Salaries of Incumbents.* - Incumbents of positions presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred to as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future.
>
> The transition allowance referred to herein shall be treated as part of the basic salary for purposes of computing retirement pay, year-end bonus and other similar benefits.
>
> x x x x

Being an incumbent at the time, Galang would have continued to receive RATA, Meal Allowance and Rice Subsidy, separate from his salary, had he not been illegally dismissed from service.

Representation and Transportation Allowance or RATA is a fringe benefit distinct from salary. Unlike salary which is paid for services rendered, RATA belongs to a basket of allowances to defray expenses deemed unavoidable in the discharge of office. Hence, it is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses. The Department of Budget and Management (DBM) Manual on Position Classification and Compensation discusses the nature of the RATA and qualifies the entitlement of reinstated government employees thereto in certain fiscal years.

> The pertinent general provisions of the General Appropriations Acts (GAAs) prior to FY 1993 and in the FY 1999 GAA provided that the officials listed therein and those of equivalent ranks as may be determined by the Department of Budget and Management (DBM) are to be granted monthly commutable RATA. Hence, prior to FY 1993 and in FY 1999, RATA were allowances attached to the position.
>
> The pertinent provisions of the FYs 1993 to 1998 GAAs and in the FY 2000 GAA provided that the officials listed therein and those of equivalent ranks as may be determined by the DBM while in the actual performance of their respective functions are to be granted monthly commutable RATA. This provision was reiterated in the

pertinent general provisions of the subsequent GAAs. Hence, in FYs 1993 to 1998 and beginning FY 2000 and up to the present, the actual performance of an official's duties and responsibilities was a pre-requisite to the grant of RATA.

The rationale behind the qualifying phrase, "while in the actual performance of their respective functions," is to provide the official concerned with additional funds to meet necessary expenses incidental to and connected with the exercise or the discharge of the functions of the office. Thus, if the official is out of office, whether voluntary or involuntary, the official does not and is not supposed to incur expenses. There being no expenses incurred, there is nothing to reimburse.

Since RATA are privileges or benefits in the form of reimbursement of expenses, they are not salaries or part of basic salaries. Forfeiture or non-grant of the RATA does not constitute diminution in pay. RATA may be spent in variable amounts per work day depending on the situation. Entitlement thereto should not be proportionate to the number of work days in a month, inclusive of regular and special holidays falling on work days.

For emphasis, the five-year period covered in the computation of Galang's back salaries and other benefits is from July 1990 to June 1995. Also, he shall receive back salaries and other benefits for the period during which he should have been reinstated from October 1, 1997 to August 15, 2001. Since the General Appropriations Act (GAA) for 1993 to 1998 and in the year 2000 onwards require the actual performance of duty as a condition for the grant of RATA, Galang shall not receive RATA in those years but shall be entitled to RATA only from July 1990 to December 1992 and in the year 1999.

On the other hand, Personnel Economic Relief Allowance (PERA) is a P500 monthly allowance authorized under the pertinent general provision in the annual GAA. It is granted to augment the pay of government employees due to the rising cost of living.

On February 12, 1997, Congress enacted R.A. No. 8250 (GAA for CY 1997), which granted PERA to all government employees and officials as a replacement of the Cost of Living Allowance (COLA). This explains why Land Bank employees began receiving PERA only in 1997 - because prior to 1997, said benefit was called by another name, COLA. Hence, Land Bank is still liable to pay the monthly PERA to Galang.

LT. COL. ROGELIO BOAC, et al. v. ERLINDA T. CADAPAN, et al.
G.R. Nos. 184461-62, 184495 & 187109, May 31, 2011, EN BANC (Carpio-Morales, J.)

At 2:00 a.m. of June 26, 2006, armed men abducted Sherlyn Cadapan, Karen Empeño and Manuel Merino from a house in San Miguel, Hagonoy, Bulacan. The three were herded onto a jeep bearing license plate RTF 597 that sped towards an undisclosed location.

Having thereafter heard nothing from Sherlyn, Karen and Merino, their respective families scoured nearby police precincts and military camps in the hope of finding them but the same yielded nothing.

On July 17, 2006, spouses Asher and Erlinda Cadapan and Concepcion Empeño filed a petition for habeas corpus, impleading then Generals Romeo Tolentino and Jovito Palparan, Lt. Col. Rogelio Boac, Arnel Enriquez and Lt. Francis Mirabelle Samson as respondents. The Court issued a writ of habeas corpus, returnable to the Presiding Justice of the Court of Appeals.

The respondents in the habeas corpus petition denied that Sherlyn, Karen and Merino are in the custody of the military. To the Return were attached affidavits from the respondents, except Enriquez, who all attested that they do not know Sherlyn, Karen and Merino; that they had inquired from their subordinates about the reported abduction and disappearance of the three but their inquiry yielded nothing; and that the military does not own nor possess a stainless steel jeep with plate number RTF 597.

The CA dismissed the petition, stating that the present petition for habeas corpus is not the appropriate remedy since the main office or function of the habeas corpus is to inquire into the legality of one's detention which presupposes that respondents have actual custody of the persons subject of the petition. The reason therefor is that the courts have limited powers, means and resources to conduct an investigation. It being the situation, the proper remedy is not a habeas corpus proceeding but criminal proceedings by initiating criminal suit for abduction or kidnapping as a crime punishable by law.

The respondents file a motion for reconsideration. During the pendency of the motion, they also filed a writ of amparo. Both petitions were subsequently granted.

ISSUES:

1. The Court of Appeals erred in dropping President Gloria Macapagal Arroyo as party respondent in this case;

2. The Court of Appeals erred in not finding that President Gloria Macapagal Arroyo had command responsibility in the enforced disappearance and continued detention of the three aggrieved parties

RULING:

Preliminarily, the Court finds the appellate court's dismissal of the petitions against then President Arroyo well-taken, owing to her immunity from suit at the time the habeas corpus and amparo petitions were filed.

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. x x x

Parenthetically, the petitions are bereft of any allegation that then President Arroyo permitted, condoned or performed any wrongdoing against the three missing persons.

On the issue of whether a military commander may be held liable for the acts of his subordinates in an amparo proceeding, a brief discussion of the concept of command responsibility and its application insofar as amparo cases already decided by the Court is in order.

Rubrico v. Macapagal Arroyo expounded on the concept of command responsibility as follows:

> The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is "an omission mode of individual criminal liability," whereby the superior is made responsible for crimes committed by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered).

It bears stressing that command responsibility is properly a form of criminal complicity, and thus a substantive rule that points to criminal or administrative liability.

An amparo proceeding is not criminal in nature nor does it ascertain the criminal liability of individuals or entities involved. Neither does it partake of a civil or administrative suit. Rather, it is a remedial measure designed to direct specified courses of action to government agencies to safeguard the constitutional right to life, liberty and security of aggrieved individuals.

Thus Razon Jr. v. Tagitis enlightens:

> [An amparo proceeding] does nor determine guilt nor pinpoint criminal culpability for the disappearance [threats thereof or extrajudicial killings]; it determines responsibility, or at least accountability, for the enforced disappearance...for purposes of imposing the appropriate remedies to address the disappearance...

Further, Tagitis defines what constitutes "responsibility" and "accountability," viz:

> x x x. Responsibility refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. Accountability, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of Amparo is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.

Rubrico categorically denies the application of command responsibility in amparo cases to determine criminal liability. The Court maintains its adherence to this pronouncement as far as amparo cases are concerned.

Rubrico, however, recognizes a preliminary yet limited application of command responsibility in amparo cases to instances of determining the responsible or accountable individuals or entities that are duty-bound to abate any transgression on the life, liberty or security of the aggrieved party.

If command responsibility were to be invoked and applied to these proceedings, it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of amparo. As intimated earlier, however, the determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any.

In other words, command responsibility may be loosely applied in amparo cases in order to identify those accountable individuals that have the power to effectively implement whatever processes an amparo court would issue. In such application, the amparo court does not impute criminal responsibility but merely pinpoint the superiors it considers to be in the best position to protect the rights of the aggrieved party.

Such identification of the responsible and accountable superiors may well be a preliminary determination of criminal liability which, of course, is still subject to further investigation by the appropriate government agency.

Relatedly, the legislature came up with Republic Act No. 9851 (RA 9851) to include command responsibility as a form of criminal complicity in crimes against international humanitarian law, genocide and other crimes. RA 9851 is thus the substantive law that definitively imputes criminal liability to those superiors who, despite their position, still fail to take all necessary and reasonable measures within their power to prevent or repress the commission of illegal acts or to submit these matters to the competent authorities for investigation and prosecution.

MARCELO G. GANADEN, et al. v. THE HON. OFFICE OF THE OMBUDSMAN, et al.
G.R. No. 169359-61, June 1, 2011, Third Division (Villarama, J.)

A group of employees of the NAPOCOR District IV filed a complaint against Marcelo Ganaden, NPC-Area Manager, Oscar B. Mina, Employee, NPC-Substation, Josephine V. Atal, Cashier, NPC-Substation, Jose M. Bautista, Ernesto H. Narciso, Jr. and Virgilio M. Rimando for allegedly committing the following:

1. Printing and sale of raffle tickets using NPC Resources under the direction of Mr. Ganaden by making it appear to be the project of Cagayan Valley Area Employees Association but without consultation with the NPC-District IV employees and the required permit from appropriate agencies. The employees, security guards and janitors were given tickets ranging from P200 to P1,000.00 with the instruction that [the tickets were] considered sold. However, the tickets were not drawn nor the monies collected...returned.
2. By making it appear that the assembly, erection, mounting of beams, gantry towers and steel towers at the 230 KV and 69 KV switchyard at Tuguegarao substation was thru "Pakyaw Labor" [contract for piece of work] done by the linemen of Tuguegarao substation as shown in their daily [t]ime record. In fact, based [o]n the Security In and Out Logbook and Security Attendance Sheet, there was no entry of [the alleged contractors] Mr. De Gracia nor Jojo Mateo for the period March 29, 1999 to April 22, 1999, the period the pakyaw work [was supposedly done].
3. Mr. Ganaden influenced a certain Perfecto D. Lazaro, husband of the proprietress of Remy D. Lazaro Builders and Construction Supplier to agree that the volume of soil to be removed and hauled from the 230 KV switchyard of Tuguegarao substation be increased from the actual volume of about 5 cubic meters to 253 cubic meters with the excess payment be given to him (Ganaden).
4. On Dec[ember] 14 and 23, 2000, Mr. Ganaden's personal car with plate [n]o. TDF 366 refueled at Solano Caltex but [it was made to appear that the gas was] loaded to an NPC vehicle.
5. Mr. Ganaden, also reassigned employees from one province to another by virtue of his Office Order No. AO-99-418. However, said order was based on a fictitious and unapproved Table of Organization which was not approved by the higher management.
6. Purchase and withdrawal of tires in CY 2000 purposely to replace the tires of NPC service vehicle with Plate [No.] SEW 454, his service vehicle, but said tires were installed to his personal Nissan Pick-up car with Plate [No.] ADL 157.
7. Withdrawal and delivery of ceramic tiles in CY 2000 from SANTIAGO Substation to his house at Fairview, Quezon City which was undergoing renovation.

The Deputy Ombudsman found probable cause against the petitioners, and a case has been filed in the RTC. The petitioners assail the Resolution of the Office of the Deputy Ombudsman.

ISSUE:

Whether the Office of the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause to indict petitioners for alleged violation of the Anti-Graft and Corrupt Practices Act.

RULING:

Jurisprudence has established rules on the determination of probable cause. In *Galario v. Office of the Ombudsman (Mindanao)*, the Court held:

> [A] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.
>
> `*The term does not mean "actual and positive cause" nor does it import absolute certainty.* It is merely based on opinion and reasonable belief. x x x. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.

It is worth stressing that the Ombudsman's finding of probable cause does not touch on the issue of guilt or innocence of the accused. It is not the function of the Office of the Ombudsman to rule on such issue. All that the Office of the Ombudsman did was to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused are probably guilty thereof. In this light, we find no compelling reason to disturb the findings of the Office of the Ombudsman.

On the assertion of grave abuse of discretion amounting to lack or excess of jurisdiction, we are guided by previous pronouncements of this Court regarding this matter. In *Vergara v. Ombudsman*, the Court ruled:

> We reiterate the rule that courts do not interfere in the Ombudsman's exercise of discretion in determining probable cause unless there are compelling reasons. The Ombudsman's finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion. Besides, to justify the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.

Grave abuse of discretion is defined as capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

M.A. JIMENEZ ENTERPRISES, INC. v. HON. OMBUDSMAN JESUS P. CAMMAYO, et al.
G.R. No. 155307, June 6, 2011, Third Division (Villarama, *J.*)

The Department of Public Works and Highways (DPWH) entered into a contract for the proposed construction of the Baguio General Hospital and Medical Center (BGHMC) Building (Phase I) with Royson and Co., Inc. (Royson)

An excavation of sixty meters deep was made on the area under the control and supervision of the Project Director, Engr. Arturo M. Santos. Thinking that its property which was adjacent to the project site was under threat of erosion, petitioner, through its representative Carolina Jimenez, sent three letters[5] addressed to Royson asking that Royson hasten the construction of a retaining wall.

Construction of a provisional slope protection measure in the construction and excavation area was then started. Unfortunately, on February 7, 2000, unusually heavy rains triggered the collapse of a portion of the slope protection, resulting in a landslide. Petitioner alleged that the landslide caused cracks in the house owned by it and prejudiced the structural integrity of the house.

Petitioner brought the case before the DPWH and the Office of the City Mayor. When he could not recover, petitioner filed a complaint for damages with the RTC.

The case was referred to the Office of the Ombudsman. The Ombudsman dismissed the complaint and petitioner's motion for reconsideration. Hence, the petition.

ISSUE:

Whether the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaint against all the respondents.

RULING:

It is well-settled that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Ombudsman. The Ombudsman is vested with the sole power to investigate and prosecute, *motu proprio* or upon the complaint of any person, any act or omission which appears to be illegal, unjust, improper, or inefficient. It has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. As explained in *Esquivel v. Ombudsman*:

> The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon his constitutional mandate and the courts will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the

exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.

The Court respects the relative autonomy of the Ombudsman to investigate and prosecute, and refrains from interfering when the latter exercises such powers either directly or through the Deputy Ombudsman, except when there is grave abuse of discretion. Indeed, the Ombudsman's determination of probable cause may only be assailed through certiorari proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.

Here, however, an assiduous examination of the records, as well as the assailed resolution and order of the Ombudsman dismissing the case against all the respondents for insufficiency of evidence, shows that the Ombudsman did not act with grave abuse of discretion.

Respondents were charged with violation of Section 3(e) of R.A. No. 3019, the Anti-Graft and Corrupt Practices Act, which is committed as follows:

> SEC. 3. *Corrupt practices of public officers.* - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x
>
> e. Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The following essential elements must therefore be present: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) the accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the action of the accused caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.

But as correctly noted by the Ombudsman, petitioner failed to point out specific evidence and concrete proof that respondents demonstrated manifest partiality or evident bad faith in the construction of the BGHMC and its retaining wall. There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. Evident bad faith, on the other hand, connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage. It connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. Petitioner has not shown that respondents were impelled by such motives in the performance of their official duties and functions. Neither did petitioner establish that respondents acted with gross inexcusable

negligence. The foregoing findings of the Ombudsman are based on substantial evidence. As long as substantial evidence supports it, the Ombudsman's ruling will not be overturned.

BOY SCOUTS OF THE PHILIPPINES, v. COMMISSION ON AUDIT
G.R. No. 177131, June 7, 2011, EN BANC (Leonardo-De Castro, *J.)*

COA issued Resolution No. 99-0115 on August 19, 1999 with the subject "Defining the Commissions policy with respect to the audit of the Boy Scouts of the Philippines." In its whereas clauses, the COA Resolution stated that the BSP was created as a public corporation under CA No. 111, as amended by PD No. 460 and Republic Act No. 7278; that in Boy Scouts of the Philippines v. NLRC, the Supreme Court ruled that the BSP, as constituted under its charter, was a "government-controlled corporation within the meaning of Article IX(B)(2)(1) of the Constitution"; and that "the BSP is appropriately regarded as a government instrumentality under the 1987 Administrative Code." The COA Resolution also cited its constitutional mandate under Section 2(1), Article IX (D).

COA General Counsel, Director Sunico wrote BSP that latter have to comply with COA Resolution No. 99-011, among which is to conduct an annual financial audit therein.

Upon the BSPs request, the audit was deferred for thirty (30) days. The BSP then filed a Petition for Review with Prayer for Preliminary Injunction and/or Temporary Restraining Order before the COA. This was denied by the COA in its questioned Decision, which held that the BSP is under its audit jurisdiction. The BSP moved for reconsideration but this was likewise denied under its questioned Resolution.

This led to the filing by the BSP of this petition for prohibition with preliminary injunction and temporary restraining order against the COA.

ISSUE:

Whether the BSP falls under the COAs audit jurisdiction.

RULING:

The BSP is under the COAs audit jurisdiction.

POLITICAL LAW personality of BSP

We believe that the BSP is appropriately regarded as "a government instrumentality" under the 1987 Administrative Code.

It thus appears that the BSP may be regarded as both a "government controlled corporation with an original charter" and as an "instrumentality" of the Government within the meaning of Article IX (B) (2) (1) of the Constitution.

The existence of public or government corporate or juridical entities or chartered institutions by legislative fiat distinct from private corporations and government owned or controlled corporation is best exemplified by the 1987 Administrative Code cited above, which we quote in part:

> Sec. 2. General Terms Defined. Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

(10) "Instrumentality" refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.

(12) "Chartered institution" refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State.

(13) "Government-owned or controlled corporation" refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

Assuming for the sake of argument that the BSP ceases to be owned or controlled by the government because of reduction of the number of representatives of the government in the BSP Board, it does not follow that it also ceases to be a government instrumentality as it still retains all the characteristics of the latter as an attached agency of the DECS under the Administrative Code. Vesting corporate powers to an attached agency or instrumentality of the government is not constitutionally prohibited and is allowed by the above-mentioned provisions of the Civil Code and the 1987 Administrative Code.

Historically, therefore, the BSP had been subjected to government audit in so far as public funds had been infused thereto. However, this practice should not preclude the exercise of the audit jurisdiction of COA, clearly set forth under the Constitution, which pertinently provides:

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 and 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 with original charters 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 of the granting institution to submit to such audit as a condition of subsidy or equity.

Since the BSP, under its amended charter, continues to be a public corporation or a government instrumentality, we come to the inevitable conclusion that it is subject to the exercise by the COA of its audit jurisdiction in the manner consistent with the provisions of the BSP Charter.

The Petition for prohibition is dismissed.

HEIRS OF DR. JOSE DELESTE v. LAND BANK
G.R. No. 169913, June 8, 2011, First Division (Velasco, *J.*)

The late Juan, a former governor, owned a 4-hectare farm in Nueva Ecija, tilled by Raymundo. As tiller, he was issued a Certificate of Land Transfer. In 1980, henchmen of Juan evicted Raymundo from the farm, threatening to kill them if they did not leave. Thus, Raymundo was left with no recourse but to leave with his family. Upon learning of Juan's death in 1993, Raymundo and his family returned to the farm. He then filed with the Department of Agrariam Reform Adjudication Board a complaint that his possession and cultivation of the farm be respected, against the estate of Juan, as well as payment of harvest from 1980 to 1993. The estate filed a motion to dismiss, arguing that Raymundo's cause of action has prescribed under the provisions of Republic Act 3844 since the dispossession took place in 1980 but the petition was filed only in 1995, way beyond the three-year period for filing such claims. On the other hand, Raymundo argues that his possession should be deemed uninterrupted since his departure was made due to threats to his life. Expectedly, the Provincial Agrarian Reform Adjudication Board ruled in favour of the estate. Raymundo was guilty of laches since he did not assert his claim within a period of 14 years, according to the PARAB. When the case was appealed to the DARAB, the latter reversed the PARAD decision., which however, was reinstated by the Court of Appeals, affirming the PARAD decision. Raymundo thus filed his petition for review on certiorari. He posits that prescription should have started when the intimidation ceased upon Juan's death, not from 1980, when he was forcibly evicted from the land. Further, the CA decision disregards the 2003 DARAB Rules of Procedure.

RULING:

The Court grants the Petition.

Petitioner availed of the remedy of Petition for Review on Certiorari, but claimed that the CA committed grave abuse of discretion, which accusation properly pertains to an original Petition for Certiorari under Rule 65. However, this should not affect his case for the CA committed a glaring error on a question of law which must be reversed.

It must be recalled from the facts that the farm has been placed under the coverage of RA 3844. It is also undisputed that a tenancy relation existed between Chioco and petitioner. In fact, a CLT had been issued in favor of the petitioner; thus, petitioner already had an expectant right to the farm. A CLT serves as "a provisional title of ownership over the landholding while the lot owner is awaiting full payment of just compensation or for as long as the tenant-farmer is an amortizing owner. This certificate proves inchoate ownership of an agricultural land primarily devoted to rice and corn production. It is issued in order for the tenant-farmer to acquire the land he was tilling." Since the farm is considered expropriated and placed under the coverage of the land reform law, Chioco had no right to evict petitioner and enter the property. More significantly, Chioco had no right to claim that petitioner's cause of action had prescribed.

x x x [T]he Land Reform Code forges by operation of law, between the landowner and the farmer — be [he] a leasehold tenant or temporarily a share tenant — a vinculum juris with certain vital consequences, such as security of tenure of the tenant and the tenant's right to continue in possession of the land he works despite the expiration of the contract or the sale or transfer of the land to third persons, and now, more basically, the farmer's pre-emptive right to buy the land he cultivates under Section 11 of the Code, as well as the right to redeem the land, if sold to a third person without his knowledge, under Section 12 of this Code.

To strengthen the security of tenure of tenants, Section 10 of R.A. No. 3844 provides that the agricultural leasehold relation shall not be extinguished by the sale, alienation or transfer of the legal possession of the landholding. With unyielding consistency, we have held that transactions involving the agricultural land over which an agricultural leasehold subsists resulting in change of ownership, such as the sale or transfer of legal possession, will not terminate the rights of the agricultural lessee who is given protection by the law by making such rights enforceable against the transferee or the landowner's successor in interest. x x x

In addition, Section 7 of the law enunciates the principle of security of tenure of the tenant, such that it prescribes that the relationship of landholder and tenant can only be terminated for causes provided by law. x x x [S]ecurity of tenure is a legal concession to agricultural lessees which they value as life itself and deprivation of their [landholdings] is tantamount to deprivation of their only means of livelihood. Perforce, the termination of the leasehold relationship can take place only for causes provided by law. x x x (Emphasis supplied and citations omitted)

The CA has failed to recognize this vinculum juris, this juridical tie, that exists between the petitioner and Chioco, which the latter is bound to respect.

Under Section 8 of RA 3844, the agricultural leasehold relation shall be extinguished only under any of the following three circumstances, to wit: "(1) abandonment of the landholding without the knowledge of the agricultural lessor; (2) voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or (3) absence of the persons under Section 9 to succeed the lessee x x x." None of these is obtaining in this case. In particular, petitioner cannot be said to have abandoned the landholding. It will be recalled that Chioco forcibly ejected him from the property through threats and intimidation. His house was bulldozed and his crops were destroyed. Petitioner left the farm in 1980 and returned only in 1993 upon learning of Chioco's death. Two years after, or in 1995, he filed the instant Petition.

Indeed, Section 38 of RA 3844 specifically provides that "[a]n action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued." In this case, we deem it proper to reckon petitioner's cause of action to have accrued only upon his knowledge of the death of Chioco in 1993, and not at the time he was forcibly ejected from the landholding in 1980. For as long as the intimidation and threats to petitioner's life and limb existed, petitioner had a cause of action against Chioco to enforce the recognition of this juridical tie. Since the threats and intimidation ended with Chioco's death, petitioner's obligation to file a case to assert his rights as grantee of the farm under the agrarian laws within the prescriptive period commenced. These rights, as enumerated above, include the right to security of tenure, to continue in possession of the land he works despite the expiration of the contract or the sale or transfer of the land to third persons, the pre-emptive right to buy the land, as well as the right to redeem the land, if sold to a third person without his knowledge.

Petitioner may not be faulted for acting only after Chioco passed away for his life and the lives of members of his family are not worth gambling for a piece of land. The bulldozing of his house – his castle – is only an example of the fate that could befall them. Under the circumstances, it is therefore understandable that instead of fighting for the farm, petitioner opted to leave and keep his family safe. Any man who cherishes his family more than the most valuable material thing in his life would have done the same.

Force and intimidation restrict or hinder the exercise of the will, and so long as they exist, petitioner is deprived of his free will. He could not occupy his farm, plant his crops, tend to them, and harvest them. He could not file an agrarian case against Chioco, for that meant having to return to Nueva Ecija. He could not file the case anywhere else; any other agrarian tribunal or agency would have declined to exercise jurisdiction.

Notably, on various instances, we have set aside technicalities for reasons of equity. We are inclined to apply the same liberality in view of the peculiar situation in this case.

It is worth reiterating at this juncture that respondent had no right to claim prescription because a CLT had already been issued in favor of petitioner. The farm is considered expropriated and placed under the coverage of the land reform law. As such, respondent had neither the right to evict petitioner nor to claim prescription. In ***Catorce v. Court of Appeals***, this Court succinctly held:

Petitioner had been adjudged the bona fide tenant of the landholding in question. Not only did respondent fail to controvert this fact, but he even impliedly admitted the same in his Answer to petitioner's Complaint when he raised, as one of his defenses, the alleged voluntary surrender of the landholding by petitioner. Respondent Court should have taken this fact into consideration for tenants are guaranteed security of tenure, meaning, the continued enjoyment and possession of their landholding except when their dispossession had been authorized by virtue of a final and executory judgment, which is not so in the case at bar.

The Agricultural Land Reform Code has been designed to promote economic and social stability. Being a social legislation, it must be interpreted liberally to give full force and effect to its clear intent, which is 'to achieve a dignified existence for the small farmers' and to make them 'more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society'.

Petitioner's tenure on the farm should be deemed uninterrupted since he could not set foot thereon. And if he could not make the required payments to Chioco or the Land Bank of the Philippines, petitioner should not be faulted. And, since his tenure is deemed uninterrupted, any benefit or advantage from the land should accrue to him as well

Our law on agrarian reform is a legislated promise to emancipate poor farm families from the bondage of the soil. P.D. No. 27 was promulgated in the exact same spirit, with mechanisms which hope to forestall a reversion to the antiquated and inequitable feudal system of land ownership. It aims to ensure the continued possession, cultivation and enjoyment by the beneficiary of the land that he tills which would certainly not be possible where the former owner is allowed to reacquire the land at any time following the award – in contravention of the government's objective to emancipate tenant-farmers from the bondage of the soil.

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) v. GROUP MANAGEMENT CORPORATION (GMC) and LAPU-LAPU DEVELOPMENT & HOUSING SUMMARY
G.R. Nos. 167000, June 8, 2011, First Division (Leonardo-De Castro, *J.*)

Lapu-Lapu Development & Housing Corporation (LLDHC) was the registered owner of seventy-eight (78) lots (subject lots), situated in Barrio Marigondon, Lapu-Lapu City.

LLDHC and the GSIS entered into a Project and Loan Agreement for the development of the subject lots. GSIS agreed to extend a Twenty-Five Million Peso-loan (P25,000,000.00) to LLDHC, and in return, LLDHC will develop, subdivide, and sell its lots to GSIS members.

To secure the payment of the loan, LLDHC executed a real estate mortgage over the subject lots in favor of GSIS. For LLDHC's failure to fulfill its obligations, GSIS foreclosed the mortgage. As the lone bidder in the public auction sale, GSIS acquired the subject lots, and eventually was able to consolidate its ownership over the subject lots with the corresponding transfer certificates of title (TCTs) issued in its name.

GMC offered to purchase on installments the subject lots from GSIS for a total price of One Million One Hundred Thousand Pesos (P1,100,000.00), with the aggregate area specified as 423,177square meters. GSIS accepted the offer and on February 26, 1980, executed a Deed of Conditional Sale over the subject lots.

However, when GMC discovered that the total area of the subject lots was only 298,504 square meters, it wrote GSIS and proposed to proportionately reduce the purchase price to conform to the actual total area of the subject lots. GSIS approved this proposal and an Amendment to the Deed of Conditional Sale was executed to reflect the final sales agreement between GSIS and GMC.

LLDHC filed a complaint for Annulment of Foreclosure with Writ of Mandatory Injunction against GSIS before the RTC of Manila (Manila RTC). GMC filed its own complaint against GSIS for Specific Performance with Damages before the Lapu-Lapu RTC. The complaint was to compel GSIS toexecute a Final Deed of Sale over the subject lots since the purchase price had already beenfully paid by GMC. GSIS, submitted to the court a Commission on Audit (COA) Memorandum , purportedly disallowing in audit the sale of the subject lots for "apparent inherent irregularities," the sale price to GMC being lower than GSIS's purchase price at the public auction.

The Lapu-Lapu RTC rendered its decision in favor of GMC. In deciding in favor of GMC, the Lapu-Lapu RTC held that there existed a valid and binding salescontract between GSIS and GMC, which GSIS could not continue to ignore without any justifiablereason especially since GMC had already fully complied with its obligations. It also dismissed LLDHC's complaint-in-intervention, appeal also dismissed.

On May 10, 1994, the Manila RTC rendered a Decision and held that GSIS was unable to prove the alleged violations committed by LLDHC to warrant the foreclosure of the mortgage over the subject lots. Thus, the Manila RTC annulled the foreclosure made by GSIS and ordered LLDHC to pay GSIS the balance of its loan with interest.

LLDHC, filed before the Court of Appeals a petition for annulment of judgment of the Lapu-Lapu RTC decision (GSIS & GMC sale). LLDHC alleged that the Manila RTC decision nullified the sale of the subject lots to GMC and consequently, the Lapu-Lapu RTC decision was also nullified.

ISSUE:

Whether or not GSIS can invoke immunity from suit.

RULING:

That the exemption of GSIS is not absolute and does not encompass all of its funds, to wit: In so far as Section 39 of the GSIS charter exempts the GSIS from execution, suffice it to say that such exemption is not absolute and does not encompass all the GSIS funds. Thus, it may sue and be sued, as also, explicitly granted by its charter. To say, where proper, under section 36, the GSIS may be held liable for the contracts it has entered into in the course of its business investments. For GSIS cannot claim a special immunity from liability in regard to its business ventures under said Section. Nor can it deny contracting parties, in our view, the right of redress and the enforcement of a claim, particularly as it arises from a purely contractual relationship, of a private character between an individual and the GSIS.

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) v. COURT OF APPEALS, et al.
G.R. No. 189206, June 8, 2011, First Division (Perez, *J.*)

On December 13, 1996, a surety bond was agreed with DOMSAT HOLDINGS, INC. as the principal and the GSIS as administrator and the obligees are Land Bank of the Philippines, Tong Yang Merchant Bank, Industrial Bank of Korea and First Merchant Banking Corporation collectively known as "The Banks" with the loan granted to DOMSAT of US $ 11,000,000.00 to be used for the financing of the two-year lease of a Russian Satellite from INTERSPUTNIK. Domsat failed to pay the loan and GSIS refused to comply with its obligation reasoning that Domsat did not use the loan proceeds for the payment of rental for the satellite. GSIS alleged that Domsat, with Westmont Bank as the conduit, transferred the U.S. $11 Million loan proceeds from the Industrial Bank of Korea to Citibank New York account of Westmont Bank and from there to the Binondo Branch of Westmont Bank. The Banks filed a complaint before the RTC of Makati against Domsat and GSIS. GSIS requested for the issuance of a subpoena duces tecum to the custodian of records of Westmont Bank to produce bank ledger covering the account of Domsat with the Westmont Bank (now United Overseas Bank) and other pertinent documents. The RTC issued the subpoena but nonetheless, the RTC then granted the second motion for reconsideration by "The Banks" to quash the subpoena granted to GSIS.

GSIS assailed its case to the CA and CA partially granted it's petition allowing it to look into document but not the bank ledger because the US $ 11,000,000.00 deposited by Domsat to Westmont Bank is covered by R.A. 6426 or the Bank Secrecy Law. GSIS now filed a petition for certiorari in the Supreme Court for the decision of CA allowing the quashal by the RTC of a subpoena for the production of bank ledger.

ISSUE:

Whether or not the deposited US $ 11,000,000.00 by Domsat, Inc. to Westmont Bank is covered by R.A. 6426 as what "The Banks" contend or it is covered by R.A. 1405 as what GSIS contends.

RULING:

The Supreme Court ruled in favor of R.A. 6426 and thereby AFFIRMING the decision of Court of Appeals. R.A. 1405 was enacted on 1955 while R.A. 6426 was enacted on 1974. These two laws both support the confidentiality of bank deposits. There is no conflict between them. Republic Act No. 1405 was enacted for the purpose of giving encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country. It covers all bank deposits in the Philippines and no distinction was made between domestic and foreign deposits. Thus, Republic Act No. 1405 is considered a law of general application. On the other hand, Republic Act No. 6426 was intended to encourage deposits from foreign lenders and investors. It is a special law designed especially for foreign currency deposits in the Philippines. A general law does not nullify a specific or special law. Generalia specialibus non derogant. Therefore, it is beyond cavil that Republic Act No. 6426 applies in this case. Intengan v. Court of Appeals affirmed the above-cited principle and categorically declared that for foreign currency deposits, such as U.S. dollar deposits, the applicable law is Republic Act No. 6426.In said case, Citibank filed an action against its officers for persuading their clients to transfer their dollar deposits to competitor banks. Bank records, including dollar deposits of petitioners, purporting to establish the deception practiced by the officers, were annexed to the complaint. Petitioners now complained that Citibank violated Republic Act No. 1405. Supreme Court ruled that since the accounts in question are U.S. dollar deposits, the applicable law therefore is not Republic Act No. 1405 but Republic Act No. 6426.

WILSON P. GAMBOA v. FINANCE SECRETARY TEVES
G.R. No. 176579, June 28, 2011, EN BANC (Carpio, J.)

This is a petition to nullify the sale of shares of stock of Philippine Telecommunications Investment Corporation (PTIC) by the government of the Republic of the Philippines, acting through the Inter-Agency Privatization Council (IPC), to Metro Pacific Assets Holdings, Inc. (MPAH), an affiliate of First Pacific Company Limited (First Pacific), a Hong Kong-based investment management and holding company and a shareholder of the Philippine Long Distance Telephone Company (PLDT).

The petitioner questioned the sale on the ground that it also involved an indirect sale of 12 million shares (or about 6.3 percent of the outstanding common shares) of PLDT owned by PTIC to First Pacific. With the this sale, First Pacific's common shareholdings in PLDT increased from 30.7 percent to 37 percent, thereby increasing the total common shareholdings of foreigners in PLDT to about 81.47%. This, according to the petitioner, violates Section 11, Article XII of the 1987 Philippine Constitution which limits foreign ownership of the capital of a public utility to not more than 40%.

ISSUE:

Whether or not the term "capital" in Section 11, Article XII of the Constitution refers to the total common shares only, or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of PLDT, a public utility.

RULING:

Section 11, Article XII (National Economy and Patrimony) of the 1987 Constitution mandates the Filipinization of public utilities, to wit:

> Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. (Emphasis supplied)

The term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock comprising both common and non-voting preferred shares [of PLDT].

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation. In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the

preferred shareholders are merely investors in the corporation for income in the same manner as bondholders. xxx.

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.

Mere legal title is insufficient to meet the 60 percent Filipino-owned "capital" required in the Constitution. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is "considered as non-Philippine national[s]."

To construe broadly the term "capital" as the total outstanding capital stock, including both common and *non-voting* preferred shares, grossly contravenes the intent and letter of the Constitution that the "State shall develop a self-reliant and independent national economy *effectively controlled* by Filipinos." A broad definition unjustifiably disregards who owns the all-important voting stock, which necessarily equates to control of the public utility.

We shall illustrate the glaring anomaly in giving a broad definition to the term "capital." Let us assume that a corporation has 100 common shares owned by foreigners and 1,000,000 non-voting preferred shares owned by Filipinos, with both classes of share having a par value of one peso (₱1.00) per share. Under the broad definition of the term "capital," such corporation would be considered compliant with the 40 percent constitutional limit on foreign equity of public utilities since the overwhelming majority, or more than 99.999 percent, of the total outstanding capital stock is Filipino owned. This is obviously absurd.

In the example given, only the foreigners holding the common shares have voting rights in the election of directors, even if they hold only 100 shares. The foreigners, with a minuscule equity of less than 0.001 percent, exercise control over the public utility. On the other hand, the Filipinos, holding more than 99.999 percent of the equity, cannot vote in the election of directors and hence, have no control over the public utility. This starkly circumvents the intent of the framers of the Constitution, as well as the clear language of the Constitution, to place the control of public utilities in the hands of Filipinos. It also renders illusory the State policy of an independent national economy *effectively controlled* by Filipinos.

The example given is not theoretical but can be found in the real world, *and in fact exists in the present case.*

[O]nly holders of common shares can vote in the election of directors [of PLDT], meaning only common shareholders exercise control over PLDT. Conversely, holders of preferred shares, who have no voting rights in the election of directors, do not have any control over PLDT. In fact, under PLDT's Articles of Incorporation, holders of common shares have voting rights for all purposes, while holders of preferred shares have no voting right for any purpose whatsoever.

It must be stressed, and respondents do not dispute, that foreigners hold a majority of the common shares of PLDT. In fact, based on PLDT's 2010 General Information Sheet (GIS), which is a document required to be submitted annually to the Securities and Exchange Commission, foreigners hold 120,046,690 common shares of PLDT whereas Filipinos hold only 66,750,622 common shares. In other words, foreigners hold 64.27% of the total number of PLDT's common shares, while Filipinos hold only 35.73%. Since holding a majority of the common shares equates to control, it is clear that foreigners exercise control over PLDT. Such amount of control unmistakably exceeds the allowable 40 percent limit on foreign ownership of public utilities expressly mandated in Section 11, Article XII of the Constitution.

As shown in PLDT's 2010 GIS, as submitted to the SEC, the par value of PLDT common shares is ₱5.00 per share, whereas the par value of preferred shares is ₱10.00 per share. In other words, preferred shares have twice the par value of common shares but cannot elect directors and have only 1/70 of the dividends of common shares. Moreover, 99.44% of the preferred shares are owned by Filipinos while foreigners own only a minuscule 0.56% of the preferred shares. Worse, preferred shares constitute 77.85% of the authorized capital stock of PLDT while common shares constitute only 22.15%. This undeniably shows that beneficial interest in PLDT is not with the non-voting preferred shares but with the common shares, blatantly violating the constitutional requirement of 60 percent Filipino control and Filipino beneficial ownership in a public utility.

The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipinos in accordance with the constitutional mandate. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is constitutionally required for the State's grant of authority to operate a public utility. The undisputed fact that the PLDT preferred shares, 99.44% owned by Filipinos, are non-voting and earn only 1/70 of the dividends that PLDT common shares earn, grossly violates the constitutional requirement of 60 percent Filipino control and Filipino beneficial ownership of a public utility.

In short, Filipinos hold less than 60 percent of the voting stock, and earn less than 60 percent of the dividends, of PLDT. This directly contravenes the express command in Section 11, Article XII of the Constitution that "[n]o franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to x x x corporations x x x organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens x x x."

To repeat, (1) foreigners own 64.27% of the common shares of PLDT, which class of shares exercises the sole right to vote in the election of directors, and thus exercise control over PLDT; (2) Filipinos own only 35.73% of PLDT's common shares, constituting a minority of the voting stock, and thus do not exercise control over PLDT; (3) preferred shares, 99.44% owned by Filipinos, have no voting rights; (4) preferred shares earn only 1/70 of the dividends that common shares earn; (5) preferred shares have twice the par value of common shares; and (6) preferred shares constitute 77.85% of the authorized capital stock of PLDT and common shares only 22.15%. This kind of ownership and control of a public utility is a mockery of the Constitution.

Incidentally, the fact that PLDT common shares with a par value of ₱5.00 have a current stock market value of ₱2,328.00 per share, while PLDT preferred shares with a par value of ₱10.00 per share have a current stock market value ranging from only ₱10.92 to ₱11.06 per share, is a glaring confirmation by the market that control and beneficial ownership of PLDT rest with the common shares, not with the preferred shares.

ATTY. ROMULO B. MACALINTAL v. PRESIDENTIAL ELECTORAL TRIBUNAL
G.R. No. 191618, November 23, 2010, EN BANC (Nachura, *J.*)

Atty. Romulo Macalintal questions the constitutionality of the Presidential Electoral Tribunal (PET) as an illegal and unauthorized progeny of Section 4,Article VII of the Constitution.

ISSUES:

1. Whether the creation of the Presidential Electoral Tribunal is unconstitutional for being a violation of paragraph 7, Section 4 of Article VII of the 1987 Constitution
2. Whether the designation of members of the Supreme Court as members of the presidential electoral tribunal is unconstitutional for being a violation of Section 12, Article VIII of the 1987 Constitution

RULING:

1. Petitioner, a prominent election lawyer who has filed several cases before this Court involving constitutional and election law issues, including, among others, the constitutionality of certain provisions of Republic Act (R.A.) No. 9189 (The Overseas Absentee Voting Act of 2003),cannot claim ignorance of: (1) the invocation of our jurisdiction under Section 4, Article VII of the Constitution; and (2) the unanimous holding thereon. Unquestionably, the overarching framework affirmed in Tecson v. Commission on Elections is that the Supreme Court has original jurisdiction to decide presidential and vice-presidential election protests while concurrently acting as an independent Electoral Tribunal.

Verba legis dictates that wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed, in which case the significance thus attached to them prevails. However, where there is ambiguity or doubt, the words of the Constitution should be interpreted in accordance with the intent of its framers or ratio legis et anima. A doubtful provision must be examined in light of the history of the times, and the condition and circumstances surrounding the framing of the Constitution. Last, ut magis valeat quam pereat the Constitution is to be interpreted as a whole.

By the same token, the PET is not a separate and distinct entity from the Supreme Court, albeit it has functions peculiar only to the Tribunal. It is obvious that the PET was constituted in implementation of Section 4, Article VII of the Constitution, and it faithfully complies not unlawfully defies the constitutional directive. The adoption of a separate seal, as well as the change in the nomenclature of the Chief Justice and the Associate Justices into Chairman and Members of the Tribunal, respectively, was designed simply to highlight the singularity and exclusivity of the Tribunals functions as a special electoral court. the PET, as intended by the framers of the Constitution, is to be an institution independent, but not separate, from the judicial department ,i.e., the Supreme Court.

2. It is also beyond cavil that when the Supreme Court, as PET, resolves a presidential or vice-presidential election contest, it performs what is essentially a judicial power. In the landmark case of Angara v. Electoral Commission, Justice Jose P. Laurel enucleated that "it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels." In fact, Angara pointed out that "[t]he Constitution is a definition of the powers of government." And yet, at that time, the 1935 Constitution did not contain the expanded definition of judicial power found in Article VIII, Section 1, paragraph 2 of the present Constitution.

AMPATUAN v. PUNO
G.R. No. 190259, June 7, 2011, EN BANC (Abad, *J.*)

On 24 November 2009, the day after the Maguindanao Massacre, then Pres. Arroyo issued Proclamation 1946, placing "the Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato under a state of emergency." She directed the AFP and the PNP "to undertake such measures as may be allowed by the Constitution and by law to prevent and suppress all incidents of lawless violence" in the named places. Three days later, she also issued AO 273 "transferring" supervision of the ARMM from the Office of the President to the DILG. She subsequently issued AO 273-A, which amended the former AO (the term "transfer" used in AO 273 was amended to "delegate", referring to the supervision of the ARMM by the DILG).

Claiming that the President's issuances encroached on the ARMM's autonomy, petitioners Datu Zaldy Uy Ampatuan, Ansaruddin Adiong, and Regie Sahali-Generale, all ARMM officials, filed this petition for prohibition under Rule 65. They alleged that the President's proclamation and orders encroached on the ARMM's autonomy as these issuances empowered the DILG Secretary to take over ARMM's operations and to seize the regional government's powers. They also claimed that the President had no factual basis for declaring a state of emergency, especially in the Province of Sultan Kudarat and the City of Cotabato, where no critical violent incidents occurred and that the deployment of troops and the taking over of the ARMM constitutes an invalid exercise of the President's emergency powers. Petitioners asked that Proclamation 1946 as well as AOs 273 and 273-A be declared unconstitutional.

ISSUES:

1. Whether Proclamation 1946 and AOs 273 and 273-A violate the principle of local autonomy under the Constitution and The Expanded ARMM Act

2. Whether or not President Arroyo invalidly exercised emergency powers when she called out the AFP and the PNP to prevent and suppress all incidents of lawless violence in Maguindanao, Sultan Kudarat, and Cotabato City

3. Whether or not the President had factual bases for her actions

RULING:

1. The principle of local autonomy was not violated. DILG Secretary did not take over control of the powers of the ARMM. After law enforcement agents took the respondent Governor of ARMM into custody for alleged complicity in the Maguindanao Massacre, the ARMM Vice-Governor, petitioner Adiong, assumed the vacated post on 10 Dec. 2009 pursuant to the rule on succession found in Sec. 12 Art.VII of RA 9054. In turn, Acting Governor Adiong named the then Speaker of the ARMM Regional Assembly, petitioner Sahali-Generale, Acting ARMM Vice-Governor. The DILG Secretary therefore did not take over the administration or the operations of the ARMM.

2. The deployment is not by itself an exercise of emergency powers as understood under Section 23 (2), Article VI of the Constitution, which provides:

> SECTION 23. x x x (2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner

withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

The President did not proclaim a national emergency, only a state of emergency in the three places mentioned. And she did not act pursuant to any law enacted by Congress that authorized her to exercise extraordinary powers. The calling out of the armed forces to prevent or suppress lawless violence in such places is a power that the Constitution directly vests in the President. She did not need a congressional authority to exercise the same.

3. The President's call on the armed forces to prevent or suppress lawless violence springs from the power vested in her under Section 18, Article VII of the Constitution, which provides:

> Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. x x x

While it is true that the Court may inquire into the factual bases for the President's exercise of the above power, it would generally defer to her judgment on the matter. As the Court acknowledged in Integrated Bar of the Philippines v. Hon. Zamora, it is clearly to the President that the Constitution entrusts the determination of the need for calling out the armed forces to prevent and suppress lawless violence. Unless it is shown that such determination was attended by grave abuse of discretion, the Court will accord respect to the President's judgment. Thus, the Court said:

> If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.
>
> On the other hand, the President, as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call, on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property. Indeed, the decision to call out the military to prevent or suppress lawless violence must be done swiftly and decisively if it were to have any effect at all. x x x.

Here, petitioners failed to show that the declaration of a state of emergency in the Provinces of Maguindanao, Sultan Kudarat and Cotabato City, as well as the President's exercise of the "calling out" power had no factual basis. They simply alleged that, since not all areas under the ARMM were placed under a state of emergency, it follows that the takeover of the entire ARMM by the DILG Secretary had no basis too.

The imminence of violence and anarchy at the time the President issued Proclamation 1946 was too grave to ignore and she had to act to prevent further bloodshed and hostilities in the places

mentioned. Progress reports also indicated that there was movement in these places of both high-powered firearms and armed men sympathetic to the two clans. Thus, to pacify the people's fears and stabilize the situation, the President had to take preventive action. She called out the armed forces to control the proliferation of loose firearms and dismantle the armed groups that continuously threatened the peace and security in the affected places.

Since petitioners are not able to demonstrate that the proclamation of state of emergency in the subject places and the calling out of the armed forces to prevent or suppress lawless violence there have clearly no factual bases, the Court must respect the President's actions.

RE: PETITION FOR RADIO AND TELEVISION COVERAGE OF THE MULTIPLE MURDER CASES AGAINST MAGUINDANAO GOVERNOR ZALDY AMPATUAN, et al.
A.M. Nos. 10-11-5-SC, 10-11-6-SC & 10-11-7-SC, June 14, 2011, EN BANC (Carpio-Morales, J.)

On November 23, 2009, 57 people including 32 journalists and media practitioners were killed while on their way to Shariff Aguak in Maguindanao. Touted as the worst election-related violence and the most brutal killing of journalists in recent history, the tragic incident which came to be known as the "Maguindanao Massacre" spawned charges for 57 counts of murder and an additional charge of rebellion against 197 accused, docketed as Criminal Case entitled *People v. Datu Andal Ampatuan, Jr., et al.*

Almost a year later or on November 19, 2010, the National Union of Journalists of the Philippines (NUJP), ABS-CBN Broadcasting Corporation, GMA Network, Inc., relatives of the victims, individual journalists from various media entities, and members of the academe filed a petition before this Court praying that live television and radio coverage of the trial in these criminal cases be allowed, recording devices (*e.g.*, still cameras, tape recorders) be permitted inside the courtroom to assist the working journalists, and reasonable guidelines be formulated to govern the broadcast coverage and the use of devices. National Press Club and AFIMA joined in later. President Noynoy Aquino also expressed his support to the move.

Petitioners countered the petition, praying that the said motion be denied on the ground that it is violative of the doctrine that proposed restrictions on constitutional rights are to be narrowly construed and outright prohibition cannot stand when regulation is a viable alternative.

ISSUE:

Whether or not the trial be allowed to be broadcasted live in radio and television.

RULING:

The Court partially GRANTS *pro hac vice* petitioners' prayer for a live broadcast of the trial court proceedings*, subject* to the guidelines.

The indication of "serious risks" posed by live media coverage to the accused's right to due process, left unexplained and unexplored in the era obtaining in *Aquino* and *Estrada,* has left a blow to the exercise of press freedom and the right to public information.

The rationale for an outright total prohibition was shrouded, as it is now, inside the comfortable cocoon of a feared speculation which no scientific study in the Philippine setting confirms, and which fear, if any, may be dealt with by safeguards and safety nets under existing rules and exacting regulations.

In this day and age, it is about time to craft a win-win situation that shall not compromise rights in the criminal administration of justice, sacrifice press freedom and allied rights, and interfere with the integrity, dignity and solemnity of judicial proceedings. Compliance with regulations, not curtailment of a right, provides a workable solution to the concerns raised in these administrative matters, while, at the same time, maintaining the same underlying principles upheld in the two previous cases of *Aquino* and *Estrada.*

The basic principle upheld in *Aquino* is firm "[a] trial of any kind or in any court is a matter of serious importance to all concerned and should not be treated as a means of entertainment[, and t]o so

treat it deprives the court of the dignity which pertains to it and departs from the orderly and serious quest for truth for which our judicial proceedings are formulated." The observation that "[m]assive intrusion of representatives of the news media into the trial itself can so alter and destroy the constitutionally necessary atmosphere and decorum" stands.

The Court concluded in *Aquino:*

> Considering the prejudice it poses to the defendant's right to due process as well as to the fair and orderly administration of justice, and considering further that the freedom of the press and the right of the people to information may be served and satisfied by less distracting, degrading and prejudicial means, live radio and television coverage of court proceedings shall not be allowed. Video footages of court hearings for news purposes shall be restricted and limited to shots of the courtroom, the judicial officers, the parties and their counsel taken prior to the commencement of official proceedings. No video shots or photographs shall be permitted during the trial proper.

Accordingly, in order to protect the parties' right to due process, to prevent the distraction of the participants in the proceedings and in the last analysis, to avoid miscarriage of justice, the Court resolved to prohibit live radio and television coverage of court proceedings. Video footage of court hearings for news purposes shall be limited and restricted as above indicated.

The Court had another unique opportunity in *Estrada* to revisit the question of live radio and television coverage of court proceedings in a criminal case. It held that "[t]he propriety of granting or denying the instant petition involve[s] the weighing out of the constitutional guarantees of freedom of the press and the right to public information, on the one hand, and the fundamental rights of the accused, on the other hand, along with the constitutional power of a court to control its proceedings in ensuring a fair and impartial trial."

Respecting the possible influence of media coverage on the impartiality of trial court judges, petitioners correctly explain that prejudicial publicity insofar as it undermines the right to a fair trial must pass the "totality of circumstances" test, applied in *People v. Teehankee, Jr.* and *Estrada v. Desierto,* that the right of an accused to a fair trial is not incompatible to a free press, that pervasive publicity is not *per se* prejudicial to the right of an accused to a fair trial, and that there must be allegation and proof of the impaired capacity of a judge to render a bias-free decision. Mere fear of possible undue influence is not tantamount to actual prejudice resulting in the deprivation of the right to a fair trial.

Moreover, an aggrieved party has ample legal remedies. He may challenge the validity of an adverse judgment arising from a proceeding that transgressed a constitutional right. As pointed out by petitioners, an aggrieved party may early on move for a change of venue, for continuance until the prejudice from publicity is abated, for disqualification of the judge, and for closure of portions of the trial when necessary. The trial court may likewise exercise its power of contempt and issue gag orders.

One apparent circumstance that sets the Maguindanao Massacre cases apart from the earlier cases is the impossibility of accommodating even the parties to the cases - the private complainants/families of the victims and other witnesses - inside the courtroom. On public trial, *Estrada* basically discusses:

> An accused has a right to a public trial but it is a right that belongs to him, more than anyone else, where his life or liberty can be held critically in balance. A public trial aims to ensure that

> he is fairly dealt with and would not be unjustly condemned and that his rights are not compromised in secrete conclaves of long ago. A public trial is not synonymous with publicized trial; it only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with decorum and observe the trial process. In the constitutional sense, a courtroom should have enough facilities for a reasonable number of the public to observe the proceedings, not too small as to render the openness negligible and not too large as to distract the trial participants from their proper functions, who shall then be totally free to report what they have observed during the proceedings.

Even before considering what is a "reasonable number of the public" who may observe the proceedings, the peculiarity of the subject criminal cases is that the proceedings already necessarily entail the presence of hundreds of families. It cannot be gainsaid that the families of the 57 victims and of the 197 accused have as much interest, beyond mere curiosity, to attend or monitor the proceedings as those of the impleaded parties or trial participants. It bears noting at this juncture that the prosecution and the defense have listed more than 200 witnesses each.

The impossibility of holding such judicial proceedings in a courtroom that will accommodate all the interested parties, whether private complainants or accused, is unfortunate enough. What more if the right itself commands that a reasonable number of the general public be allowed to witness the proceeding as it takes place inside the courtroom. Technology tends to provide the only solution to break the inherent limitations of the courtroom, to satisfy the imperative of a transparent, open and public trial.

Indeed, the Court cannot gloss over what advances technology has to offer in distilling the abstract discussion of key constitutional precepts into the workable context. Technology *per se* has always been neutral. It is the use and regulation thereof that need fine-tuning. Law and technology can work to the advantage and furtherance of the various rights herein involved, within the contours of defined guidelines.

HACIENDA LUISITA, INCORPORATED v. PRESIDENTIAL AGRARIAN REFORM COUNCIL
G.R. No. 171101, 05 July 2011, EN BANC (Velasco, Jr., *J.*)

In 1988, RA 6657 or the CARP law was passed. It is a program aimed at redistributing public and private agricultural lands to farmers and farmworkers who are landless. One of the lands covered by this law is the Hacienda Luisita, a 6,443-hectare mixed agricultural-industrial-residential expanse straddling several municipalities of Tarlac. Hacienda Luisita was bought in 1958 from the Spanish owners by the Tarlac Development Corporation (TADECO), which is owned and/or controlled by Jose Cojuanco Sr., Group. Back in 1980, the Martial Law administration filed an expropriation suit against TADECO to surrender the Hacienda to the then Ministry of Agrarian Reform (now DAR) so that the land can be distributed to the farmers at cost. The Regional Trial Court (RTC) rendered judgment ordering TADECO to surrender Hacienda Luisita to the MAR.

In 1988, the Office of the Solicitor General (OSG) moved to dismiss the government's case against TADECO. The CA dismissed it, but the dismissal was subject to the condition that TADECO shall obtain the approval of FWB (farm worker beneficiaries) to the Stock Distribution Plan (SDP) and to ensure its implementation.

Sec. 31 of the CARP Law allows either land transfer or stock transfer as two alternative modes in distributing land ownership to the FWBs. Since the stock distribution scheme is the preferred option of TADECO, it organized a spin-off corporation, the Hacienda Luisita Inc. (HLI), as vehicle to facilitate stock acquisition by the farmers.

After conducting a follow-up referendum and revision of terms of the Stock Distribution Option Agreement (SDOA) proposed by TADECO, the Presidential Agrarian Reform Council (PARC), led by then DAR Secretary Miriam Santiago, approved the SDP of TADECO/HLI through Resolution 89-12-2 dated Nov 21, 1989.

From 1989 to 2005, the HLI claimed to have extended those benefits to the farmworkers. Such claim was subsequently contested by two groups representing the interests of the farmers – the HLI Supervisory Group and the AMBALA. In 2003, each of them wrote letter petitions before the DAR asking for the renegotiation of terms and/or revocation of the SDOA. They claimed that they haven't actually received those benefits in full, that HLI violated the terms, and that their lives haven't really improved contrary to the promise and rationale of the SDOA.

The DAR created a Special Task Force to attend to the issues and to review the terms of the SDOA and the Resolution 89-12-2. Adopting the report and the recommendations of the Task Force, the DAR Sec recommended to the PARC (1) the revocation of Resolution 89-12-2 and (2) the acquisition of Hacienda Luisita through compulsory acquisition scheme. Consequently, the PARC revoked the SDP of TADECO/HLI and subjected those lands covered by the SDP to the mandated land acquisition scheme under the CARP law. These acts of the PARC are assailed by HLI via Rule 65.

On the other hand, FARM, an intervenor, asks for the invalidation of Sec. 31 of RA 6657, insofar as it affords the corporation, as a mode of CARP compliance, to resort to stock transfer in lieu of outright agricultural land transfer. For FARM, this modality of distribution is an anomaly to be annulled for being inconsistent with the basic concept of agrarian reform ingrained in Sec. 4, Art. XIII of the Constitution.

ISSUE:

May the Court exercise its power of judicial review over the constitutionality of Sec. 31 of RA 6657?

RULING:

NO. First, the intervenor FARM failed to challenged the constitutionality of RA 6657, Sec 31 at the earliest possible opportunity. It should have been raised as early as Nov 21, 1989, when PARC approved the SDP of HLI or at least within a reasonable time thereafter.

Second, the constitutionality of RA 6657 is not the very lis mota of this case. Before the SC, the lis mota of the petitions filed by the HLI is whether or not the PARC acted with grave abuse of discretion in revoking the SDP of HLI. With regards to the original positions of the groups representing the interests of the farmers, their very lis mota is the non-compliance of the HLI with the SDP so that the the SDP may be revoked. Such issues can be resolved without delving into the constitutionality of RA 6657.

Hence, the essential requirements in passing upon the constitutionality of acts of the executive or legislative departments have not been met in this case.

RENATO V. DIAZ and AURORA MA. F. TIMBOL v. THE SECRETARY OF FINANCE and THE COMMISSIONER OF INTERNAL REVENUE
G.R. No. 193007, 19 July 2011, EN BANC (Abad, *J.*)

Renato V. Diaz and Aurora Ma. F. Timbol filed a petition for declaratory relief assailing the validity of the impending imposition of VAT by BIR on the collections of tollway operators.

Petitioners claim that, since the VAT would result in increased toll fees, they have an interest asregular users of tollways in stopping the BIR action.

Diaz claims that he sponsored the approval of Republic Act 7716 (EVAT Law) and Republic Act 8424 (the1997 NIRC) at the House of Representatives.

Timbol claims that she served as Assistant Secretary of DTI and consultant of the Toll Regulatory Board (TRB) in the past administration.

Petitioners allege that the BIR attempted during the administration of President Gloria Macapagal- Arroyo to impose VAT on toll fees. But the imposition was deferred in view of the consistent opposition of Diaz and other sectors to such move.

But, upon President Benigno C. Aquino III's assumption of office in 2010, the BIR revived the idea and would impose the challenged tax on toll fees beginning August 16, 2010 unless judicially enjoined.

Petitioners hold the view that since VAT was never factored into the formula for computing toll fees, its imposition would violate the non-impairment clause of the constitution

The government (SOLGEN) avers that petitioners have no right to invoke the non-impairment of contracts clause since they clearly have no personal interest in existing toll operating agreements (TOAs) between the government and tollway operators. At any rate, the non- impairment clause cannot limit the State's sovereign taxing power which is generally read into contracts.

ISSUE:

Do Diaz and Timbol have legal standing to file the action?

RULING:

NO. They have no personality to invoke the non-impairment clause on behalf of private investors in the tollway projects. They will neither be prejudiced nor affected by the alleged diminution in return of investments that may result from the VAT imposition. They have no interest in the profits to be earned in the TOAs. The interest in and right to recover investments belongs solely to the private tollway investors.

NATIONAL ASSOCIATION OF ELECTRICIY CONSUMERS FOR REFORMS, INC. (NASECORE) v. ENERGY REGULATORY COMMISSION (ERC) and MANILA ELECTRIC COMPANY, INC. (MERALCO)
G.R. No. 190795, 06 July 2011, SECOND DIVISION (Sereno, *CJ.*)

The Energy Regulatory Commission (ERC), created under the *Electric Power Industry Reform Act of 2001* (EPIRA), used to apply the Return on Rate Base (RORB) method to determine the proper amount a distribution utility (DU) may charge for the services it provides. The RORB scheme had been the method for computing allowable electricity charges in the Philippines for decades, before the onset of the EPIRA. Section 43 (f) of the EPIRA allows the ERC to shift from the RORB methodology to alternative forms of internationally accepted rate-setting methodology, subject to multiple conditions. The ERC, through a series of resolutions, adopted the Performance-Based Regulation (PBR) method to set the allowable rates DUs may charge their customers. Meralco, a DU, applied for an increase of its distribution rate under the PBR scheme.

Petitioners NASECORE, FOLVA, FOVA, and Engineer Robert F. Mallillin (Mallillin) all filed their own petitions for Intervention to oppose the application of Meralco.

At the initial hearing, Meralco, Mallillin, and FOVA entered their appearances. Petitioners NASECORE and FOLVA failed to appear despite due notice.

At the date of hearing, FOLVA failed to appear despite due notice. During the continuation of Meralco's presentation of its witness, petitioners NASECORE, FOVA, and FOLVA all failed to appear despite due notice. NASECORE had sent a letter requesting that it be excused from the said hearing, but reserved its right to cross-examine the witness presented by Meralco. The latter objected to this request by virtue of the ERC's Rules of Practice and Procedure. ERC ruled that the absence of NASECORE and FOVA was deemed a waiver of their right to cross-examine Meralco's first witness.

At the 26 November 2009 hearing, NASECORE and FOLVA again failed to attend the hearing despite due notice. Upon motion by Meralco, ERC declared that NASECORE had waived its right to cross-examine the second witness of Meralco for failure to attend the said hearing. ERC then gave Meralco five (5) days from said date of hearing within which to file its Formal Offer of Evidence. FOVA and all the other Intervenors were, likewise, given ten (10) days from receipt thereof to file their comments thereon and fifteen (15) days from said date of hearing to file their position papers or Memoranda.

On 1 December 2009, Meralco filed its Formal Offer of Evidence with compliance. On 7 December 2009, it was directed by ERC to submit additional documents to facilitate the evaluation of its application.

NASECORE claims that it was only on 8 December 2009, that it received Meralco's Formal Offer of Evidence, together with a copy of the 7 December 2009 ERC Order. Thus, it believes that it has until 18 December 2009 to file its comment thereon.

NASECORE filed with ERC a Manifestation with Motion dated 9 December 2009 requesting that the ERC direct applicant Meralco to furnish intervenor NASECORE all the items in ERC's directive/Order dated 7 December 2009; to furnish Intervenor NASECORE a copy of the Records of the Proceedings of the hearings held on 19 and 26 November 2009; and to grant the same intervenor

fifteen (15) days, from receipt of applicant's compliance with the ERC's Order dated 7 December 2009, within which to file its comment to applicant's Formal Offer of Evidence.

Meralco's application in the MAP case was approved by ERC. Petitioner NASECORE protests this claiming approval as premature, that there were still four days before the expiration of the period given to it to file its opposition to the formal offer of evidence of Meralco, and before petitioner NASECORE received its copy of the documents Meralco was required to additionally submit in the 7 December 2009 ERC Order.

ISSUE:

Did the ERC deny due process to the petitioners?

RULING:

NO. This Court is of the Opinion that considering the facts in this case, including all the events that occurred both prior to and subsequent to the issuance of the 14 December 2010 Decision, the ERC did not deprive petitioners of their right to be heard.

Petitioners claim that that they were not given a chance to submit their evidence or memorandum in support of their position that Meralco had been charging rates that were beyond the 12% reasonable rate of return established in jurisprudence. The records show, however, that they had been given notice to attend all the hearings conducted by the ERC, but that they voluntarily failed to appear in or attend those hearings.

Furthermore, after the issuance of the assailed Order, Mallillin filed an MR before petitioners filed their Petition in this Court. On 25 January 2010, the ERC issued an Order directing Petitioners NASECORE, FOLVA, and FOVA to file their respective comments on Mallillin's MR. Petitioners were given a period of ten days from receipt of the order, to file their comments. The ERC also scheduled the hearing on the said MR on 5 February 2010.

On 26 January 2010, Meralco filed a Manifestation and Motion wherein it expressed its decision to voluntarily suspend the implementation of the 14 December 2009 Decision pending the ERC's resolution of Mallillin's MR.

Instead of filing their comments, petitioners NASECORE and FOVA, through separate letters respectively dated 28 January 2010 and 31 January 2010, sought to excuse themselves from participating in the proceedings before the ERC on the ground that they have already filed the present Petition.

On 1 February 2010, the ERC issued an Order suspending the implementation of the herein questioned 14 December 2010 Decision pending the resolution of the MR.

During the 5 February 2010 hearing, only Meralco appeared. Neither petitioners nor Mallillin participated in the proceedings.

OFFICE OF THE OMBUDSMAN v. ULDARICO P. ANDUTAN, JR.
G.R. No. 164679, 27 July 2011, SECOND DIVISION (Brion, *J.*)

Pursuant to the Memorandum directing all non-career officials or those occupying political positions to vacate their positions, Andutan resigned from the DOF as the former Deputy Director of the One-Stop Shop Tax Credit and Duty Drawback Center of the DOF. Subsequently, Andutan, et al. was criminally charged by the Fact Finding and Intelligence Bureau (FFIB) of the Ombudsman with Estafa through Falsification of Public Documents, and violations RA 3019. As government employees, Andutan et al. were likewise administratively charged of Grave Misconduct, Dishonesty, Falsification of Official Documents and Conduct Prejudicial to the Best Interest of the Service. The criminal and administrative charges arose from anomalies in the illegal transfer of Tax Credit Certificates (TCCs) to Steel Asia, among others. The Ombudsman found the respondents guilty of Gross Neglect of Duty. Having been separated from the service, Andutan was imposed the penalty of forfeiture of all leaves, retirement and other benefits and privileges, and perpetual disqualification from reinstatement and/or reemployment in any branch or instrumentality of the government, including government owned and controlled agencies or corporations. The CA annulled and set aside the decision of the Ombudsman, ruling that the latter "should not have considered the administrative complaints" because: first, Section 20 of R.A. 6770 provides that the Ombudsman "may not conduct the necessary investigation of any administrative act or omission complained of if it believes that x x x [t]he complaint was filed after one year from the occurrence of the act or omission complained of"; and second, the administrative case was filed after Andutan's forced resignation

ISSUES:

1. Whether Section 20(5) of R.A. 6770 prohibit the Ombudsman from conducting an administrative investigation a year after the act was committed.
2. Whether the Ombudsman has authority to institute an administrative complaint against a government employee who had already resigned.

RULING:

1. NO. Well-entrenched is the rule that administrative offenses do not prescribe. Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government. Clearly, Section 20 of R.A. 6770 does not prohibit the Ombudsman from conducting an administrative investigation after the lapse of one year, reckoned from the time the alleged act was committed. Without doubt, even if the administrative case was filed beyond the one (1) year period stated in Section 20(5), the Ombudsman was well within its discretion to conduct the administrative investigation.

2. NO. The Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed. It is irrelevant, according to the Ombudsman, that Andutan had already resigned prior to the filing of the administrative case since the operative fact that determines its jurisdiction is the commission of an offense while in the public service. The SC observed that indeed it has held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. However, the facts of those cases are not entirely applicable to the present case. In the past cases, the Court found that the public officials – subject of the administrative cases – resigned, either to prevent the continuation of a case

already filed or to pre-empt the imminent filing of one. Here, neither situation obtains. First, Andutan's resignation was neither his choice nor of his own doing; he was forced to resign. Second, Andutan resigned from his DOF post on July 1, 1998, while the administrative case was filed on September 1, 1999, exactly one year and two months after his resignation. What is clear from the records is that Andutan was forced to resign more than a year before the Ombudsman filed the administrative case against him. If the SC agreed with the interpretation of the Ombudsman, any official – even if he has been separated from the service for a long time – may still be subject to the disciplinary authority of his superiors, ad infinitum. Likewise, if the act committed by the public official is indeed inimical to the interests of the State, other legal mechanisms are available to redress the same.

PETRA C. MARTINEZ v. FILOMENA L. VILLANUEVA
G.R. No. 169196, 06 July 2011, FIRST DIVISION (Villarama, Sr., *J.*)

Petitioner Martinez is the General Manager of Claveria Agri-Based Multi-Purpose Cooperative, Inc. (CABMPCI) while respondent Villanueva is the Assistant Regional Director of the Cooperative Development Authority (CDA), Regional Office No. 02, Tuguegarao City, Cagayan.

Respondent solicited several loans from CABMPCI. The Ombudsman later found that respondent abused her position when she solicited a loan from CABMPCI despite the fact that she is disqualified by its by-laws. The relevant provision under which respondent was charged is Section 7(d) of R.A. No. 6713 which reads:

> SEC. 7. Prohibited Acts and Transactions.- In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:
>
> > (d) Solicitation or acceptance of gifts. - Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office. x x x x

On appeal, Respondent argued that the Office of the Deputy Ombudsman for Luzon erred in treating the loan she obtained from CABMPCI as a prohibited loan under Section 7(d) of R.A. No. 6713 because she was an official of the CDA. Respondent argued that although Section 7(d) of R.A. No. 6713 prohibits all public officials and employees from soliciting or accepting loans in connection with any operation being regulated by her office, the subsequent enactment of R.A. No. 6938 or the Cooperative Code of the Philippines allows qualified officials and employees to become members of cooperatives and naturally, to avail of the attendant privileges and benefits of membership. She contended that it would be absurd if CDA officials and employees who are eligible to apply for membership in a cooperative would be prohibited from availing loans.

On appeal, the CA held that respondent should not have been held liable for grave misconduct because of the supposed failure of Martinez to show undue influence

ISSUE:

Does the Cooperative Code impliedly repeal Section 7(d) of R.A. No. 6713?

RULING:

NO. True, the Cooperative Code allows CDA officials and employees to become members of cooperatives and enjoy the privileges and benefits attendant to membership. However, it should not be taken as creating in favor of CDA officials and employees an exemption from the coverage of Section 7(d), R.A. No. 6713 considering that the benefits and privileges attendant to membership in a cooperative are not confined solely to availing of loans and not all cooperatives are established for the sole purpose of providing credit facilities to their members. Thus, the limitation on the benefits which respondent may enjoy in connection with her alleged membership in

CABMPCI does not lead to absurd results and does not render naught membership in the cooperative or render R.A. No. 6938 ineffectual, contrary to respondent's assertions. We find that such limitation is but a necessary consequence of the privilege of holding a public office and is akin to the other limitations that, although interfering with a public servant's private rights, are nonetheless deemed valid in light of the public trust nature of public employment.

CIVIL SERVICE COMMISSION v. RICHARD G. CRUZ
G.R. No. 187858, 09 August 2011, EN BANC (Brion, *J.*)

The respondent, Storekeeper A of the City of Malolos Water District (CMWD), was charged with grave misconduct and dishonesty by CMWD General Manager (GM) Nicasio Reyes. He allegedly uttered a false, malicious and damaging statement (Masasamang tao ang mga BOD at General Manager) against GM Reyes and the rest of the CMWD Board of Directors (Board); four of the respondent subordinates allegedly witnessed the utterance. The dishonesty charge, in turn, stemmed from the respondent act of claiming overtime pay despite his failure to log in and out in the computerized daily time record for three working days.

The respondent denied the charges against him. On the charge of grave misconduct, he stressed that three of the four witnesses already retracted their statements against him. On the charge of dishonesty, he asserted that he never failed to log in and log out. He reasoned that the lack of record was caused by technical computer problems. The respondent submitted documents showing that he rendered overtime work on the three days that the CMWD questioned.

GM Reyes preventively suspended the respondent for 15 days. Before the expiration of his preventive suspension, however, GM Reyes, with the approval of the CMWD Board, found the respondent guilty of grave misconduct and dishonesty, and dismissed him from the service.

The CSC found no factual basis to support the charges of grave misconduct and dishonesty. The CSC, however, found the respondent liable for violation of reasonable office rules for his failure to log in and log out. It imposed on him the penalty of reprimand but did not order the payment of back salaries.

Both the CMWD and the respondent elevated the CSC ruling to the CA via separate petitions for review under Rule 43 of the Rules of Court. The CA dismissed the CMWD petition and this ruling has lapsed to finality. Hence, the issue of reinstatement is now a settled matter. The CA ruled in the respondent favor on the issue of back salaries.

ISSUE:

Is the respondent entitled to back salaries after the CSC ordered his reinstatement to his former position in consonant with the CSC ruling that he was guilty only of violation of reasonable office rules and regulations?

RULING:

NO. The issue of entitlement to back salaries, for the period of suspension pending appeal, of a government employee who had been dismissed but was subsequently exonerated is settled in the Court jurisdiction. The Court starting point for this outcome is the "no work-no pay" principle public officials are only entitled to compensation if they render service. It is excepted from this general principle and awarded back salaries even for unworked days to illegally dismissed or unjustly suspended employees based on the constitutional provision that "no officer or employee in the civil service shall be removed or suspended except for cause provided by law"; to deny these employees their back salaries amounts to unwarranted punishment after they have been exonerated from the charge that led to their dismissal or suspension.

The present legal basis for an award of back salaries is Section 47, Book V of the Administrative Code of 1987.

> Section 47. Disciplinary Jurisdiction. x x x.
>
> (4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.
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> This provision, however, on its face, does not support a claim for back salaries since it does not expressly provide for back salaries during this period; the Court established rulings hold that back salaries may not be awarded for the period of preventive suspension as the law itself authorizes its imposition so that its legality is beyond question.
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> To resolve the seeming conflict, the Court crafted two conditions before an employee may be entitled to back salaries:
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> a) the employee must be found innocent of the charges and
>
> b) his suspension must be unjustified.

The reasoning behind these conditions runs this way: although an employee is considered under preventive suspension during the pendency of a successful appeal, the law itself only authorizes preventive suspension for a fixed period; hence, his suspension beyond this fixed period is unjustified and must be compensated.

It is the Court consistent stand in determining the propriety of the award of back salaries that the government employees must not only be found innocent of the charges; their suspension must likewise be shown to be unjustified.

The CA was correct in awarding the respondent his back salaries during the period he was suspended from work, following his dismissal until his reinstatement to his former position. The records show that the charges of grave misconduct and dishonesty against him were not substantiated. As the CSC found, there was no corrupt motive showing malice on the part of the respondent in making the complained utterance. Likewise, the CSC found that the charge of dishonesty was well refuted by the respondent evidence showing that he rendered overtime work on the days in question.

The Court is fully in accord with the CA conclusion that the two conditions to justify the award of back salaries exist in the present case.

The first condition was met since the offense which the respondent was found guilty of (violation of reasonable rules and regulations) stemmed from an act (failure to log in and log out) different from the act of dishonesty (claiming overtime pay despite his failure to render overtime work) that he was charged with.

The second condition was met as the respondent committed offense merits neither dismissal from the service nor suspension (for more than one month), but only reprimand.

In sum, the respondent is entitled to back salaries from the time he was dismissed by the CMWD until his reinstatement to his former position - i.e., for the period of his preventive suspension pending appeal. For the period of his preventive suspension pending investigation, the respondent is not entitled to any back salaries.

PROF. MERLIN M. MAGALLONA, et.al v. HON. EDUARDO ERMITA, et.al
G.R. No. 187167, 16 July 2011, EN BANC (Carpio, J.)

R.A. 9522 was enacted by the Congress in March 2009 to comply with the terms of the United Nations Convention on the Law of the Sea (UNCLOS III), which the Philippines ratified on February 27, 1984. Such compliance shortened one baseline, optimized the location of some basepoints around the Philippine archipelago and classified adjacent territories such as the Kalayaan Island Ground (KIG) and the Scarborough Shoal as "regimes of islands" whose islands generate their own applicable maritime zones.

Petitioners, in their capacities as "citizens, taxpayers or legislators" assail the constitutionality of R.A. 9522 with one of their arguments contending that the law unconstitutionally "converts" internal waters into archipelagic waters, thus subjecting these waters to the right of innocent and sea lanes passage under UNCLOS III, including overflight. Petitioners have contended that these passage rights will violate the Constitution as it shall expose Philippine internal waters to nuclear and maritime pollution hazard.

ISSUE:

Is R.A. 9522 unconstitutional for converting internal waters into archipelagic waters?

RULING:

NO. The Court finds R.A. 9522 constitutional and is consistent with the Philippine's national interest. Aside from being a vital step in safeguarding the country's maritime zones, the law also allows an internationally-recognized delimitation of the breadth of the Philippine's maritime zones and continental shelf.

The Court also finds that the conversion of internal waters into archipelagic waters will not risk

the Philippines as affirmed in the Article 49 of the UNCLOS III, an archipelagic State has sovereign power that extends to the waters enclosed by the archipelagic baselines, regardless of their depth or distance from the coast. It is further stated that the regime of archipelagic sea lanes passage will not affect the status of its archipelagic waters or the exercise of sovereignty over waters and air space, bed and subsoil and the resources therein.

Furthermore, due to the absence of its own legislation regarding routes within the archipelagic waters to regulate innocent and sea lanes passage, the Philippines has no choice but to comply with the international law norms. The Philippines is subject to UNCLOS III, which grants innocent passage rights over the territorial sea or archipelagic waters, subject to the treaty's limitations and conditions for their exercise, thus, the right of innocent passage, being a customary international law, is automatically incorporated in the corpus of Philippine law. If the Philippines or any country shall invoke its sovereignty to forbid innocent passage, it shall risk retaliatory measures from the international community. With compliance to UNCLOS III and the enactment of R.A. 9522, the Congress has avoided such conflict.

Contrary to the contention of the petitioners, the compliance to UNCLOS III through the R.A. 9522 will not expose Philippine internal waters to nuclear and maritime pollution hazard. As a matter of fact, if the Philippines did not comply with the baselines law, it will find itself devoid of internationally

acceptable baselines from where the breadth of its maritime zones and continental shelf is measured and which will produce two-fronted disaster: (1) open invitation to the seafaring powers to freely enter and exploit the resources in the waters and submarine areas around the archipelago and (2) it shall weaken the country's case in any international dispute over Philippine maritime space. Such disaster was avoided through the R.A. 9522.

RENALD F. VILANDO v. HOUSE OF REPRESENTATIVES and ELECTORAL TRIBUNAL, JOCELYN SY LIMKAICHONG and HON. SPEAKER PROSPERO NOGRALES
G.R. Nos. 192147 & 192149, 23 August 2011, EN BANC (Mendoza, *J.*)

In the May 14, 2007 elections, Limkaichong filed her certificate of candidacy for the position of Representative of the First District of Negros Oriental. She won over the other contender, Olivia Paras. On May 25, 2007, she was proclaimed as Representative by the Provincial Board of Canvassers on the basis of Comelec Resolution No. 8062 issued on May 18, 2007. OnJuly 23, 2007, she assumed office as Member of the House of Representatives.

Meanwhile, petitions involving either the disqualification or the proclamation of Limkaichong were filed before the Commission on Elections (COMELEC)which reached the Court.

The petitions, which questioned her citizenship, were filed against Limkaichong by her detractors.

On April 21, 2009 and May 27, 2009, petitioner Renald F. Vilando (Vilando), as taxpayer; and Jacinto Paras, as registered voter of the congressional district concerned, filed separate petitions for Quo Warranto against Limkaichong before the HRET. These petitions were consolidated by the HRET as they both challenged the eligibility of one and the same respondent. Petitioners asserted that Limkaichong was a Chinese citizen and ineligible for the office she was elected and proclaimed. They alleged that she was born to a father (Julio Sy), whose naturalization had not attained finality, and to a mother who acquired the Chinese citizenship of Julio Sy from the time of her marriage to the latter. Also, they invoked the jurisdiction of the HRET for a determination of Limkaichong's citizenship, which necessarily included an inquiry into the validity of the naturalization certificate of Julio Sy.

For her defense, Limkaichong maintained that she is a natural-born Filipino citizen. She averred that the acquisition of Philippine citizenship by her father was regular and in order and had already attained the status ofres judicata. Further, she claimed that the validity of such citizenship could not be assailed through a collateral attack.

Vilando asserts that as an incident in determining the eligibility of Limkaichong, the HRET,having the plenary, absolute and exclusive jurisdiction to determine her qualifications,can pass upon the efficacy of the certificate of naturalization.

On March 24, 2010, the HRET dismissed both petitions and declared Limkaichong not disqualified as Member of the House of Representatives.

The petitioners sought reconsideration of the aforesaid decision, but it was denied by the HRET in its Resolution. Hence, this petition for certiorari filed by Vilando.

ISSUES:

1. Is the case already moot and academic?
2. Is Limkaichong a natural born-citizen?
3. Does the HRET have the jurisdiction to determine the legality of the judgment of naturalization of Limkaichong?

RULING:

1. YES. It should be noted that Limkaichong's term of office as Representative of the First District of Negros Oriental from June 30, 2007 to June 30, 2010 already expired. As such, the issue questioning her eligibility to hold office has been rendered moot and academic by the expiration of her term. Whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced. Thus, the petition may be dismissed for being moot and academic.

Moreover, there was the conduct of the 2010 elections, a supervening event, in a sense, has also rendered this case moot and academic. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.

2. YES. Citizenship, being a continuing requirement for Members of the House of Representatives, however, may be questioned at anytime. For this reason, the Court deems it appropriate to resolve the petition on the merits. This position finds support in the rule that courts will decide a question, otherwise moot and academic, if it is capable of repetition, yet evading review. The question on Limkaichongs citizenship is likely to recur if she would run again, as she did run, for public office, hence, capable of repetition.

In any case, the Court is of the view that the HRET committed no grave abuse of discretion in finding that Limkaichong is not disqualified to sit as Member of the House of Representatives.

Vilando's argument, that the quo warranto petition does not operate as a collateral attack on the citizenship of Limkaichongs father as the certificate of naturalization is null and void from the beginning, is devoid of merit.

In this petition, Vilando seeks to disqualify Limkaichong on the ground that she is a Chinese citizen. To prove his point, he makes reference to the alleged nullity of the grant of naturalization of Limkaichong's father which, however, is not allowed as it would constitute a collateral attack on the citizenship of the father. In our jurisdiction, an attack on a person's citizenship may only be done through a direct action for its nullity.

The proper proceeding to assail the citizenship of Limkaichong's father should be in accordance with Section 18 of Commonwealth Act No. 473.As held in Limkaichong v. Comelec, thus:

> As early as the case of Queto v. Catolico, where the Court of First Instance judge motu propio and not in the proper denaturalization proceedings called to court various grantees of certificates of naturalization (who had already taken their oaths of allegiance) and cancelled their certificates of naturalization due to procedural infirmities, the Court held that:
> It may be true that, as alleged by said respondents, that the proceedings for naturalization were tainted with certain infirmities, fatal or otherwise,but that is beside the point in this case. The jurisdiction of the court to inquire into and rule upon such infirmities must be properly invoked in accordance with the procedure laid down by law. Such procedure is the cancellation of the naturalization certificate. [Section 1(5), Commonwealth Act No. 63], in the manner fixed in Section 18 of Commonwealth Act No. 473, hereinbefore quoted, namely, "upon motion made in the proper proceedings by the Solicitor General or his representatives, or by the proper

provincial fiscal." In other words, the initiative must come from these officers, presumably after previous investigation in each particular case.

Clearly, under law and jurisprudence, it is the State, through its representatives designated by statute, that may question the illegally or invalidly procured certificate of naturalization in the appropriate denaturalization proceedings. It is plainly not a matter that may be raised by private persons in an election case involving the naturalized citizen's descendant.

Records disclose that Limkaichong was born in Dumaguete City on November 9, 1959.The governing law is the citizenship provision of the 1935 Constitution, the pertinent portion thereof, reads:

Article IV

Section 1.The following are citizens of the Philippines:

xxx

(3)Those whose fathers are citizens of the Philippines.

(4)Those whose mothers are citizens of the Philippines and,upon reaching the age of majority, elect Philippine citizenship.

xxx

Indubitably, with Limkaichongs father having been conferred the status as a naturalized Filipino, it follows that she is a Filipino citizen born to a Filipino father.

Even on the assumption that the naturalization proceedings and the subsequent issuance of certificate of naturalization were invalid, Limkaichong can still be considered a natural-born Filipino citizen having been born to a Filipino mother and having impliedly elected Filipino citizenship when she reached majority age. The HRET is, thus, correct in declaring that Limkaichong is a natural-born Filipino citizen:

Respondent Limkaichong falls under the category of those persons whose fathers are citizens of the Philippines. (Section 1(3), Article IV, 1935 Constitution)It matters not whether the father acquired citizenship by birth or by naturalization.Therefore, following the line of transmission through the father under the 1935 Constitution, the respondent has satisfactorily complied with the requirement for candidacy and for holding office, as she is a natural-born Filipino citizen.

Likewise, the citizenship of respondent Limkaichong finds support inparagraph 4, Section 1, Article IV of the 1935 Constitution.

Having failed to prove that Anesia Sy lost her Philippine citizenship, respondent can be considered a natural born citizen of the Philippines, having been born to a mother who was a natural-born Filipina at the time of marriage, and because respondent was able to elect citizenship informally when she reached majority age. Respondent participated in the barangay elections as a young voter in 1976, accomplished voters affidavit as of 1984, and ran as a candidate and was elected as Mayor of La Libertad, Negros Oriental in 2004.These are positive acts of election of Philippine citizenship. The case of In re: Florencio Mallare, elucidates how election of citizenship is manifested in actions indubitably

showing a definite choice. We note that respondent had informally elected citizenship after January 17, 1973during which time the 1973 Constitution considered as citizens of the Philippines all those who elect citizenship in accordance with the 1935 Constitution. The 1987 Constitution provisions, i.e., Section 1(3), Article [IV] and Section 2, Article [IV]were enacted to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically accorded the status of a natural-born citizen, while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship yet if so elected, was not conferred natural-born status. It was the intention of the framers of the 1987 Constitution to treat equally those born before the 1973 Constitution and who elected Philippine citizenship upon reaching the age of majority either before or after the effectivity of the 1973 Constitution. Thus, those who would elect Philippine citizenship under par. 3, Section 1, Article [IV] of the 1987 Constitution are now, under Section 2, Article [IV] thereof also natural-born Filipinos. The following are the pertinent provisions of the 1987 Constitution:

> **Article IV**
>
> **Section 1.** The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
> (2) Those whose fathers or mothers are citizens of the Philippines;
> (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
> (4) Those who are naturalized in accordance with law.
>
> **Section 2.** Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

Vilando's assertion that Limkaichong cannot derive Philippine citizenship from her mother because the latter became a Chinese citizen when she married Julio Sy, as provided for under Section 1 (7) of Commonwealth Act No. 63 in relation to Article 2 (1) Chapter II of the Chinese Revised Nationality Law of February 5, 1959, must likewise fail.

As aptly pointed out by the HRET, Vilando was not able to offer in evidence a duly certified true copy of the alleged Chinese Revised Law of Nationality to prove that Limkaichong's mother indeed lost her Philippine citizenship. Verily, Vilando failed to establish his case through competent and admissible evidence to warrant a reversal of the HRET ruling.

> Also, an application for an alien certificate of registration (ACR)is not an indubitable proof of forfeiture of Philippine citizenship. It is well to quote the ruling of the HRET on this matter, to wit:
>
> > An alien certificate of registration is issued to an individual who declares that he is not a Filipino citizen. It is obtained only when applied for. It is in a form prescribed by the agency and contains a declaration by the applicant of his or her personal information, a photograph, and physical details that identify the applicant. It bears no indication of basis for foreign citizenship, nor proof of change to foreign citizenship. It certifies that a person named therein has applied for registration and fingerprinting and

that such person was issued a certificate of registration under the Alien Registration Act of 1950 or other special law. It is only evidence of registration.

Unlike birth certificates registered pursuant to Act 3753 (The Civil Register Law), and much less like other public records referred to under Section 23, Rule 132, an alien certificate of registration is not a public document that would be prima facie evidence of the truth of facts contained therein. On its face, it only certifies that the applicant had submitted himself or herself to registration. Therefore, there is no presumption of alienage of the declarant. This is especially so where the declarant has in fact been a natural-born Filipino all along and never lost his or her status as such.

Thus, obtaining an ACR by Limkaichong's mother was not tantamount to a repudiation of her original citizenship. Neither did it result in an acquisition of alien citizenship. In a string of decisions, this Court has consistently held that an application for, and the holding of, an alien certificate of registration is not an act constituting renunciation of Philippine citizenship. For renunciation to effectively result in the loss of citizenship, the same must be express. Such express renunciation is lacking in this case.

Accordingly, Limkaichong's mother, being a Filipino citizen, can transmit her citizenship to her daughter.

Well-settled is the principle that the judgments of the HRET are beyond judicial interference. The only instance where this Court may intervene in the exercise of its so-called extraordinary jurisdiction is upon a determination that the decision or resolution of the HRET was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or upon a clear showing of such arbitrary and improvident use of its power to constitute a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such grave abuse of discretion that there has to be a remedy for such abuse. In this case, there is no showing of any such arbitrariness or improvidence. The HRET acted well within the sphere of its power when it dismissed the quo warranto petition.

In fine, this Court finds sufficient basis to sustain the ruling of the HRET which resolved the issue of citizenship in favor of Limkaichong.

3. NO. True, the HRET has jurisdiction over quo warranto petitions, specifically over cases challenging ineligibility on the ground of lack of citizenship. No less than the 1987 Constitution vests the HRET the authority to be the sole judge of all contests relating to the election, returns and qualifications of its Members. This constitutional power is likewise echoed in the 2004 Rules of the HRET. Rule 14 thereof restates this duty, thus:

> Rule 14. Jurisdiction. The Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives.
>
> Time and again, this Court has acknowledged this sole and exclusive jurisdiction of the HRET. The power granted to HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature. Such power is regarded as full, clear and complete and excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same.

Such power of the HRET, no matter how complete and exclusive, does not carry with it the authority to delve into the legality of the judgment of naturalization in the pursuit of disqualifying Limkaichong. To rule otherwise would operate as a collateral attack on the citizenship of the father which, as already stated, is not permissible. The HRET properly resolved the issue with the following

ratiocination: We note that Jocelyn C. Limkaichong, not the father Julio Ong Sy, is the respondent in the present case. The Tribunal may not dwell on deliberating on the validity of naturalization of the father if only to pursue the end of declaring the daughter as disqualified to hold office.

Unfortunately, much as the Tribunal wants to resolve said issue, it cannot do so because its jurisdiction is limited to the qualification of the proclaimed respondent Limkaichong, being a sitting Member of the Congress.

Evidently, there is no basis to oblige the Tribunal to reopen the naturalization proceedings for a determination of the citizenship of the ascendant of respondent. A petition forquo warrantois not a means to achieve that purpose. To rule on this issue in this quo warranto proceeding will not only be a clear grave abuse of discretion amounting to a lack or excess of jurisdiction, but also a blatant violation of due process on the part of the persons who will be affected or who are not parties in this case.

The HRET, therefore, correctly relied on the presumption of validity of the Orders of the Court of First Instance (CFI) Negros Oriental, which granted the petition and declared Julio Sy a naturalized Filipino absent any evidence to the contrary.

DCD CONSTRUCTION, INC. v. REPUBLIC OF THE PHILIPPINES
G.R. No. 179978, 31 August 2011, FIRST DIVISION (Villarama, Jr., J.)

On January 19, 2001, petitioner DCD Construction, Inc., through its President and CEO Danilo D. Dira, Jr., filed a verified application for registration of a parcel of land situated in Taytay, DanaoCity with an area of 4,493 square meters. It was alleged that applicant which acquired theproperty by purchase, together with its predecessors-in-interest, have been in continuous, open, adverse, public, uninterrupted, exclusive and notorious possession and occupation of the property for more than thirty (30) years. Thus, petitioner prayed to have its title judicially confirmed.

Based on petitioner's documentary and testimonial evidence, it appears that the approved technical description is allegedly identical to that of another lot consisting of 3,781 square meters. 712 square meters of said lot can be segregated as salvage zone pursuant to DENR Administrative Order No. 97-05.On August 22, 2002, the trial court declared that the applicant DCD CONSTRUCTION INC., has a registrable title to subject lot. On appeal by respondent Republic of the Philippines, the CA reversed the trial court. The CA ruled that the evidence failed to show that the land applied for was alienable and disposable considering that only a notation in the survey plan was presented to show the status of the property. It was further noted that the earliest tax declaration submitted was issued only in1988. It was also held that petitioner did not prove open, continuous, exclusive and notorious possession under a bona fide claim of ownership since June 12, 1945.

ISSUE:

Is the subject lot alienable and disposable?

RULING:

NO. Applicants for confirmation of imperfect title must prove the following: (a) that the land forms part of the disposable and alienable agricultural lands of the public domain and (b) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a bona fide claim of ownership either since time immemorial or since June 12, 1945.

Under Section 2, Article XII of the Constitution, which embodies the Regalian doctrine, all land of the public domain belong to the State - the source of any asserted right to ownership of land. All lands not appearing to be clearly of private dominion presumptively belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable and disposable agricultural land or alienated to a private person by the State remain part of the inalienable public domain. Incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable. In support of its contention the land is alienable and disposable, petitioner contends that the DENR-Lands Management Services itself had approved and adopted the notation made by a certifying officer on the survey plan as its own. Such approval amounts to a positive act of the government indicating that the land applied for is indeed alienable and disposable. However, the testimony of the officer from DENR-LMS, Rafaela Belleza, did not at all attest to the veracity of the notation made by a certifying officer, Ibañez, on the survey plan regarding the status of the subject land. Hence, no error was committed by the CA in finding that the certification made by DENR-LMS pertained only to the technical correctness of the survey plotted in the survey plan and not to the nature and character of the property surveyed. In the light of the foregoing, it is clear that the notation inserted in the survey plan hardly satisfies the incontrovertible proof required by law on the classification of land

applied for registration. The CA likewise correctly held that there was no compliance with the required possession under a bona fide claim of ownership since June 12, 1945.

The phrase "adverse, continuous, open, public, peaceful and in concept of owner," are mere conclusions of law requiring evidentiary support and substantiation. The burden of proof is on the applicant to prove by clear, positive and convincing evidence that the alleged possessionwas of the nature and duration required by law.

The bare statement of petitioner's witness, Andrea Batucan Enriquez, that her family had been in possession of the subject land from the time her father bought it after the Second World War does not suffice.

Moreover, the tax declaration in the name of petitioner's father was issued only in 1994, while the other in its own name was issued in 2000. Petitioner's predecessors-in-interest were able to submit a tax declaration only for the year1988, which was long after both spouses Vivencio and Paulina Batucan have died. Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner. And while Andrea Batucan Enriquez claimed knowledge of their family's possession since she was just ten (10) years old –

although she said she was born in 1932 --there was no clear and convincing evidence of such open, continuous, exclusive and notorious possession under a bona fide claim of ownership. She never mentioned any act of occupation, development, cultivation or maintenance over the property throughout the alleged length of possession. There was no account of the circumstances regarding their father's acquisition of the land, whether their father introduced any improvements or farmed the land, and if they established residence or built any house thereon. We have held that the bare claim of the applicant that the land applied for had been in the possession of her predecessor-in-interest for 30 years does not constitute the "well-nigh inconvertible" and "conclusive" evidence required in land registration.

The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction.

Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.

ESTATE OF SALUD JIMENEZ v. PHILIPPINE EXPORT PROCESSING ZONE
G.R. No. 188995, 24 August 2011, FIRST DIVISION (Bersamin, *J.*)

On 15 May 1981, Philippine Export Processing Zone (PEZA), then called as the Export Processing Zone Authority (EPZA), initiated before the Regional Trial Court of Cavite expropriation proceedings on 3 parcels of irrigated riceland in Rosario, Cavite. One of the lots, Lot 1406 (A and B) of the San Francisco de Malabon Estate, with an approximate area of 29,008 square meters, is registered in the name of Salud Jimenez (TCT T-113498 of the Registry of Deeds of Cavite). More than 10 years later, the said trial court in an Order dated 11 July 1991 upheld the right of PEZA to expropriate, among others, Lot 1406 (A and B).

Reconsideration of the said order was sought by the Estate of Salud Jimenez contending that said lot would only be transferred to a private corporation, Philippine Vinyl Corp., and hence would not be utilized for a public purpose. In an Order dated 25 October 1991, the trial court reconsidered the Order dated 11 July 1991 and released Lot 1406-A from expropriation while the expropriation of Lot 1406- B was maintained. Finding the said order unacceptable, PEZA interposed an appeal to the Court of Appeals. Meanwhile, the Estate and PEZA entered into a compromise agreement, dated 4 January 1993. The compromise agreement provides "(1) That plaintiff agrees to withdraw its appeal from the Order of the Honorable Court dated October 25, 1991 which released lot 1406-A from the expropriation proceedings.

On the other hand, defendant Estate of Salud Jimenez agrees to waive, quitclaim and forfeit its claim for damages and loss of income which it sustained by reason of the possession of said lot by plaintiff from 1981 up to the present. (2) That the parties agree that defendant Estate of Salud Jimenez shall POWER OF EMINENT DOMAIN transfer lot 1406-B with an area of 13,118 square meters which forms part of the lot registered under TCT No. 113498 of the Registry of Deeds of Cavite to the name of the plaintiff and the same shall be swapped and exchanged with lot 434 with an area of 14,167 square meters and covered by Transfer Certificate of Title No. 14772 of the Registry of Deeds of Cavite which lot will be transferred to the name of Estate of Salud Jimenez. (3) That the swap arrangement recognizes the fact that the lot 1406-B covered by TCT No. T-113498 of the estate of defendant Salud Jimenez is considered expropriated in favor of the government based on Order of the Honorable Court dated July 11, 1991. However, instead of being paid the just compensation for said lot, the estate of said defendant shall be paid with lot 434 covered by TCT No. T-14772. (4) That the parties agree that they will abide by the terms of the foregoing agreement in good faith and the Decision to be rendered based on this Compromise Agreement is immediately final and executory."

The Court of Appeals remanded the case to the trial court for the approval of the said compromise agreement entered into between the parties, consequent with the withdrawal of the appeal with the Court of Appeals. In the Order dated 23 August 1993, the trial court approved the compromise agreement. However, PEZA failed to transfer the title of Lot 434 to the Estate inasmuch as it was not the registered owner of the covering TCT T-14772 but Progressive Realty Estate, Inc. Thus, on 13 March 1997, the Estate filed a "Motion to Partially Annul the Order dated August 23, 1993."

In the Order dated 4 August 1997, the trial court annulled the said compromise agreement entered into between the parties and directed PEZA to peacefully turn over Lot 1406-A to the Estate. Disagreeing with the said Order of the trial court, respondent PEZA moved for its reconsideration, which was denied in an order dated 3 November 1997. On 4 December 1997, the trial court, at the instance of the Estate, corrected the Orders dated 4 August 1997 and 3 November 1997 by declaring that it is Lot 1406-B and not Lot 1406-A that should be surrendered and returned to the Estate.

On 27 November 1997, PEZA interposed before the Court of Appeals a petition for certiorari and prohibition seeking to nullify the Orders dated 4 August 1997 and 3 November 1997 of the trial court. Acting on the petition, the Court of Appeals, in a Decision dated 25 March 1998, partially granted the petition by setting aside the order of the trial court regarding "the peaceful turn over to the Estate of Salud Jimenez of Lot 1406-B" and instead ordered the trial judge to "proceed with the hearing of the expropriation proceedings regarding the determination of just compensation over Lot 1406-B." The Estate sought reconsideration of the Decision dated 25 March 1998. However, the appellate court in a Resolution dated 14 January 1999 denied the Estate's motion for reconsideration. The Estate filed a petition for review on certiorari with the Supreme Court.

ISSUE:

Is the purpose of the expropriation by PEZA of "public use"?

RULING:

YES. This is an expropriation case which involves two (2) orders: an expropriation order and an order fixing just compensation. Once the first order becomes final and no appeal thereto is taken, the authority to expropriate and its public use cannot anymore be questioned. Contrary to the Estate's contention, the incorporation of the expropriation order in the compromise agreement did not subject said order to rescission but instead constituted an admission by the Estate of PEZA's authority to expropriate the subject parcel of land and the public purpose for POWER OF EMINENT DOMAIN which it was expropriated. This is evident from paragraph three (3) of the compromise agreement which states that the "swap arrangement recognizes the fact that Lot 1406-B covered by TCT T-113498 of the estate of defendant Salud Jimenez is considered expropriated in favor of the government based on the Order of the Honorable Court dated 11 July 1991." It is crystal clear from the contents of the agreement that the parties limited the compromise agreement to the matter of just compensation to the Estate. Said expropriation order is not closely intertwined with the issue of payment such that failure to pay by PEZA will also nullify the right of PEZA to expropriate. No statement to this effect was mentioned in the agreement. The Order was mentioned in the agreement only to clarify what was subject to payment. Since the compromise agreement was only about the mode of payment by swapping of lots and not about the right and purpose to expropriate the subject Lot 1406-B, only the originally agreed form of compensation that is by cash payment, was rescinded. PEZA has the legal authority to expropriate the subject Lot 1406-B and that the same was for a valid public purpose. PEZA expropriated the subject parcel of land pursuant to Proclamation 1980 dated 30 May 1980 issued by former President Ferdinand Marcos. Meanwhile, the power of eminent domain of respondent is contained in its original charter, Presidential Decree 66. Accordingly, subject Lot 1406-B was expropriated "for the construction of terminal facilities, structures and approaches thereto." The authority is broad enough to give PEZA substantial leeway in deciding for what public use the expropriated property would be utilized. Pursuant to this broad authority, PEZA leased a portion of the lot to commercial banks while the rest was made a transportation terminal. Said public purposes were even reaffirmed by Republic Act 7916, a law amending PEZA's original charter. As reiterated in various case, the "public use" requirement for a valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. The term "public use" has acquired a more comprehensive coverage. To the literal import of the term signifying strict use or employment by the public has been added the broader notion of indirect public benefit or advantage. What ultimately emerged is a concept of public use which is just as broad as "public welfare."

NATIONAL POWER CORPORATION v. HEIRS OF MACABANGKIT SANGKAY
G.R. No. 165828, 24 August 2011, FIRST DIVISION (Bersamin, J.)

Pursuant to its legal mandate under Republic Act No. 6395 (An Act Revising the Charter of the National Power Corporation), NPC undertook the Agus River Hydroelectric Power Plant Project in the 1970s to generate electricity for Mindanao. The project included the construction of several underground tunnels to be used in diverting the water flow from the Agus River to the hydroelectric plants.

On November 21, 1997, the respondents as the owners of land with an area of 221,573 square meters situated in Ditucalan, Iligan City, sued NPC in the RTC for the recovery of damages and of the property, with the alternative prayer for the payment of just compensation. They alleged that they had belatedly discovered that one of the underground tunnels of NPC that diverted the water flow of the Agus River for the operation of the Hydroelectric Project in Agus V, Agus VI and Agus VII traversed their land; that their discovery had occurred in 1995 after Atty. Saidali C. Gandamra, President of the Federation of Arabic Madaris School, had rejected their offer to sell the land because of the danger the underground tunnel might pose to the proposed Arabic Language Training Center and Muslims Skills Development Center; that such rejection had been followed by the withdrawal by Global Asia Management and Resource Corporation from developing the land into a housing project for the same reason; that Al-Amanah Islamic Investment Bank of the Philippines had also refused to accept their land as collateral because of the presence of the underground tunnel; that the underground tunnel had been constructed without their knowledge and consent; that the presence of the tunnel deprived them of the agricultural, commercial, industrial and residential value of their land; and that their land had also become an unsafe place for habitation because of the loud sound of the water rushing through the tunnel and the constant shaking of the ground, forcing them and their workers to relocate to safer grounds.

In its answer with counterclaim, NPC countered that the Heirs of Macabangkit had no right to compensation under section 3(f) of Republic Act No. 6395, under which a mere legal easement on their land was established; that their cause of action, should they be entitled to compensation, already prescribed due to the tunnel having been constructed in 1979; and that by reason of the tunnel being an apparent and continuous easement, any action arising from such easement prescribed in five years.

After trial, the RTC ruled in favor of the plaintiffs (Heirs of Macabangkit).

Earlier, on August 18, 1999, the Heirs of Macabangkit filed an urgent motion for execution of judgment pending appeal. The RTC granted the motion and issued a writ of execution, prompting NPC to assail the writ by petition for certiorari in the CA. On September 15, 1999, the CA issued a temporary restraining order (TRO) to enjoin the RTC from implementing its decision.The Heirs of Macabangkit elevated the ruling of the CA (G.R. No. 141447), but the Court upheld the CA on May 4, 2006.

On October 5, 2004, the CA affirmed the decision of the RTC.

ISSUE:

Had the Heirs of Macabangkit's right to claim just compensation prescribed under section 3(i) of Republic Act No. 6395, or, alternatively, under Article 620 and Article 646 of the Civil Code?

RULING:

NO. Without necessarily adopting the reasoning of the CA, we uphold its conclusion that prescription did not bar the present action to recover just compensation.

Section 3 (i) of Republic Act No. 6395, the cited law, relevantly provides:

Section 3.Powers and General Functions of the Corporation. The powers, functions, rights and activities of the Corporation shall be the following: xxx

> (i) To construct works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require:Provided, That said works be constructed in such a manner as not to endanger life or property; And provided, further, That the stream, watercourse, canal ditch, flume, street, avenue, highway or railway so crossed or intersected be restored as near as possible to their former state, or in a manner not to impair unnecessarily their usefulness. Every person or entity whose right of way or property is lawfully crossed or intersected by said works shall not obstruct any such crossings or intersection and shall grant the Board or its representative, the proper authority for the execution of such work. The Corporation is hereby given the right of way to locate, construct and maintain such works over and throughout the lands owned by the Republic of the Philippines or any of its branches and political subdivisions. The Corporation or its representative may also enter upon private property in the lawful performance or prosecution of its business and purposes, including the construction of the transmission lines thereon;Provided,that the owner of such property shall be indemnified for any actual damage caused thereby;Provided, further,That said action for damages is filed within five years after the rights of way, transmission lines, substations, plants or other facilities shall have been established;Provided, finally, That after said period, no suit shall be brought to question the said rights of way, transmission lines, substations, plants or other facilities;

A cursory reading shows that Section 3(i) covers the construction of works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require. It is notable that Section 3(i) includes no limitation except those enumerated after the termworks. Accordingly, we consider the term works as embracing all kinds of constructions, facilities, and other developments that can enable or help NPC to meet its objectives of developing hydraulic power expressly provided under paragraph (g) of Section 3.The CAs restrictive construal of Section 3(i) as exclusive of tunnels was obviously unwarranted, for the provision applies not only to development works easily discoverable or on the surface of the earth but also to subterranean works like tunnels. Such interpretation accords with the fundamental guideline in statutory construction that when the law does not distinguish, so must we not. Moreover, when the language of the statute is plain and free from ambiguity, and expresses a single, definite, and sensible meaning, that meaning is conclusively presumed to be the meaning that the Congress intended to convey.

Even so, we still cannot side with NPC.

We rule that the prescriptive period provided under Section 3(i) of Republic Act No. 6395 is applicable only to an action for damages, and does not extend to an action to recover just compensation like this case. Consequently, NPC cannot thereby bar the right of the Heirs of Macabangkit to recover just compensation for their land.

The action to recover just compensation from the State or its expropriating agency differs from the action for damages. The former, also known as inverse condemnation, has the objective to recover the value of property taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.Just compensation is the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the takers gain, but the owner's loss. The word just is used to intensify the meaning of the word compensation in order to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. On the other hand, the latter action seeks to vindicate a legal wrong through damages, which may be actual, moral, nominal, temperate, liquidated, or exemplary. When a right is exercised in a manner not conformable with the norms enshrined in Article 19 and like provisions on human relations in the Civil Code,and the exercise results to the damage of another, a legal wrong is committed and the wrongdoer is held responsible.

The two actions are radically different in nature and purpose. The action to recover just compensation is based on the Constitution while the action for damages is predicated on statutory enactments. Indeed, the former arises from the exercise by the State of its power of eminent domain against private property for public use, but the latter emanates from the transgression of a right. The fact that the owner rather than the expropriator brings the former does not change the essential nature of the suit as an inverse condemnation, for the suit is not based on tort, but on the constitutional prohibition against the taking of property without just compensation. It would very well be contrary to the clear language of the Constitution to bar the recovery of just compensation for private property taken for a public use solely on the basis of statutory prescription.

Due to the need to construct the underground tunnel, NPC should have first moved to acquire the land from the Heirs of Macabangkit either by voluntary tender to purchase or through formal expropriation proceedings. In either case, NPC would have been liable to pay to the owners the fair market value of the land, for Section 3(h) of Republic Act No. 6395 expressly requires NPC to pay the fair market value of such property at the time of the taking, thusly:

> (h)To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created:Provided, That in case a right of way is necessary for its transmission lines, easement of right of way shall only be sought:Provided, however,That in case the property itself shall be acquired by purchase, the cost thereof shall be the fair market value at the time of the taking of such property.

The Court held in National Power Corporation v. Ibrahim that NPC was liable to pay not merely an easement fee but rather the full compensation for land traversed by the underground tunnels, viz:

> In disregarding this procedure and failing to recognize respondents ownership of the sub-terrain portion, petitioner took a risk and exposed itself to greater liability with the passage of time. It must be emphasized that the acquisition of the easement is not without expense. The underground tunnels impose limitations on respondents use of the property for an indefinite period and deprive them of its ordinary use. Based upon the foregoing, respondents are clearly entitled to the payment of just compensation. Notwithstanding the fact that petitioner only occupies the sub-terrain portion, it is liable to pay not merely an easement fee but rather the full compensation for land. This is so because in this case, the nature of the easement practically

deprives the owners of its normal beneficial use. Respondents, as the owner of the property thus expropriated, are entitled to a just compensation which should be neither more nor less, whenever it is possible to make the assessment, than the money equivalent of said property.

Here, like in National Power Corporation v. Ibrahim,NPC constructed a tunnel underneath the land of the Heirs of Macabangkit without going through formal expropriation proceedings and without procuring their consent or at least informing them beforehand of the construction. NPCs construction adversely affected the owners rights and interests because the subterranean intervention by NPC prevented them from introducing any developments on the surface, and from disposing of the land or any portion of it, either by sale or mortgage.

We agree with both the RTC and the CA that there was a full taking on the part of NPC, notwithstanding that the owners were not completely and actually dispossessed. It is settled that the taking of private property for public use, to be compensable, need not be an actual physical taking or appropriation. Indeed, the expropriators action may be short of acquisition of title, physical possession, or occupancy but may still amount to a taking. Compensable taking includes destruction, restriction, diminution, or interruption of the rights of ownership or of the common and necessary use and enjoyment of the property in a lawful manner, lessening or destroying its value. It is neither necessary that the owner be wholly deprived of the use of his property, nor material whether the property is removed from the possession of the owner, or in any respect changes hands.

As a result, NPC should pay just compensation for the entire land. In that regard, the RTC pegged just compensation at P500.00/square meter based on its finding on what the prevailing market value of the property was at the time of the filing of the complaint, and the CA upheld the RTC.

We rule that the reckoning value is the value at the time of the filing of the complaint, as the RTC provided in its decision. Compensation that is reckoned on the market value prevailing at the time either when NPC entered or when it completed the tunnel, as NPC submits, would not be just, for it would compound the gross unfairness already caused to the owners by NPCs entering without the intention of formally expropriating the land, and without the prior knowledge and consent of the Heirs of Macabangkit. NPCs entry denied elementary due process of law to the owners since then until the owners commenced the inverse condemnation proceedings. The Court is more concerned with the necessity to prevent NPC from unjustly profiting from its deliberate acts of denying due process of law to the owners. As a measure of simple justice and ordinary fairness to them, therefore, reckoning just compensation on the value at the time the owners commenced these inverse condemnation proceedings is entirely warranted.

In National Power Corporation v. Court of Appeals, a case that involved the similar construction of an underground tunnel by NPC without the prior consent and knowledge of the owners, and in which we held that the basis in fixing just compensation when the initiation of the action preceded the entry into the property was the time of the filing of the complaint, not the time of taking, we pointed out that there was no taking when the entry by NPC was made without intent to expropriate or was not made under warrant or color of legal authority.

CERIACO BULILIS v. VICTORINO NUEZ
G.R. No.195953, 09 August 2011, EN BANC (Leonardo-De Castro, J.)

On October 25, 2010, petitioner Ceriaco Bulilis was proclaimed winner of the elections for punong barangay of Barangay Bulilis, Ubay, Bohol. He won over Victorino Nuez by a margin of 4 votes. On November 2, 2010, Nuez filed an Election Protest. It was inexplicably docketed as Civil Case No. 134-10.

Bulilis denied the allegations in the protest and praying for its dismissal on the ground that the MCTC had no jurisdiction since the protest failed to implead the Chairman and the Members of the Board of Election Inspectors who were purportedly indispensable parties. On the same date, the Clerk of Court of the MCTC issued a notice of "hearing" for November 9, 2010. However, counsel for Bulilis claimed that he never received said "notice" nor was he in any way informed that the November 9, 2010 hearing was a preliminary conference. At about 1:45 p.m., on November 9, 2010, counsel for Bulilis filed his Preliminary Conference Brief with the Clerk of Court and also furnished Nuez counsel with a copy. However, when the case was called at 2:10 p.m., counsel for Nuez moved in open court to be allowed to present evidence ex parte. Noting that counsel for Bulilis failed to file his brief and to furnish a copy of the brief on the other party at least one (1) day prior to the preliminary conference as required by Section 4, Rule 9 of A.M. No. 07-4-15-SC, Judge Daniel Jose J. Garces granted Nuez motion to present evidence ex parte.

Counsel for Bulilis filed a motion for reconsideration on November 10, 2010, asserting the lack of proper notice to him of the preliminary conference. The MCTC denied the motion. The RTC likewise denied Bulilis subsequent petition and motion for reconsideration. Hence, this petition.

ISSUE:

Did the RTC commit grave abuse of discretion in dismissing the petition for lack of jurisdiction?
RULING:

NO. It appears from the record that the questioned notice of preliminary conference issued in the instant election protest may have been defective in that (1) the notice issued by the MCTC clerk of court was a generic notice of hearing without any mention that it was for preliminary conference, and (2) it was served on the party himself despite being represented by counsel in contravention of Rule 9, Section 2 of A.M. No. 07-4-15-SC. For this reason the Court disagrees with the RTC finding that impliedly ascribed all fault to petitioner in failing to timely file his preliminary conference brief. We, nonetheless, finds that the RTC and even the Court itself have no jurisdiction to correct any error that may have been committed by MCTC Judge Garces in his order to allow the protestant to present evidence ex parte.

Petitioner contends that the petition for certiorari that he filed with the RTC was "not an election case", but one imputing grave abuse of discretion on the part of the MCTC judge in his issuance of an interlocutory order. He further claims that the COMELEC appellate jurisdiction is only limited to "decided barangay election cases."

There is no merit in petitioner argument that Rule 28, Section 1 of the COMELEC Rules of Procedure limits the COMELEC's jurisdiction over petitions for certiorari in election cases to issues related to elections, returns and qualifications of elective municipal and barangay officials. Said provision,

taken together with the succeeding section, undeniably shows that an aggrieved party may file a petition for certiorari with the COMELEC whenever a judge hearing an election case has acted without or in excess of his jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.

This Court also recognizes the COMELEC appellate jurisdiction over petitions for certiorari against all acts or omissions of courts in election cases. Indeed, in the recent case of Galang v. Geronimo,the Court had the opportunity to rule that a petition for certiorari questioning an interlocutory order of a trial court in an electoral protest was within the appellate jurisdiction of the COMELEC. To quote the relevant portion of that decision:

> The question then is, would taking cognizance of a petition for certiorari questioning an interlocutory order of the regional trial court in an electoral protest case be considered in aid of the appellate jurisdiction of the COMELEC? The Court finds in the affirmative.

Interpreting the phrase "in aid of its appellate jurisdiction," the Court held in J.M. Tuason & Co., Inc. v. Jaramillo, et al. that if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction. This was reiterated in De Jesus v. Court of Appeals, where the Court stated that a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.

Note that Section 8, Rule 14 of the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials states that:

> Sec. 8. Appeal. An aggrieved party may appeal the decision to the COMELEC within five (5) days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or on the adverse party who is not represented by counsel.
>
> Since it is the COMELEC which has jurisdiction to take cognizance of an appeal from the decision of the regional trial court in election contests involving elective municipal officials, then it is also the COMELEC which has jurisdiction to issue a writ of certiorari in aid of its appellate jurisdiction. Clearly, petitioner erred in invoking this Court's power to issue said extraordinary writ. (Emphasis supplied.)

Although Galang involved a petition for certiorari involving an interlocutory order of a regional trial court in a municipal election contest, the rationale for the above ruling applies to an interlocutory order issued by a municipal trial court in a barangay election case. Under Rule 14, Section 8 of A.M. No. 07-4-15-SC, decisions of municipal trial courts in election contests involving barangay officials are appealed to the COMELEC. Following the Galang doctrine, it is the COMELEC which has jurisdiction over petitions for certiorari involving acts of the municipal trial courts in such election contests.

LUCIANO VELOSO, et al. v. COMMISSION ON AUDIT
G.R. No. 193677, 06 September 2011, EN BANC (Peralta, *J.)*

In 2000, the City of Manila enacted Ordinance No. 8040 authorizing the conferment of Exemplary Service Award (EPSA) to elective officials of the City who have been elected for three (3) consecutive terms in the same position. Such officials shall be given a retirement and gratuity pay remuneration equivalent to the actual time served in the position for three (3) consecutive terms. In 2006, Legal and Adjudication Office (LAO)-Local of the COA issued a Notice of Disallowance. Petitioner filed a Motion to Lift the Notice of Disallowance on the ground that LGUs have fiscal autonomy and that they have the power to grant allowances/gratuity.

ISSUE:

Did the COA properly exercise its jurisdiction in disallowing the disbursement of the City of Manila's funds for the EPSA of its former three-term councilors?

RULING:

YES. 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. LGUs, though granted local fiscal autonomy, are still within the audit jurisdiction of the COA. Moreover, COA was held correct in issuing the Notice of Disallowance because, contrary to the contention of the petitioners that the award is a form of gratuity, 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. Undoubtedly, the computation of the awardees' reward is excessive and tantamount to double and additional compensation which is prohibited by law.

OFFICE OF THE PRESIDENT and PRESIDENTIAL ANTI-GRAFT COMMISSION v. CATAQUIZ
GR NO. 183445, 14 September 2011, THIRD DIVISION (Mendoza, J.)

Respondent Cataquiz, then General Manager of the Laguna Lake Development Authority (LLDA), was being ousted in a petition by a majority of the members of the Management Committee and the rank and file employees of the LLDA, on the grounds of corrupt and unprofessional behavior and management incompetence. In an investigation into the allegations against Cataquiz ordered by Secretary Gozun of the DENR, it was determined that respondent may be found guilty for acts prejudicial to the best interest of the government and for violations of several pertinent laws and regulations. It was recommended that the case be forwarded to the Presidential Anti-Graft Commission. Later, a duly organized employees union of the LLDA, CELLDA, filed a complaint before the PAGC charging Cataquiz with violations of RA 3019 (The Anti-Graft and Corrupt Practices Act), The Administrative Code and The Code of Conduct and Ethical Standards for Public Officials and Employees. The Office of the President adopted the findings and recommendations of PAGC, and dismissed the respondent from service. The decision was amended by the OP imposing the penalties of disqualification from re-employment and forfeiture of retirement benefits because the penalty of dismissal was no longer available to him because of his replacement as General Manager of LLDA. The Court of Appeals reversed the decision.

Meanwhile, the Office of the Ombudsman recommended the dismissal of the charges against respondent for violation of RA No. 3019.

ISSUE:

Does the dismissal of the charges against respondent by the Ombudsman serve as a bar to the finding of administrative liability?

RULING:

NO. It is a basic rule in administrative law that public officials are under a three-fold responsibility for a violation of their duty or for a wrongful act or omission, such that they may be held civilly, criminally and administratively liable for the same act. Obviously, administrative liability is separate and distinct from penal and civil liability. In the case of People v. Sandiganbayan, the Court elaborated on the difference between administrative and criminal liability: "The distinct and independent nature of one proceeding from the other can be attributed to the following: first, the difference in the quantum of evidence required and, correlatively, the procedure observed and sanctions imposed; and second, the principle that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability.

CITY OF MANILA v. MELBA TAN TE
G.R. No. 169263, 21 September 2011, THIRD DIVISION (Peralta, *J.*)

The City of Manila enacted Ordinance No. 7951, an ordinance authorizing the mayor to acquire by negotiation or expropriation pieces of real property along Maria Clara and Forbes Streets where low-cost housing could be built and awarded to bona-fide residents therein. One of those included was the property of Melba, 475-square meter property included within the 1,425 sq. meter covered property. Melba acquired the property from one Emerlinda in 1996, and it was already occupied by several families whose leasehold rights have already expired. Melba was able to secure a writ of execution from the MTC of Manila, but it remained unexecuted, as it was opposed by the city. Between the time an order of execution and a writ of demolition were issued, the city filed an expropriation complaint against the property. The RTC dismissed the first compliant upon motion by Melba for failure to show that an ordinance authorized the expropriation and non-compliance with the provisions of Republic Act 7279.

The city filed a second expropriation complaint, this time armed with Ordinance No. 7951, and alleging that pursuant thereto, it had already offered to buy the property from Melba, which the latter failed to retrieve from the post office despite notice. The city was thereby compelled to file the complaint, after depositing in trust with the Land Bank of the Philippines P1,000,000.00 in cash, representing the just compensation required by law.

Melba, instead of filing, filed a motion to dismiss, and raised the following grounds: Ordinance No. 7951 was an invalid ordinance because it violated a rule against taking private property without just compensation; that petitioner did not comply with the requirements of Sections 9 and 10 of R.A. No. 7279; and that she qualified as a small property owner and, hence, exempt from the operation of R.A. No. 7279, the subject lot being the only piece of realty that she owned.

The city then moved to be allowed to enter the proper, but the RTC dismissed the complaint filed by the city in this wise: First, the trial court held that while petitioner had deposited with the bank the alleged P1M cash in trust for respondent, petitioner nevertheless did not submit any certification from the City Treasurer's Office of the amount needed to justly compensate respondent for her property. Second, it emphasized that the provisions of Sections 9 and 10 of R.A. No. 7279 are mandatory in character, yet petitioner had failed to show that it exacted compliance with them prior to the commencement of this suit. Lastly, it conceded that respondent had no other real property except the subject lot which, considering its total area, should well be considered a small property exempted by law from expropriation.

On appeal to the Court of Appeals by the city, the appellate court denied the appeal, hence the city of Manila elevated its case to the Supreme Court. In its petition, the city avers that the dismissal denied it the opportunity to show compliance with Sections 9 and 10 of RA 7279; Melba had other properties aside from the subject property. Whether or not it had complied with the law is a matter best treated in a full-blown trial rather than in a motion to dismiss. Melba on the other hand countered that Ordinance 7951 is an invalid ordinance; expropriation for socialized housing must abide by the priorities in land acquisition and the available modes of land acquisition laid out in the law, and that expropriation of privately-owned lands avails only as the last resort. She also invokes the exemptions provided in the law. She professes herself to be a small property owner under Section 3 (q), and claims that the subject property is the only piece of land she owns where she, as of yet, has not been able to build her own home because it is still detained by illegal occupants whom she had already successfully battled with in the ejectment court. Replying, the city averred that by virtue of its power of eminent domain included in its charter, it is not bound by the provisions of Republic Act 7279.

ISSUE:

Does socialized housing fall under the meaning of "public use"?

RULING:

YES. The public use requirement for a valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions.

The taking to be valid must be for public use. There was a time where it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not anymore. As long as the purpose of the taking is public, then the power of eminent domain comes into play. x x x The constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be divided into small lots for resale at cost to individuals. The other is in the transfer, through the exercise of this power, of utilities and other enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use.

The term "public use" has acquired a more comprehensive coverage. To the literal import of the term signifying strict use or employment by the public has been added the broader notion of indirect public benefit or advantage. x x x

The restrictive view of public use may be appropriate for a nation which circumscribes the scope of government activities and public concerns and which possesses big and correctly located public lands that obviate the need to take private property for public purposes. Neither circumstance applies to the Philippines. We have never been a laissez-faire state. And the necessities which impel the exertion of sovereign power are all too often found in areas of scarce public land or limited government resources.

Specifically, urban renewal or development and the construction of low-cost housing are recognized as a public purpose, not only because of the expanded concept of public use but also because of specific provisions in the Constitution. x x x The 1987 Constitution [provides]:

The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living and an improved quality of life for all. (Article II, Section 9)

The State shall, by law and for the common good, undertake, in cooperation with the private sector, a continuing program for urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. x xx In the implementation of such program the State shall respect the rights of small property owners. (Article XIII, Section 9)

Housing is a basic human need. Shortage in housing is a matter of state concern since it directly and significantly affects public health, safety, the environment and in sum, the general welfare. The public character of housing measures does not change because units in housing projects cannot be occupied by all but only by those who satisfy prescribed qualifications. A beginning has to be made, for it is not possible to provide housing for all who need it, all at once.

Population growth, the migration to urban areas and the mushrooming of crowded makeshift dwellings is a worldwide development particularly in developing countries. So basic and urgent are housing problems that the United Nations General Assembly proclaimed 1987 as the "International Year of Shelter for the Homeless" "to focus the attention of the international community on those problems." The General Assembly is seriously concerned that, despite the efforts of Governments at the national and local levels and of international organizations, the driving conditions of the majority of the people in slums and squatter areas and rural settlements, especially in developing countries, continue to deteriorate in both relative and absolute terms." [G.A. Res. 37/221, Yearbook of the United Nations 1982, Vol. 36, p. 1043-4]

In light of the foregoing, the Court is satisfied that "socialized housing" falls within the confines of "public use."

Congress passed R.A. No. 7279, to provide a comprehensive and continuing urban development and housing program as well as access to land and housing by the underprivileged and homeless citizens; uplift the conditions of the underprivileged and homeless citizens in urban areas by making available decent housing at affordable cost; optimize the use and productivity of land and urban resources; reduce urban dysfunctions which affect public health, safety and ecology; and improve the capability of local governments in undertaking urban development and housing programs and projects, among others. Accordingly, all city and municipal governments are mandated to inventory all lands and improvements within their respective locality and identify lands which may be utilized for socialized housing and as resettlement sites for acquisition and disposition to qualified beneficiaries. Section 10 thereof authorizes local government units to exercise the power of eminent domain to carry out the objectives of the law, but subject to the conditions stated therein and in Section 9."

CARBONILLA v. BOARD OF AIRLINES REPRESENTATIVE
G.R. No. 193247, 14 September 2011, SECOND DIVISION (Carpio, *J.*)

The Bureau of Customs issued Customs Administrative Order No. 1-2005 (CAO 1-2005) amending CAO 7-92.6 The Department of Finance7 approved CAO 1-2005 on 9 February 2006. CAO 7-92 and CAO 1-2005 were promulgated pursuant to Section 35068 in relation to Section 6089 of the Tariff and Customs Code of the Philippines (TCCP).Petitioners Office of the President, et al. alleged that prior to the amendment of CAO 7-92, the BOC created on 23 April 2002 a committee to review the overtime pay of Customs personnel in Ninoy Aquino International Airport (NAIA) and to propose its adjustment from the exchange rate of P25 to US$1 to the then exchange rate of P55 to US$1. The Office of the President, et al. alleged that for a period of more than two years from the creation of the committee, several meetings were conducted with the agencies concerned, including respondent Board of Airlines Representatives (BAR), to discuss the proposed rate adjustment that would be embodied in an Amendatory Customs Administrative Order.

On the other hand, BAR alleged that it learned of the proposed increase in the overtime rates only sometime in 2004 and only through unofficial reports.

On 23 August 2004, BAR wrote a letter addressed to Edgardo L. De Leon, Chief, Bonded Warehouse Division, BOC-NAIA, informing the latter of its objection to the proposed increase in the overtime rates. BAR further requested for a meeting to discuss the matter. BAR wrote the Secretary of Finance on 31 January 2005 and 21 February 2005 reiterating its concerns against the issuance of CAO 1-2005. In a letter dated 3 March 2005, the Acting District Collector of BOC informed BAR that the Secretary of Finance already approved CAO 1-2005 on 9 February 2005. As such, the increase in the overtime rates became effective on 16 March 2005. BAR still requested for an audience with the Secretary of Finance which was granted on 12 October 2005.

The BOC then sent a letter to BAR's member airlines demanding payment of overtime services to BOC personnel in compliance with CAO 1-2005. The BAR's member airlines refused and manifested their intention to file a petition with the Commissioner of Customs and/or the Secretary of Finance to suspend the implementation of CAO 1-2005.

In a letter dated 31 August 2006, Undersecretary Gaudencio A. Mendoza, Jr. (Usec. Mendoza), Legal and Revenue Operations Group, Department of Finance informed BAR, through its Chairman Felix J. Cruz (Cruz) that they "find no valid ground to disturb the validity of CAO 1-2005, much less to suspend its implementation or effectivity" and that its implementation effective 16 March 2005 is legally proper.

In separate letters both dated 4 December 2006,Cruz requested the Office of the President and the Office of the Executive Secretary to review the decision of Usec. Mendoza. Cruz manifested the objection of the International Airlines operating in the Philippines to CAO 1-2005

In a Decision 13 dated 12 March 2007, the Office of the President denied the appeal of BAR and affirmed the Decision of the Department of Finance. The Office of the President ruled that the BOC was merely exercising its rule-making or quasi-legislative power when it issued CAO 1-2005. The Office of the President ruled that since CAO 1-2005 was issued in the exercise of BOC's rule-making or quasi-legislative power, its validity and constitutionality may only be assailed through a direct action before the regular courts.

The Court of Appeals further ruled that it has the power to resolve the constitutional issue raised against CAO 7-92 and CAO 1-2005. The Court of Appeals ruled that Section 8, Article IX(B) of the Constitution prohibits an appointive public officer or employee from receiving additional, double or indirect compensation, unless specifically authorized by law. The Court of Appeals ruled that Section 3506 of the TCCP only authorized payment of additional compensation for overtime work, and thus, the payment of traveling and meal allowances under CAO 7-92 and CAO 1-2005 are unconstitutional and could not be enforced against BAR members. The Court of Appeals ruled that Section 3506 of the TCCP failed the completeness and sufficient standard tests to the extent that it attempted to cover BAR members through CAO 7-92 and CAO 1-2005. The Court of Appeals ruled that the phrase "other persons served" did not provide for descriptive terms and conditions that might be completely understood by the BOC. The Court of Appeals ruled that devoid of common distinguishable characteristic, aircraft owners and operators should not have been lumped together with importers and shippers. The Court of Appeals also ruled that Section 3506 of the TCCP failed the sufficient standard test because it does not contain adequate guidelines or limitations needed to map out the boundaries of the delegate's authority.

ISSUE:

Whether or not Section 3506 of the TCCP failed the completeness and sufficient standard tests?

RULING:

NO. Section 3506 of the TCCP provides:

> Section 3506. Assignment of Customs Employees to Overtime Work. - Customs employees may be assigned by a Collector to do overtime work at rates fixed by the Commissioner of Customs when the service rendered is to be paid by the importers, shippers or other persons served. The rates to be fixed shall not be less than that prescribed by law to be paid to employees of private enterprise.

The term "other persons served" refers to all other persons served by the BOC employees. Airline companies, aircraft owners, and operators are among other persons served by the BOC employees. As pointed out by the OSG, the processing of embarking and disembarking from aircrafts of passengers, as well as their baggages and cargoes, forms part of the BOC functions. BOC employees who serve beyond the regular office hours are entitled to overtime pay for the services they render. Congress deemed it proper that the payment of overtime services shall be shouldered by the "other persons served" by the BOC, that is, the airline companies. This is a policy decision on the part of Congress that is within its discretion to determine. Such determination by Congress is not subject to judicial review.

Section 3506 of the TCCP does not fail the completeness and sufficient standard tests .Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it. The second test requires adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot. Contrary to the ruling of the Court of Appeals, Section 3506 of the TCCP complied with these requirements. The law is complete in itself that it leaves nothing more for the BOC to do: it gives authority to the Collector to assign customs employees to do overtime work; the Commissioner of Customs fixes the rates; and it provides that the payments shall be made by the importers, shippers or other persons served. Section 3506 also fixed the standard to be

followed by the Commissioner of Customs when it provides that the rates shall not be less than that prescribed by law to be paid to employees of private enterprise.

Contrary to the ruling of the Court of Appeals, BOC employees rendering overtime services are not receiving double compensation for the overtime pay, travel and meal allowances provided for under CAO 7-92 and CAO 1-2005. Section 3506 provides that the rates shall not be less than that prescribed by law to be paid to employees of private enterprise. The overtime pay, travel and meal allowances are payment for additional work rendered after regular office hours and do not constitute double compensation prohibited under Section 8, Article IX(B) of the 1987 Constitution as they are in fact authorized by law or Section 3506 of the TCCP.

SALVADOR D. VIOLAGO, SR. *v.* COMMISSION ON ELECTIONS and JOAN V. ALARILLA
G.R. No. 194143, 4 October 2011, EN BANC (Peralta, *J.*)

Salvador Violago and Joan Alarilla both ran for mayor in the May 10, 2010 elections in Meycauayan, Bulacan; the Alarilla was proclaimed the winner.

Subsequently, Violago filed a petition before the Commission on Elections (COMELEC) assailing Alarilla's proclamation on the grounds that there was massive vote-buying, intimidation and harassment, election fraud, non-appreciation by the Precinct Count Optical Scan (PCOS) machines of valid votes, and irregularities due to non-observance of guidelines provided by the COMELEC.

COMELEC 2nd Division, however, dismissed the petition on the ground that Violago failed to file his Preliminary Conference Brief on time. Upon appeal to the COMELEC *En Banc*, affirmed the same.

ISSUE:

Did the COMELEC 2nd Division and COMELEC *En Banc* violated Violago's right to due process when it dismissed the petition of Violago?

RULING:

YES. A perusal of the records of the instant case would show that Violago was able to present a copy of the Certification issued by the Postmaster of Meycauayan City, Bulacan, attesting to the fact that the Order sent by the COMELEC to Violago's counsel informing the latter of the scheduled hearing set on August 12, 2010 and directing him to file his Preliminary Conference Brief was received only on August 16, 2010. Violago likewise submitted an advisory issued by the Chief of the Operations Division of the TELECOM Office in Meycauayan that the telegraph service in the said City, through which the COMELEC also supposedly sent Violago a notice through telegram, has been terminated and the office permanently closed and transferred to Sta. Maria, Bulacan as of April 1, 2009.

While it may be argued that Violago acquired actual knowledge of the scheduled conference a day prior to the date set through means other than the official notice sent by the COMELEC, the fact remains that, unlike his opponent, he was not given sufficient time to thoroughly prepare for the said conference. A one-day delay, as in this case, does not justify the outright dismissal of the protest based on technical grounds where there is no indication of intent to violate the rules on the part of Violago and the reason for the violation is justifiable.

With respect to the COMELEC *en banc's* denial of petitioner's Motion for Reconsideration, it is true that Section 3, Rule 20 of the COMELEC Rules of Procedure on Disputes in an Automated Election System, as well as Section 3, Rule 19 of the COMELEC Rules of Procedure, clearly require that a motion for reconsideration should be verified. However, the settled rule is that the COMELEC Rules of Procedure are subject to liberal construction. It has been frequently decided, and it may be stated as a general rule recognized by all courts, that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. An election contest, unlike an ordinary action, is imbued with public interest since it involves not only the adjudication of the private interests of rival candidates but also the

paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift.

In the present case, notwithstanding the fact that petitioner's motion for reconsideration was not verified, the COMELEC *en banc* should have considered the merits of the said motion in light of petitioner's meritorious claim that he was not given timely notice of the date set for the preliminary conference. The essence of due process is to be afforded a reasonable opportunity to be heard and to submit any evidence in support of one's claim or defense. It is the denial of this opportunity that constitutes violation of due process of law. More particularly, procedural due process demands prior notice and hearing.

MONICO K. IMPERIAL, JR. *v.* GOVERNMENT SERVICE INSURANCE SYSTEM
G.R. No. 191224, 4 October 2011, EN BANC (Brion, *J.*)

Monico Imperial, a branch manager of the Government Service Insurance System (GSIS), was charged by the latter with Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. GSIS alleged that Imperial erred when he approved the request for salary loans of several of the employees in its Naga Branch despite the lack of contribution as mandated by its guidelines. As a consequence, Imperial was preventively suspended for 90 days.

Atty. Manuel Molina, who was purportedly the counsel of Imperial, filed an unverified answer. Atty. Molina explained that Imperial granted the subject loans in pursuance of a board resolution, with the approval of the Vice President of GSIS and that the loans were fully paid. A motion for reconsideration was filed but it was subsequently denied. Copies of the order were duly sent via fax and regular mail. Atty. Molina received the faxed copy on August 14, 2006, while he received the registered mail on August 18, 2006.

At the pre-hearing conference, the Imperial and Atty. Molina failed to appear and failed to submit Imperial's verification of the answer and to submit a letter of authority to represent the Imperial in the case. As a consequence, Imperial was declared to have waived his right to file his answer and to have a formal investigation of his case, and expunged the unverified answer and other pleadings filed by Atty. Molina from the records.

GSIS President and General Manager Winston Garcia found Imperial guilty if grave misconduct and conduct prejudicial to the best interest of the service ratiocinating that it was improper for Imperial to approve the request for salary loans of the 8 employees knowing that they lacked the contribution requirements provided for in PPG No. 153-99.

Imperial then brought the case to the Civil Service Commission (CSC) on the grounds of absence of due process and that the GSIS had no sufficient evidence against him. But the CSS denied Imperial's claim, which was likewise done by the Court of Appeals upon appeal.

ISSUE:

Was Imperial denied his right to due process?

RULING:

NO. Procedural due process is the constitutional standard demanding that notice and an opportunity to be heard be given before judgment is rendered. As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain; the essence of due process is in the opportunity to be heard. A formal or trial-type hearing is not always necessary.

In this case, while the Imperial did not participate in the August 17, 2006 pre-hearing conference (despite receipt on August 14, 2006 of a fax copy of the August 11, 2006 order), Garcias decision of February 21, 2007 duly considered and discussed the defenses raised in Atty. Molinas pleadings, although the answer was ordered expunged from the records because it was unverified and because Atty. Molina failed to submit a letter of authority to represent the petitioner.

What negates any due process infirmity is the Imperial subsequent motion for reconsideration which cured whatever defect the Hearing Officer might have committed in the course of hearing the petitioners case. Again, Garcia duly considered the arguments presented in the petitioners motion for reconsideration when he rendered the June 6, 2007 resolution. Thus, the petitioner was actually heard through his pleadings.

ERDITO QUARTO *v.* HON. OMBUDSMAN SIMEON MARCELO, et al.
G.R. No. 169042, 5 October 2011, SECOND DIVISION (Brion, *J.*)

A committee was created by DPWH Secretary Simeon Datumanong to investigate alleged anomaly with regard to the repairs and/or purchase of spare parts for DPWH service vehicles. It was then discovered by the Internal Audit Service (IAS) of the DPWH that between March to December of 2001, several emergency repairs and/or purchase of spare parts were approved by the government which, however, did not in reality occurred. This resulted to loss on the part of DPWH in the amount of P143 million.

Atty. Irene Ofilada of the DPWH-IAS then filed a complaint before the Office of the Ombudsman charging several officials and employees of DPWH, which included petitioner and respondents, with Plunder, Money Laundering, Malversation, and violations of RA 3019 and the Administrative Code.

Erdito Quarto, who was the Chief of the Central Equipment and Spare Parts Division (*CESPD*) of DPWH, denied the said claims and argued that he relied upon his subordinates when he signed the job orders and inspection reports. Respondents, on their part, acknowledged the existence of the anomalous transactions and offered to testify and provide evidence against the officials and employees involved in exchange for immunity from prosecution.

The Ombudsman granted the request of respondents and filed with the Sandiganbayan informations charging the DPWH officials and employees with plunder, estafa through falsification of official/commercial documents and violation of Section 3(e) of RA 3019.

Quarto filed a petition for certiorari with the Sandiganbayan questioning the immunity granted by the Ombudsman in favor of the respondents. The case was dismissed for lack of jurisdiction. Quarto subsequently filed the present petition before the Supreme Court.

Quarto claims that the Ombudsman should not have granted immunity to the respondents since the inspection reports they executed that "paved way" for the accomplishment of the anomalous transactions. Quarto also claims that before the respondents may be discharged as state witnesses, they must be included first in the informations. Furthermore, the requirements that there is absolute necessity for the testimony of the proposed state witness and that he/she should not appear to be the most guilty were not satisfied.

The Ombudsman, in defending his action, invoked RA 6770 (Ombudsman Act of 1989) which gives him power to grant immunity to witnesses and the policy of non-interference in the exercise of his discretion which involve investigatory and prosecutorial powers. Respondents, in their defense, argued that the Ombudsman has the discretion to determine who to include in the information and that his decision can only be questioned if there is a showing of grave abuse of discretion.

ISSUE:

Did the Ombudsman commit grave abuse of discretion when he granted the request of the respondents to be immune from prosecution in exchange for their testimonies?

RULING:

NO. In the exercise of his investigatory and prosecutorial powers, the Ombudsman is generally no different from an ordinary prosecutor in determining who must be charged. He also enjoys the same latitude of discretion in determining what constitutes sufficient evidence to support a finding of probable cause (that must be established for the filing of an information in court) and the degree of participation of those involved or the lack thereof. His findings and conclusions on these matters are not ordinarily subject to review by the courts except when he gravely abuses his discretion.

Among the most important powers of the State is the power to compel testimony from its residents; this power enables the government to secure vital information necessary to carry out its myriad functions. This power though is not absolute. The constitutionally-enshrined right against compulsory self-incrimination is a leading exception. The states power to compel testimony and the production of a persons private books and papers run against a solid constitutional wall when the person under compulsion is himself sought to be penalized. In balancing between state interests and individual rights in this situation, the principles of free government favor the individual to whom the state must yield.

In the present case, the Ombudsman granted the respondents immunity from prosecution pursuant to RA No. 6770 which specifically empowers the Ombudsman to grant immunity *in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives.* A state response to the constitutional exception to its vast powers, especially in the field of ordinary criminal prosecution and in law enforcement and administration, is the use of an immunity statute. Immunity statutes seek a rational accommodation between the imperatives of an individuals constitutional right against self-incrimination (considered the fount from which all statutes granting immunity emanate) and the legitimate governmental interest in securing testimony. By voluntarily offering to give information on the commission of a crime and to testify against the culprits, a person opens himself to investigation and prosecution if he himself had participated in the criminal act. To secure his testimony without exposing him to the risk of prosecution, the law recognizes that the witness can be given immunity from prosecution. In this manner, the state interest is satisfied while respecting the individuals constitutional right against self-incrimination.

OFFICE OF THE OMBUDSMAN *v.* ANTONIO T. REYES
G.R. No. 170512, 4 October 2011, FIRST DIVISION (Leonardo-De Castro, *J.*)

An affidavit was executed accusing Antonio Reyes and Angelito Pealoza, who were Transportation Regulation Officer II/Acting Officer-in-Charge and Clerk III, respectively, of the Land Transportation Office (LTO) District Office in Mambajao, Camiguin, of committing fraud against one Jaime Acero. Acero alleged that after Pealoza informed him that he failed the examination for applicants for a driver's license, Pealoza made an offer that they would be willing to reconsider his application if Acero would pay an additional amount of P680. Acero agreed and paid P1,000. However, the LTO issued an Official Receipt only for the amount of P180.

Pealoza denied the allegations of Acero stating that when Pealoza received the application, he saw that Acero obtained a failing grade in the examination. Acero was then given the option to either retake the examination or pay additional costs. Acero agreed to pay. After Acero left the office, he called the LTO to ask for the receipt for the P500 given to Reyes which caused both Pealoza and Reyes tried to cancel the driver's license of Acero which, however, could no longer be done.

On his part, Reyes stated that he took no part in the subject transaction; that it was Pealoza who processed Acero's application and the money was given to Pealoza, not Reyes.

The Office of the Ombudsman-Mindanao ruled that Reyes was guilty of grave misconduct and Pealoza, guilty of simple misconduct. The Court of Appeals (CA) reversed the judgment against Reyes stating that it was Pealoza who received the money and that no evidence was presented showing that Reyes was even present when the transaction occurred.

ISSUE:

Was Reyes' right to due process violated when the Office of the Ombudsman-Mindanao rendered a decision based merely on the affidavits of Pealoza and his witnesses?

RULING:

YES. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.

Due process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents right to a hearing, which includes the right to present ones case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) *the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected*; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved. In the present case, the fifth requirement stated above was not complied with. Reyes was not properly apprised of the evidence offered against him, which were eventually made the bases of the Office of the Ombudsman's decision that found him guilty of grave misconduct.

To recall, after the affidavit of Acero was filed with the Office of the Ombudsman-Mindanao, Reyes and Pealoza, were ordered to submit their counter-affidavits in order to discuss the charges lodged against them. It would appear that Reyes had no idea that Pealoza, a co-respondent in the administrative case, would point an accusing finger at him and even supply the inculpatory evidence to prove his guilt. The said affidavits were made known to Reyes only after the rendition of the petitioners Decision dated September 24, 2001.

The fact that Reyes was able to assail the adverse decision of the Office of the Ombudsman-Mindanao *via* a Motion for Reconsideration Cum Motion to Set the Case for Preliminary Conference did not cure the violation of his right to due process in this case. It is true that, in the past, this Court has held that the right to due process of a respondent in an administrative case was not violated if he was able to file a motion for reconsideration to refute the evidence against him. In the instant case, the Office of the Ombudsman-Mindanao plainly disregarded Reyes protestations without giving him an opportunity to be belatedly furnished copies of the affidavits of Pealoza, Amper and Valdehueza to enable him to refute the same.

EMILIO GANCAYCO *v.* CITY GOVERNMENT OF QUEZON CITY and METRO MANILA DEVELOPMENT AUTHORITY
G.R. Nos. 177807 & 177933, 11 October 2011, EN BANC (Sereno, *J.*)

Retired Justice Emilio A. Gancayco owned a parcel of land located EDSA, Quezon City. In 1956, the Quezon City Council issued Ordinance No. 2904, requiring the construction of arcades for commercial buildings to be constructed on business zones in accordance with the city's zoning plan. The arcade is to be created by constructing the wall of the ground floor facing the sidewalk a few meters away from the property line. Thus, the building owner is not allowed to construct his wall up to the edge of the property line, thereby creating a space or shelter under the first floor. Also at that time no building code was in effect, regulations pertaining to structures were under the control of local governments. Gancayco was able to secure an exemption for his two-storey building subject to the condition that upon notice by the City Engineer, the owner shall, within reasonable time, demolish the enclosure of said arcade at his own expense when public interest so demands.

Decades after, the Metro Manila Development Authority (MMDA) conducted operations to clear obstructions along the sidewalk of EDSA in Quezon City pursuant to Metro Manila Council's (MMC) Resolution No. 02-28. The resolution authorized the MMDA and local government units to "clear the sidewalks, streets, avenues, alleys, bridges, parks and other public places in Metro Manila of all illegal structures and obstructions." Thereafter, MMDA sent a notice of demolition to Gancayco alleging that a portion of his building violated the Building Code in relation to Ordinance No. 2904. He did not comply with the notice. The MMDA then proceeded to demolish the party wall of the ground floor structure.

Gancayco then sought for the nullity of Ordinance 2904 or to be justly compensated. MMDA on the other hand, contends that the "wing walls" on said property was a public nuisance impeding the safe passage of pedestrians. Finally, the MMDA claimed that it was merely implementing the legal easement established by Ordinance No. 2904. Regional Trial Court (RTC) ruled in favor of Gancayco. On appeal, the Court of Appeals (CA) partly ruled in favor of MMDA.

ISSUES:

1. Whether or not the assailed Ordinance no. 2904 is a valid exercise of police power.
2. Should the wing walls be considered as a public nuisance/nuisance per se?
3. Whether or not the MMDA had the authority to demolish such walls.

RULING:

1. YES. It is clear that the primary objectives of the city council of Quezon City when it issued the questioned ordinance ordering the construction of arcades were the health and safety of the city and its inhabitants; the promotion of their prosperity; and the improvement of their morals, peace, good order, comfort, and the convenience. At the time that the ordinance was passed, there was no national building code enforced to guide the city council; thus, there was no law of national application that prohibited the city council from regulating the construction of buildings, arcades and sidewalks in their jurisdiction. Such power was validly vested to the city government in its charter for it the Charter also expressly provided that the city government had the power to regulate the kinds of buildings and structures that may be erected within fire limits and the manner of constructing and repairing them.

2. NO. The fact that in 1966 the City Council gave Gancayco an exemption from constructing an arcade is an indication that the wing walls of the building are not nuisances per se. The wing walls do not per se immediately and adversely affect the safety of persons and property. The fact that an ordinance may declare a structure illegal does not necessarily make that structure a nuisance. Clearly, when Gancayco was given a permit to construct the building, the city council or the city engineer did not consider the building, or its demolished portion, to be a threat to the safety of persons and property. This fact alone should have warned the MMDA against summarily demolishing the structure.

3. NO. Only courts of law have the power to determine whether a thing is a nuisance. Citing the case of AC enterprises v. Frabelle, the Sangguniang Bayan (*more so the MMDA in this case) cannot declare a particular thing as a nuisance per se and order its condemnation. It does not have the power to find, as a fact, that a particular thing is a nuisance when such thing is not a nuisance per se; nor can it authorize the extrajudicial condemnation and destruction of that as a nuisance which in its nature, situation or use is not such. Those things must be determined and resolved in the ordinary courts of law. Neither can MMDA claim that it is acting in pursuance of the building code. The building Code clearly provides the process by which a building may be demolished. The authority to order the demolition of any structure lies with the Building Official. As pointed out in the Trackworks case, the MMDA does not have the power to enact ordinances. Thus, it cannot supplement the provisions of Quezon City Ordinance No. 2904 merely through its Resolution No. 02-28. Lastly, the MMDA claims that the City Government of Quezon City may be considered to have approved the demolition of the structure, simply because then Quezon City Mayor Belmonte signed MMDA Resolution No. 02-28. In effect, the city government delegated these powers to the MMDA. The powers referred to are those that include the power to declare, prevent and abate a nuisance and to further impose the penalty of removal or demolition of the building or structure by the owner or by the city at the expense of the owner. There was no valid delegation of powers to the MMDA. Contrary to the claim of the MMDA, the City Government of Quezon City washed its hands off the acts of the former. In its Answer, the city government stated that "the demolition was undertaken by the MMDA only, without the participation and/or consent of Quezon City." Therefore, the MMDA acted on its own and should be held solely liable for the destruction of the portion of Gancayco's building.

BRICCIO A. POLLO *v.* CHAIRPERSON KARINA CONSTANTINO-DAVID, et al.
G.R. No. 181881, 18 October 2011, EN BANC (Villarama, Jr., *J.*)

On January 3, 2007, an anonymous letter-complaint was received by the Chairperson Karina Constantino-David, the Civil Service Commission (CSC) Chairperson, alleging that the "chief of the Mamamayan Muna Hindi Mamaya Na division" of Civil Service Commission Regional Office No. IV (CSC-ROIV) has been lawyering for public officials with pending cases in the CSC. David immediately formed a team with a background in information technology and issued a memorandum directing them to back up all the files in the computers found in the [CSC-ROIV] Mamamayan Muna Public Assistance and Liaison Division (PALD) and Legal divisions.

The team proceeded at once to the CSC-ROIV office and backed up *all* files in the hard disk of computers at the Public Assistance and Liaison Division (PALD) and the Legal Services Division. This was witnessed by several employees. The diskettes containing the back-up files sourced from the hard disk of PALD and LSD computers were then turned over to David. It was found that most of the files in the 17 diskettes containing files copied from the computer assigned to and being used by Briccio A. Pollo, numbering about 40 to 42 documents, were draft pleadings or letters in connection with administrative cases in the CSC and other tribunals. David thus issued a Show-Cause Order requiring the Pollo to submit his explanation or counter-affidavit within five days from notice.

Pollo filed his Comment, denying that he is the person referred to in the anonymous letter-complaint. He asserted that he had protested the unlawful taking of his computer done while he was on leave, citing the letter dated January 8, 2007 in which he informed Director Castillo of CSC-ROIV that the files in his computer were his personal files and those of his sister, relatives, friends and some associates and that he is not authorizing their sealing, copying, duplicating and printing as these would violate his constitutional right to privacy and protection against self-incrimination and warrantless search and seizure. He pointed out that though government property, the temporary use and ownership of the computer issued under a Memorandum of Receipt is ceded to the employee who may exercise all attributes of ownership, including its use for personal purposes. In view of the illegal search, the files/documents copied from his computer without his consent are thus inadmissible as evidence, being "fruits of a poisonous tree."

The CSC found *prima facie* case against the petitioner and charged him with Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Violation of R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees). On July 24, 2007, the CSC issued a Resolution finding Pollo guilty of the offense charged.

The Court of Appeals (CA) dismissed Pollo's petition for certiorari after finding no grave abuse of discretion committed by respondents CSC officials.

ISSUE:

1. Did petitioner have a reasonable expectation of privacy in his office and computer files?
2. Was the search authorized by the CSC Chair, which involved the copying of the contents of the hard drive on petitioner's computer, reasonable in its inception and scope?

RULING:

1. NO. Pollo failed to prove that he had an actual (subjective) expectation of privacy either in his office or government-issued computer which contained his personal files. Pollo did not allege that he had a separate enclosed office which he did not share with anyone, or that his office was always locked and not open to other employees or visitors. Neither did he allege that he used passwords or adopted any means to prevent other employees from accessing his computer files. On the contrary, he submits that being in the public assistance office of the CSC-ROIV, he normally would have visitors in his office like friends, associates and even unknown people, whom he even allowed to use his computer which to him seemed a trivial request. He described his office as "full of people, his friends, unknown people" and that in the past 22 years he had been discharging his functions at the PALD, he is "personally assisting incoming clients, receiving documents, drafting cases on appeals, in charge of accomplishment report, *Mamamayan Muna* Program, Public Sector Unionism, Correction of name, accreditation of service, and hardly had any time for himself alone, that in fact he stays in the office as a paying customer." Under this scenario, it can hardly be deduced that petitioner had such expectation of privacy that society would recognize as reasonable.

Moreover, even assuming *arguendo*, in the absence of allegation or proof of the aforementioned factual circumstances, that Pollo had at least a subjective expectation of privacy in his computer as he claims, such is negated by the presence of policy regulating the use of office computers [CSC Office Memorandum No. 10, S. 2002 "*Computer Use Policy (CUP)*"]. The CSC in this case had implemented a policy that put its employees on notice that they have no expectation of privacy in **anything** they create, store, send or receive on the office computers, and that the CSC may monitor the use of the computer resources using both automated or human means. This implies that on-the-spot inspections may be done to ensure that the computer resources were used only for such legitimate business purposes.

2. YES. The search of Pollo's computer files was conducted in connection with investigation of work-related misconduct prompted by an anonymous letter-complaint addressed to Chairperson David regarding anomalies in the CSC-ROIV where the head of the *Mamamayan Muna Hindi Mamaya Na* division is supposedly "lawyering" for individuals with pending cases in the CSC. A search by a government employer of an employee's office is justified at inception when there are reasonable grounds for suspecting that it will turn up evidence that the employee is guilty of work-related misconduct.

Under the facts obtaining, the search conducted on petitioner's computer was justified at its inception and scope. Even conceding for a moment that there is no such administrative policy, there is no doubt in the mind of the Commission that the search of Pollo's computer has successfully passed the test of reasonableness for warrantless searches in the workplace. It bears emphasis that the Commission pursued the search in its capacity as a government employer and that it was undertaken in connection with an investigation involving a work-related misconduct, one of the circumstances exempted from the warrant requirement.

Considering the damaging nature of the accusation, the Commission had to act fast, if only to arrest or limit any possible adverse consequence or fall-out. Thus, on the same date that the complaint was received, a search was forthwith conducted involving the computer resources in the concerned regional office. That it was the computers that were subjected to the search was justified since these furnished the easiest means for an employee to encode and store documents. Indeed, the computers would be a likely starting point in ferreting out incriminating evidence. Concomitantly, the ephemeral nature of computer files, that is, they could easily be destroyed at a click of a button, necessitated drastic and immediate action. Pointedly, to impose the need to comply with the probable cause requirement would invariably defeat the purpose of the wok-related investigation.

Thus, Pollo's claim of violation of his constitutional right to privacy must necessarily fail. His other argument invoking the privacy of communication and correspondence under Section 3(1), Article III of the 1987 Constitution is also untenable considering the recognition accorded to certain legitimate intrusions into the privacy of employees in the government workplace.

DATU MICHAEL ABAS KIDA, et al. *v.* SENATE OF THE PHILIPPINES, et al.
G.R. Nos. 196271, 196305, 197221, 197280, 197282, 197392 & 197454, 18 October 2011, EN BANC
(Brion, J.)

On August 1, 1989 or two years after the effectivity of the 1987 Constitution, Congress acted through Republic Act (RA) No. 6734 entitled "*An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao (ARMM).*" The initially assenting provinces were Lanao del Sur, Maguindanao, Sulu and Tawi-tawi. RA No. 6734 scheduled the first regular elections for the regional officials of the ARMM on a date not earlier than 60 days nor later than 90 days after its ratification.

Thereafter, RA No. 9054 was passed to further enhance the structure of ARMM under R.A. 6734. Along with it is the reset of the regular elections for the ARMM regional officials to the second Monday of September 2001. RA No. 9333 was subsequently passed by Congress to reset the ARMM regional elections to the 2nd Monday of August 2005, and on the same date every 3 years thereafter. Unlike RA No. 6734 and RA No. 9054, RA No. 9333 was not ratified in a plebiscite.

Pursuant to RA No. 9333, the next ARMM regional elections should have been held on August 8, 2011. The Commission on Elections (COMELEC) had begun preparations for these elections and had accepted certificates of candidacies for the various regional offices to be elected. But on June 30, 2011, RA No. 10153 was enacted resetting the ARMM elections to May 2013, to coincide with the regular national and local elections of the country. With the enactment into law of RA No. 10153, the COMELEC stopped its preparations for the ARMM elections.

Several cases for *certiorari*, prohibition and mandamus originating from different parties arose as a consequence of the passage of RA No. 9333 and RA No. 10153 questioning the validity of said laws. On September 13, 2011, the Court issued a temporary restraining order (TRO) enjoining the implementation of RA No. 10153 and ordering the incumbent elective officials of ARMM to continue to perform their functions should these cases not be decided by the end of their term on September 30, 2011.

The petitioners assailing RA No. 9140, RA No. 9333 and RA No. 10153 assert that these laws amend RA No. 9054 and thus, have to comply with the supermajority vote and plebiscite requirements prescribed under Sections 1 and 3, Article XVII of RA No. 9094 in order to become effective.

The petitions assailing RA No. 10153 further maintain that it is unconstitutional for its failure to comply with the three-reading requirement of Section 26(2), Article VI of the Constitution; also cited as grounds are the alleged violations of the right of suffrage of the people of ARMM, as well as the failure to adhere to the "elective and representative" character of the executive and legislative departments of the ARMM. Lastly, the petitioners challenged the grant to the President of the power to appoint Officers in Charge (OICs) to undertake the functions of the elective ARMM officials until the officials elected under the May 2013 regular elections shall have assumed office. Corrolarily, they also argue that the power of appointment also gave the President the power of control over the ARMM, in complete violation of Section 16, Article X of the Constitution.

ISSUES:

1. Whether or not the 1987 Constitution mandates the synchronization of elections
2. Whether or not the passage of RA No. 10153 violates the provisions of the 1987 Constitution

RULING:

1. YES. The Court agreed with respondent Office of the Solicitor General (*OSG*) on its position that the Constitution mandates synchronization, citing Sections 1, 2 and 5, Article XVIII (Transitory Provisions) of the 1987 Constitution. While the Constitution does not expressly state that Congress has to synchronize national and local elections, the clear intent towards this objective can be gleaned from the Transitory Provisions (Article XVIII) of the Constitution, which show the extent to which the Constitutional Commission, by deliberately making adjustments to the terms of the incumbent officials, sought to attain synchronization of elections.

The objective behind setting a common termination date for all elective officials, done among others through the shortening the terms of the twelve winning senators with the least number of votes, is to synchronize the holding of all future elections whether national or local to once every three years. This intention finds full support in the discussions during the Constitutional Commission deliberations. Furthermore, to achieve synchronization, Congress necessarily has to reconcile the schedule of the ARMMs regular elections (which should have been held in August 2011 based on RA No. 9333) with the fixed schedule of the national and local elections (fixed by RA No. 7166 to be held in May 2013).

In *Osme v. Commission on Elections*, the court thus explained:

> "It is clear from the aforequoted provisions of the 1987 Constitution that the terms of office of Senators, Members of the House of Representatives, the local officials, the President and the Vice-President have been synchronized to end on the same hour, date and year noon of June 30, 1992.
>
> "It is likewise evident from the wording of the above-mentioned Sections that the term of*synchronization*is used synonymously as the phrase*holding simultaneously*since this is the precise intent in terminating their Office Tenure on the same*day or occasion*.This common termination date will synchronize future elections to once every three years (Bernas, the Constitution of the Republic of the Philippines, Vol. II, p. 605).
>
> "That the election for Senators, Members of the House of Representatives and the local officials (under Sec. 2, Art. XVIII) will have to be synchronized with the election for President and Vice President (under Sec. 5, Art. XVIII) is likewise evident from the x x xrecords of the proceedings in the Constitutional Commission. [Emphasis supplied.]"
>
> Although called regional elections, the ARMM elections should be included among the elections to be synchronized as it is a "local" election based on the wording and structure of the Constitution. Regional elections in the ARMM for the positions of governor, vice-governor and regional assembly representatives fall within the classification of "local" elections, since they pertain to the elected officials who will serve within the limited region of ARMM. From the perspective of the Constitution, autonomous regions are considered one of the forms of local governments, as evident from Article X of the Constitution entitled "Local Government", autonomous regions are established and discussed under Sections 15 to 21 of this Article the article wholly devoted to Local Government.

2. NO. Congress, in passing RA No. 10153, acted strictly within its constitutional mandate. Given an array of choices, it acted within due constitutional bounds and with marked reasonableness in light of the necessary adjustments that synchronization demands. Congress, therefore, cannot be accused

of any evasion of a positive duty or of a refusal to perform its duty nor is there reason to accord merit to the petitioners claim of grave abuse of discretion.

In relation with synchronization, both autonomy and the synchronization of national and local elections are recognized and established constitutional mandates, with one being as compelling as the other. If their compelling force differs at all, the difference is in their coverage; synchronization operates on and affects the whole country, while regional autonomy as the term suggests directly carries a narrower regional effect although its national effect cannot be discounted.

In all these, the need for interim measures is dictated by necessity; out-of-the-way arrangements and approaches were adopted or used in order to adjust to the goal or objective in sight in a manner that does not do violence to the Constitution and to reasonably accepted norms. Under these limitations, the choice of measures was a question of wisdom left to congressional discretion.

However, the holdover contained in R.A. No. 10153, for those who were elected in executive and legislative positions in the ARMM during the 2008-2011 term as an option that Congress could have chosen because a holdover violates Section 8, Article X of the Constitution. In the case of the terms of local officials, their term has been fixed clearly and unequivocally, allowing no room for any implementing legislation with respect to the fixed term itself and no vagueness that would allow an interpretation from this Court. Thus, the term of three years for local officials should stay at three (3) years as fixed by the Constitution and cannot be extended by holdover by Congress.

RA No. 10153, does not in any way amend what the organic law of the ARMM(RA No. 9054) sets outs in terms of structure of governance. What RA No. 10153 in fact only does is to*"appoint officers-in-charge for the Office of the Regional Governor, Regional Vice Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office."* This power is far different from appointing elective ARMM officials for the abbreviated term ending on the assumption to office of the officials elected in the May 2013 elections. It must be therefore emphasized that the law must be interpreted as an interim measure to synchronize elections and must not be interpreted otherwise.

ALFAIS T. MUNDER *v.* COMMISION ON ELECTIONS and ATTY. TAGO R. SARIP
G.R. No. 194076, 19 October 2011, EN BANC (Sereno, *J.*)

Alfais Munder filed a certificate of candidacy for Mayor of Bubong, Lanao del Sur on 26 November 2009. Respondent Atty. Tago Sarip subsequently filed a petition for Munder's disqualification claiming that Munder misrepresented that he was a registered voter of Bubong, Lanao del Sur, and that he was eligible to register as a voter in 2003 even though he was not yet 18 years of age at the time of the voter's registration. Moreover, Munder's certificate of candidacy was not accomplished in full as he failed to indicate his precinctand did not affix his thumb-mark.

The COMELEC Second Division dismissed Sarip's petition and declared that his grounds are not grounds for disqualification under Section 68 but for denial or cancellation of Munder's certificate of candidacy under Section 78. Sarip's petition was also filed out of time as he had only 25 days after the filing of Munder's certificate of candidacy, or until 21December 2009, within which to file his petition. The COMELEC En Banc, however, disqualified Munder. In reversing the COMELEC Second Division, the COMELEC En Banc did not rule on the propriety of Sarip's remedy but focused on the question of whether Munder was a registered voter of Bubong, Lanao del Sur.

ISSUE:

Whether or not the COMELEC En Banc's was correct in granting the petition for disqualification Munder

RULING:

NO. One of the important differences between the two petitions is their prescriptive periods. For a Petition to Deny Due Course or to Cancel a Certificate of Candidacy, the period to file is within five days from the last day of the filing of the certificate of candidacy, but not later than 25 days from the filing thereof. On the other hand, a petition to disqualify a candidate may be filed at any day after the last day of filing of the certificate of candidacy, but not later than the date of proclamation.

We agree with Munder as to the nature of the petition filed by Sarip. The main ground of the said petition is that Munder committed dishonesty in declaring that he was a registered voter of Barangay Rogero, Bubong, Lanao del Sur, when in fact he was not. This ground is appropriate for a Petition to Deny Due Course or to Cancel Certificate of Candidacy.

For a petition for disqualification, the law expressly enumerates the grounds in Section 68 of Batas Pambansa Blg. 881 as amended, and which was replicated in Section 4(b) of Comelec Resolution No. 8696. The grounds stated by respondent in his Petition for Disqualification that Munder was not qualified to run for not being a registered voter therein was not included in the enumeration of the grounds for disqualification. The grounds in Section 68 may be categorized into two. First, those comprising prohibited acts of candidates; and second, the fact of their permanent residency in another country when that fact affects the residency requirement of a candidate according to the law. In an Fermin v. COMELEC, the Court has debunked the interpretation that a petition for disqualification covers the absence of the substantive qualifications of a candidate (with the exception of the existence of the fact of the candidate's permanent residency abroad).

It was therefore grave abuse of discretion on the part of the Comelec En Banc to gloss over the issue of whether the petition was one for disqualification or for the cancellation of CoC. It may be true

that in 2003, Munder, who was still a minor, registered himself as a voter and misrepresented that he was already of legal age. Even if it was deliberate, we cannot review his past political acts in this petition. Neither can the Comelec review those acts in an inappropriate remedy. In so doing, it committed grave abuse of discretion, and the act resulting therefrom must be nullified. With this conclusion, Sarip's petition has become moot. There is no longer any issue of whether to apply the rule on succession to an elective office, since Munder is necessarily established in the position for which the people have elected him.

PHILIPPINE ECONOMIC ZONE AUTHORITY *v.* GREEN ASIA CONSTRUCTION & DEVELOPMENT CORPORATION
G.R. No. 188866, 19 October 2011, SECOND DIVISION (Sereno, *J.*)

Philippine Economic Zone Authority (PEZA), previously Export Processing Zone Authority (EPZA), entered into a contract for a road network and storm drainage project with Green Asia Construction & Development Corporation. In year 1996, Green Asia sent a letter to PEZA to inform PEZA of its claim of a price escalation in the amount of P 9,860,169.58, in accordance with the provision of Presidential Decree (PD) 1594. But PEZA denied this claim stating that according to Section 8 of the same law, Green Asia is required to present proof that the increase or decrease in the construction costs was attributable to the direct acts of the government, which Green Asia failed to do.

Green Asia subsequently sent several demand letters but still, PEZA stood firm regarding its decision. In its final demand, Green Asia included the amount of 2,500,357.11 for the price escalation of project for the sewage treatment plant, legal interest, and a collection fee of 1% of the total amount due. Subsequently, a final demand notice was sent to PEZA, a copy of which was also given to the Office of the President (OP). Green Asia argued that the fixed price contained in the contract should not be made the basis of the payment due if the work orders varied during construction.

Green Asia then sent a letter entitled, "Appeal for the Settlement of Unpaid Claims for Price Escalation Under Project of the Philippines Economic Zone Authority", which sought the intervention of then President Gloria Macapagal-Arroyo for a favourable resolution of the controversy. The OP decided in favor of Green Asia which held that proof regarding the increase in construction process was not required by law, before the price escalation provided in the Implementing Rules and Regulations (IRR) of PD 1594 may be invoked. It further held that the phrase "direct acts of the government" as provided for in PD 454, which was a prior enactment on government infrastructure projects, "*authorized price escalation; and that direct acts of the government included increases in the prices of gasoline, fuel oil and cement. It was, therefore, not necessary to actually show that the prices of those commodities increased because of the direct acts of the government*."

The case was brought before the Court of Appeals (CA) and the decision of the OP was affirmed but with modification. The CA ordered the parties to compute the price escalation using the parametric formula in the IRR of PD 1594.

ISSUE:

Whether or not PD 1594 requires the contractor to prove that the price increase of construction materials was due to the direct acts of the government before a price escalation is granted

RULING:

NO. We agree with the ruling of the appellate court that the OP correctly construed PD 1594 as being *in pari materia* to PD 454. Since the two presidential decrees are *in pari materia*, there is a need to construe them together.

PD 454 which was enacted prior to PD 1594, was where the phrase direct acts of the government was explained to cover the increase of prices during the effectivity of a government infrastructure contract. The phrase was first used in Republic Act (RA) No. 1595, which was amended by PD 454. The latter amended R.A. No. 1595 by supplying the meaning of the phrase direct acts of the

government and expressly including the increase of prices of gasoline within the coverage of that phrase. Consequently, when PD 1594 reproduced the phrase without supplying a contrary or different definition, the definition provided by the earlier enacted PD 454 was deemed adopted by the later decree. Thus, proof of an increase in fuel and cement price and a subsequent increase in the cost of labor and relevant construction materials during the contract period are considered a compliance with the IRR requirements for a claim for price escalation.

Price escalation, as explained in paragraph 6 of Cl 2.1 of the IRR, is meant to compensate for changes in the prices of relevant construction necessities during the effectivity of the contract, resulting in more than 5% increase or decrease in the unit price of those items. It is thus the prices of the items that have actually increased that become the basis of the computation.

The contract between PEZA and Green Asia did not incorporate provisions prohibiting price escalation or any clause that may be interpreted as a waiver of the price escalation. Consequently, payment of price escalation is deemed to have included the provision for the payment of price escalation. It was therefore wrong for PEZA to disregard PD 454 by automatically denying the claim of Green Asia for price escalation or to require the latter to prove that the increase in the construction cost was due to the direct acts of the government. PD 454 actually bridges the gap between PD 1594 and its IRR. PD 1594 no longer explains the provision on price adjustment, because it is already found in PD 454 and in older laws.

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS *v.* RONALDO E. QUIWA, et al.
G.R. No. 183444, 12 October 2011, SECOND DIVISION (Sereno, *J.*)

After the eruption of Mt. Pinatubo in 1991, several contractors, including the respondents, were hired by the Department of Public Works and Highways (DPWH) for the rehabilitation of the areas affected by the lahar and floodwater. Respondents finished the works on their respective projects.

When Ronaldo Quiwa sought to claim payment for the works done by its company, DPWH failed to act upon Quiwa's request despite the report and Certification of Completion provided by the Assistant Project Manager for Operations. The other respondent contractors joined Quiwa to file an action against DPWH for sum of money. The Regional Trial Court (RTC) rendered a decision in favor of respondents stating that the respondents have completed the works assigned to them, as certified by DPWH itself; that despite the appropriation provided in the Mt. Pinatubo Rehabilitation Program in the amount of P700 million, DPWH still denied their claims; and finally, that the contract between DPWH and respondents were valid.

Upon appeal, DPWH argued that there was no valid contract between it and respondents; there was no certification issued by the DPWH Chief Accountant or by the head of its accounting unit that funds were indeed available for the project. Also, the requirements provided in Presidential Decree (PD) 1294 and 1445 were not complied with and that the project manager of DPWH was not authorized to enter into the subject contracts. The Court of Appeals (CA) affirmed the decision of the RTC. Regarding the liability of DPWH former Secretaries Gregorio T. Vigilar and Jose P. de Jesus, both the RTC and the CA held them jointly and solidarily liable with DPWH.

DPWH, however, maintains its position that there was no valid contract.

ISSUES:

1. Are the contractors entitled to payment for the accomplishment of their assigned projects, notwithstanding the absence of the legal requirements under PD 1445?
2. Whether the Secretary and the Undersecretary of DWPH should be held jointly and solidarily liable to the contractors
3. Should attorney's fees and cost of suit be awarded to the contractors?

RULING:

1. YES. DPWH primarily argues that the contracts with herein contractors were void for not complying with Sections 85 and 86 of P.D. 1445, or the Government Auditing Code of the Philippines, as amended by Executive Order No. 292. These sections require an appropriation for the contracts and a certification by the chief accountant of the agency or by the head of its accounting unit as to the availability of funds. It should be noted that there was an appropriation amounting to ₱400 million, which was increased to ₱700 million. The funding was for the rehabilitation of the areas devastated and affected by Mt. Pinatubo, which included the Sacobia-Bamban-Parua River for which some of the channeling, desilting and diking works were rendered by herein respondents construction companies.

It was, however, undisputed that there was no certification from the chief accountant of DPWH regarding the said expenditure. In addition, the project manager has a limited authority to approve contracts in an amount not exceeding ₱1 million. Notwithstanding these irregularities, it should be pointed out that there is no novelty regarding the question of satisfying a claim for construction

contracts entered into by the government, where there was no appropriation and where the contracts were considered void due to technical reasons. It has been settled in several cases that payment for services done on account of the government, but based on a void contract, cannot be avoided.

The Court first resolved such question in *Royal Trust Construction v. Commission on Audit.* In that case, the court issued a Resolution granting the claim of Royal Trust Construction under a void contract.

2. NO. They were sued in their official capacity, and it would be unfair to them to pay the contractors out of their own pockets. It has been previously declared that Court declared that it was unjust to hold the public official liable for the payment of a construction that benefited the government.

3. NO. The Constitution provides that no money shall be paid out of the Treasury except in pursuance of an appropriation made by law. Attorney's fees and costs of suit were not included in the appropriation of expenditures for the Sacobia-Bamban-Parua project.

IN THE MATTER OF THE PETITION FOR THE WRIT OF AMPARO AND HABEAS DATA IN FAVOR OF NORIEL H. RODRIGUEZ, NORIEL H. RODRIGUEZ *v.* GLORIA MACAPAGAL-ARROYO, et al.
G.R. No. 191805 & 193160, 15 November 2011, EN BANC (Sereno, *J.*)

Noriel Rodriguez claims that the military tagged Kilusang Magbubukid ng Pilipinas (KMP) as an enemy of the State under the Oplan Bantay Laya, making its members targets of extrajudicial killings and enforced disappearances. Later Rodriguez was freed under certain conditions where Rodriguez was made to sign an affidavit stating that he was neither abducted nor tortured. Afraid and desperate to return home, he was forced to sign the document. Cruz advised him not to file a case against his abductors because they had already freed him. The CHR personnel then led him and his family to the CHR Toyota Tamaraw FX service vehicle. On 7 December 2009, Rodriguez filed before this Court a Petition for the Writ of *Amparo* and Petition for the Writ of Habeas Data with Prayers for Protection Orders, Inspection of Place, and Production of Documents and Personal Properties dated 2 December 2009.

The petition was filed against former President Arroyo, Gen. Ibrado, PDG. Versoza, Lt. Gen. Bangit, Major General (Maj. Gen.) Nestor Z. Ochoa, P/CSupt. Tolentino, P/SSupt. Santos, Col. De Vera, 1st Lt.Matutina, Calog, George Palacpac (Palacpac), Cruz, Pasicolan and Callagan. The petition prayed for the following reliefs: a.) The issuance of the writ of *amparo* ordering respondents to desist from violating Rodriguez's right to life, liberty and security; b.) The issuance of an order to enjoin respondents from doing harm to or approaching Rodriguez, his family and his witnesses; c.) Allowing the inspection of the detention areas of the Headquarters of Bravo Co., 5th Infantry Division, Maguing, Gonzaga, Cagayan and another place near where Rodriguez was brought; d.) Ordering respondents to produce documents submitted to them regarding any report on Rodriguez, including operation reports and provost marshall reports of the 5th Infantry Division, the Special Operations Group of the Armed Forces of the Philippines (AFP), prior to, on and subsequent to 6 September 2009; e.) Ordering records pertinent or in any way connected to Rodriguez, which are in the custody of respondents, to be expunged, disabused, and forever barred from being used.

On 15 December 2009, the Supreme Court granted the respective writs after finding that the petition sufficiently alleged that Rodriguez had been abducted, tortured and later released by members of the 17th Infantry Battalion of the Philippine Army. The Court likewise ordered respondents therein to file a verified return on the writs on or before 22 December 2009 and to comment on the petition on or before 4 January 2010. Finally, it directed the Court of Appeals (CA) to hear the petition on 4 January 2010 and decide on the case within 10 days after its submission for decision.

ISSUES:

1. Whether the doctrine of command responsibility can be used in *amparo* and habeas data cases.
2. Whether the rights to life, liberty and property of Rodriguez were violated or threatened by respondents in G.R. No. 191805.

RULING:

1. YES. To attribute responsibility or accountability to former President Arroyo, Rodriguez contends that the doctrine of command responsibility may be applied. As we explained in Rubrico v. Arroyo, command responsibility pertains to the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars

or domestic conflict." Although originally used for ascertaining criminal complicity, the command responsibility doctrine has also found application in civil cases for human rights abuses.

In the United States, for example, command responsibility was used in *Ford v. Garcia* and *Romagoza v. Garcia* civil actions filed under the Alien Tort Claims Act and the Torture Victim Protection Act .This development in the use of command responsibility in civil proceedings shows that the application of this doctrine has been liberally extended even to cases not criminal in nature. Thus, it is our view that command responsibility may likewise find application in proceedings seeking the privilege of the writ of *amparo*. Precisely in the case at bar, the doctrine of command responsibility may be used to determine whether respondents are accountable for and have the duty to address the abduction of Rodriguez in order to enable the courts to devise remedial measures to protect his rights. Clearly, nothing precludes this Court from applying the doctrine of command responsibility in *amparo* proceedings to ascertain responsibility and accountability in extrajudicial killings and enforced disappearances

2. YES. The fair and proper rule, to our mind, is to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, we reduce our rules to the most basic test of reason, i.e. to the relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.

In the case at bar, we find no reason to depart from the factual findings of the Court of Appeals, the same being supported by substantial evidence. A careful examination of the records of this case reveals that the totality of the evidence adduced by Rodriguez indubitably prove the responsibility and accountability of some respondents in G.R. No. 191805 for violating his right to life, liberty and security.

CONSTANCIO F. MENDOZA *v.* SENEN C. FAMILARA, et al.
G.R. No. 191017, 15 November 2011, EN BANC (Perez, *J.*)

This petition questions the constitutionality of Section 2[1] of Republic Act No. 9164 (entitled "An Act Providing for Synchronized Barangay and Sangguniang Kabataan Elections, amending RA No. 7160, as amended, otherwise known as the Local Government Code of 1991"). As other barangay officials had done in previous cases, petitioner Constancio F. Mendoza likewise questions the retroactive application of the three-consecutive term limit imposed on barangay elective officials beginning from the 1994 barangay elections.

Mendoza was a candidate for Barangay Captain of Barangay Balatasan, Oriental Mindoro in the 29 October 2007 Barangay Elections. As required by law, Mendoza filed a certificate of candidacy. Prior thereto, Mendoza had been elected as Barangay Captain of Barangay Balatasan for three (3) consecutive terms.

On 26 October 2007, respondent Senen C. Familara (Familara) filed a Petition to Disqualify Mendoza averring that Mendoza, under Section 2 of RA No. 9164, is ineligible to run again for Barangay Captain of Barangay Balatasan, having been elected and having served, in the same position for three (3) consecutive terms immediately prior to the 2007 Barangay Elections. The COMELEC 1st Division agreed that Mendoza was indeed disqualified from running as Barangay Captain. This decision was affirmed by the COMELEC *En Banc*.

Mendoza filed the instant petition alleging grave abuse of discretion in the 23 December 2009 Resolution of the COMELEC *En Banc* insisting and puts in issue the constitutionality of the retroactive application to the 1994 *Barangay* Elections of the three-consecutive term limit rule.

ISSUE:

Whether or not Section 2 [1] of RA No. 9164 may be applied retroactively

RULING:

NO. The supervening event that is the conduct of the 2010 Barangay Elections renders this case moot and academic. The term of office for Barangay Captain of Balatasan for the 2007 Barangay Elections had long expired in 2010 following the last elections held on October 25 of the same year. Certainly, the rule is not set in stone and permits exceptions. Thus, we may choose to decide cases otherwise moot and academic if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest involved; third, the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; or fourth, the case is capable of repetition yet evasive of review. None of the foregoing exceptions calling for this Court to exercise jurisdiction obtains in this instance.

In any event, upon a perusal of the merits or lack thereof, the petition is clearly dismissible.

In COMELEC v. Cruz settles, the Court ruled that the constitutionality of the three-consecutive term limit rule no retroactive application was made because the three-term limit has been there all along as early as the second barangay law (RA No. 6679) after the 1987 Constitution took effect; it was continued under the Local Government Code and can still be found in the current law. We find this obvious from a reading of the historical development of the law.

The first law that provided a term limitation for barangay officials was RA No. 6653 (1988); it imposed a two-consecutive term limit. After only six months, Congress, under RA No. 6679 (1988), changed the two-term limit by providing for a three-consecutive term limit. This consistent imposition of the term limit gives no hint of any equivocation in the congressional intent to provide a term limitation. Thereafter, RA No. 7160 - the LGC - followed, bringing with it the issue of whether it provided, as originally worded, for a three-term limit for barangay officials. We differ with the RTC analysis of this issue.

Section 43 is a provision under Title II of the LGC on Elective Officials. Title II is divided into several chapters dealing with a wide range of subject matters, all relating to local elective officials, as follows: a. Qualifications and Election (Chapter I); b. Vacancies and Succession (Chapter II); c. Disciplinary Actions (Chapter IV) and d. Recall (Chapter V). Title II likewise contains a chapter on Local Legislation (Chapter III).

These Title II provisions are intended to apply to all local elective officials, unless the contrary is clearly provided. A contrary application is provided with respect to the length of the term of office under Section 43(a); while it applies to all local elective officials, it does not apply to barangay officials whose length of term is specifically provided by Section 43(c). In contrast to this clear case of an exception to a general rule, the three-term limit under Section 43(b) does not contain any exception; it applies to all local elective officials who must perforce include barangay officials.

An alternative perspective is to view Section 43(a), (b) and (c) separately from one another as independently standing and self-contained provisions, except to the extent that they expressly relate to one another. Thus, Section 43(a) relates to the term of local elective officials, except barangay officials whose term of office is separately provided under Sec. 43(c). Section 43(b), by its express terms, relates to all local elective officials without any exception. Thus, the term limitation applies to all local elective officials without any exclusion or qualification.

All these inevitably lead to the conclusion that the challenged proviso has been there all along and does not simply retroact the application of the three-term limit to the barangay elections of 1994. Congress merely integrated the past statutory changes into a seamless whole by coming up with the challenged proviso.

With this conclusion, the respondents constitutional challenge to the proviso based on retroactivity must fail.

REPUBLIC OF THE PHILIPPINES *v.* SPOUSES TAN SONG BOK, et al.
G.R. No. 191448, 16 November 2011, THIRD DIVISION (Mendoza, *J.*)

The Republic, represented by the Toll Regulatory Board (TRB), through the Office of the Solicitor General (OSG), filed a complaint before the RTC of Angeles for the expropriation of 8 parcels of land which will form part of the Luzon Expressway. A writ of possession was issued and a committee was formed. The committee recommended the just compensation to be paid to the respondents which ranged from P3,650-4,400 per square meter.

The Republic assailed the decision of the committee on the grounds that there was no sufficient basis for the prices recommended since no document or deed of sale involving similar property was offered, and that the committee did not take into consideration the properties' zonal valuation, tax declaration and the actual use of the lands.

The respondents, however, argued that the recommendation of the committee was based on the zonal value as evidenced by the certification from the BIR, a certification by the BIR which contained the price of the latest recorded sale of property in the area, verifications from proper offices in Magalang, Mabalacat and Angeles, and the ocular inspection done by the commissioners.

The RTC approved the expropriation of the subject lands upon payment of just compensation, which is based on the prices recommended by the committee. This decision was later affirmed by the CA. The CA agreed with the respondents that the committee has sufficient basis to support its recommendation.

ISSUE:

1. Whether or not petitioner was deprived of its right to due process
2. Whether or not the RTC and the CA had sufficient basis in arriving at the questioned amount of just compensation of the subject properties.

RULING:

1. NO. Records show that when the RTC issued its June 10, 2002 Order of expropriation, it created a committee on appraisal which was composed of three (3) commissioners who would determine and report the just compensation for the properties subject of expropriation. Upon submission of the Report by the Committee on September 20, 2002, petitioner filed its comment/objection to the Report arguing that it did not have sufficient basis for the recommended prices and, thus, the amounts recommended were not justified. Likewise, the petitioner prayed that the commissioners be reconvened for reception of evidence and further proceedings. After the respondents filed their reply to the petitioners comment/objection, the RTC set the hearing for clarificatory questions.

During the clarificatory hearing, the three (3) appointed commissioners testified and were subjected to cross-examination. Thereafter, the petitioner presented its evidence in support of its positions consisting of the testimonies of Cleofe Umlas, Administrative Office of the Bureau of Internal Revenue; Liberato L. Navarro, Revenue District Officer, Revenue District No. 21, Pampanga; James Suarez, Bureau of Internal Revenue District Officer; and Ronnie Vergara, Register of Deeds of Angeles City.

Clearly, the petitioner was afforded due process. The pleadings it submitted and the testimonial evidence presented during the several hearings conducted all prove that the petitioner was given its day in court. The Court notes that the RTC acceded to the petitioners request, over the respondents objection, for the reconvening of the Committee for reception of evidence and further proceedings. It also heard and allowed both sides to present evidence during the clarificatory hearings and rendered a decision based on the evidence presented.

2. YES. The lower courts properly appreciated the evidence submitted by both parties as regards the true value of the expropriated lots at the time of taking.

Eminent domain is the power of the State to take private property for public use. It is an inherent power of State as it is a power necessary for the States existence; it is a power the State cannot do without. As an inherent power, it does not need at all to be embodied in the Constitution; if it is mentioned at all, it is solely for purposes of limiting what is otherwise an unlimited power.

This Court would like to stress that the petitioner is silent on the undisputed fact that no less than its witness, Cleofe Umlas, Administrative Officer of the Bureau of Internal Revenue, testified and certified that the prevailing fair market value of land located at Pulung Maragul, Angeles City is at ₱4,800.00/s.qm. as per CAR 00158912 dated August 1, 2001. She apparently based her testimony and certification on the latest documents and deeds submitted to the Bureau of Internal Revenue *(BIR)*Regional Office at that time. Obviously, her statement corroborated the findings of the Committee. Hence, there was proper basis for the determination of the just compensation for the expropriated properties.

The petitioners tax declarations, the BIR zonal valuation and the deeds of sale it presented are not the only proof of the fair value of properties. Zonal valuation is just one of the indices of the fair market value of real estate. By itself, this index cannot be the sole basis of just compensation in expropriation cases.[10]

Various factors come into play in the valuation of specific properties singled out for expropriation. The values assigned by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts or other crops. Very often land described as cogonal has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct. Tax values can serve as guides but cannot be absolute substitutes for just compensation.

HACIENDA LUISITA, INCORPORATED *v.* PRESIDENTIAL AGRARIAN REFORM COUNCIL, et al.
G.R. No. 171101, 22 November 2011, EN BANC (Velasco, Jr., *J.*)

In 1988, Republic Act (RA) 6657 or the CARP Law was passed. It is a program aimed at redistributing public and private agricultural lands to farmers and farm workers who are landless. One of the lands covered by this law is the Hacienda Luisita, a 6,443-hectare mixed agricultural-industrial-residential expanse straddling several municipalities of Tarlac. Hacienda Luisista was bought in 1958 from the Spanish owners by the Tarlac Decelopment Corporation (TADECO), which is owned andor controlled by Jose Cojuanco Sr., Group. Back in 1980, the Martial Law administration filed an expropriation suit against TADECO to surrender the Hacienda to the then Minsitry of Agrarian Reform (MAR), which is now known as the Department of Agrarian Reform, so that the land can be distributed to the farmers at cost. The Regional Trial Court (RTC) rendered judgment ordering TADECO to surrender Hacienda Luisita to the MAR.

In 1988, the Office of the Solicitor General (OSG) moved to dismiss the government's case against TADECO. The Court of Appeals (CA) dismissed it, but the dismissal was subject to the condition that TADECO shall obtain the approval of the farm worker beneficiaries (FWB) to the Stock Distribution Plan (SDP) and to ensure its implementation.

Section 31 of the CARP Law allows either land transfer or stock transfer aas two alternative modes in distributing land ownership to the FWBs. Since the stock distribution scheme is the preferred option of TADECO, it organized a spin-off corporation, the Hacienda Luisita Inc. (HLI), as vehicle to facilitate stock acquisition by the farmers.

After conducting a follow-up referendum and revision of terms of the Stock Distribution Option Agreement (SDOA) proposed by TADECO, the Presidential Agrarian Reform Council (PARC), led by then DAR Secretary Miriam Santiago, approved the SDP of TADECO/HLI through Resolution 89-12-2 dated November 21, 1989.

From 1989 to 2005, the HLI claimed to have extended those benefits to the farm workers. Such claim was subsequently contested by two groups representing the interest of the farmers – HLI Supervisory Group and the AMBALA. In 2003, each of them wrote letter petitions before the DAR asking for the renegotiation of terms and/or revocation of the SDOA. They claimed that they haven't actually received those benefits in full, that HLI violated the terms, and that their lives haven't really improved contrary to the promise and rationale of the SDOA.

The DAR created the Special Task Force to attend to the issues and to review the terms of the SDOA and the Resolution 98-12-2. adopting the respot and the recommendations of the Task Force, the DAR Secretary recommended to the PARC: 1) the revocation of Resolution 89-12-2 and 2) the acquisition of Hacienda Luisista through compulsory acquisition scheme. Consequently, the PARC revoked the SDP of TADECO/HLI and subjected those lands covered by the SDO to the mandated land acquisition scheme under the CARP Law, these acts of the PARC was assailed by HLI vial Rule 65.

On the other hand, FARM, an intervenor, asks for the invalidation of Section 31 od RA 6657, insofar as it affords the corporation, as a mode of CARP compliance, to resort to stock transfer in lieu of outright agricultural land transfer. For FARM, this modality of distribution is an anomaly to be annulled for being inconsistent with the basic concept of agrarian reform ingrained in Section 4, Article XIII of the Constitution.

ISSUE:

1. Whether or not the Court may exercise its power of judicial review over the constitutionality of Section 31 of RA 6657
2. Whether or not the determination of just compensation should be computed from the date of the notice of coverage was issued by DAR, as claimed by HLI

RULING:

1. NO. While there is indeed an actual case or controversy, intervenor FARM, composed of a small minority of 27 farmers, has yet to explain its failure to challenge the constitutionality of Sec. 3l of RA 6657, since as early as November 21, l989 when PARC approved the SDP of Hacienda Luisita or at least within a reasonable time thereafter and why its members received benefits from the SDP without so much of a protest. It was only on December 4, 2003 or 14 years after approval of the SDP via PARC Resolution No. 89-12-2 dated November 21, 1989 that said plan and approving resolution were sought to be revoked, but not, to stress, by FARM or any of its members, but by petitioner AMBALA. Furthermore, the AMBALA petition did NOT question the constitutionality of Sec. 31 of RA 6657, but concentrated on the purported flaws and gaps in the subsequent implementation of the SDP. Even the public respondents, as represented by the Solicitor General, did not question the constitutionality of the provision. On the other hand, FARM, whose 27 members formerly belonged to AMBALA, raised the constitutionality of Sec. 31 only on May 3, 2007 when it filed its Supplemental Comment with the Court. Thus, it took FARM some eighteen (18) years from November 21, 1989 before it challenged the constitutionality of Sec. 31 of RA 6657 which is quite too late in the day. The FARM members slept on their rights and even accepted benefits from the SDP with nary a complaint on the alleged unconstitutionality of Sec. 31 upon which the benefits were derived. The Court cannot now be goaded into resolving a constitutional issue that FARM failed to assail after the lapse of a long period of time and the occurrence of numerous events and activities which resulted from the application of an alleged unconstitutional legal provision.

It has been emphasized in a number of cases that the question of constitutionality will not be passed upon by the Court unless it is properly raised and presented in an appropriate case at the first opportunity. FARM is, therefore, remiss in belatedly questioning the constitutionality of Sec. 31 of RA 6657.

The last but the most important requisite that the constitutional issue must be the very *lis mota* of the case does not likewise obtain. The *lis mota* aspect is not present, the constitutional issue tendered not being critical to the resolution of the case. The unyielding rule has been to avoid, whenever plausible, an issue assailing the constitutionality of a statute or governmental act. If some other grounds exist by which judgment can be made without touching the constitutionality of a law, such recourse is favored.

The *lis mota* in this case, proceeding from the basic positions originally taken by AMBALA (to which the FARM members previously belonged) and the Supervisory Group, is the alleged non-compliance by HLI with the conditions of the SDP to support a plea for its revocation. And before the Court, the *lis mota* is whether or not PARC acted in grave abuse of discretion when it ordered the recall of the SDP for such non-compliance and the fact that the SDP, as couched and implemented, offends certain constitutional and statutory provisions. To be sure, any of these key issues may be resolved without plunging into the constitutionality of Sec. 31 of RA 6657.

It may be well to note at this juncture that Sec. 5 of RA 9700, amending Sec. 7 of RA 6657, has all but superseded Sec. 31 of RA 6657 vis--vis the stock distribution component of said Sec. 31. In its pertinent part, Sec. 5 of RA 9700 provides: [T]hat after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition. Thus, for all intents and purposes, the stock distribution scheme under Sec. 31 of RA 6657 is no longer an available option under existing law. The question of whether or not it is unconstitutional should be a moot issue.

2. NO. The date of taking is November 21, 1989, the date when PARC approved HLIs SDP per PARC Resolution No. 89-12-2, in view of the fact that this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition. Further, any doubt should be resolved in favor of the FWBs.

It should be noted that it is precisely because the stock distribution option is a distinctive mechanism under RA 6657 that it cannot be treated similarly with that of compulsory land acquisition as these are two (2) different modalities under the agrarian reform program. As We have stated in Our July 5, 2011 Decision, RA 6657 provides two (2) alternative modalities, i.e., land or stock transfer, pursuant to either of which the corporate landowner can comply with CARP.

In this regard, it should be noted that when HLI submitted the SDP to DAR for approval, it cannot be gainsaid that the stock distribution scheme is clearly HLIs preferred modality in order to comply with CARP. And when the SDP was approved, stocks were given to the FWBs in lieu of land distribution. As aptly observed by the minority itself, instead of expropriating lands, what the government took and distributed to the FWBs were shares of stock of petitioner HLI in proportion to the value of the agricultural lands that should have been expropriated and turned over to the FWBs. It cannot, therefore, be denied that upon the approval of the SDP submitted by HLI, the agricultural lands of Hacienda Luisita became subject of CARP coverage. Evidently, the approval of the SDP took the place of a notice of coverage issued under compulsory acquisition.

OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, et al. *v.* JESUS D. FRANCISCO, SR.
G.R. No. 172553, 14 December 2011, FIRST DIVISION (Leonardo-De Castro, *J.*)

Sometime in November 1998, Ligorio Naval filed a complaint before the Office of the Ombudsman, accusing Jessie Castillo, the mayor of the Municipality of Bacoor, Cavite, among others, of violating Sections 3(e), (g) and (j) of the Anti-Graft and Corrupt Practices Act, in relation to the award of the construction of the municipal building of Bacoor, Cavite, worth more than 9 Million Pesos, to St. Marthas Trading and General Contractors.

The complaint was docketed as OMB-1-98-2365. The Ombudsman dismissed the complaint. In a series of communications with Deputy Ombudsman Margarito P. Gervacio, Jr., Naval insinuated that his evidence was not considered and the complaint was dismissed in exchange for millions of pesos. Thereafter, the Fact-Finding and Intelligence Bureau of the Ombudsman executed a complaint-affidavit for gross negligence and conduct prejudicial to the interest of the service, against 5 municipal officers, including Jesus Francisco, which was docketed asOMB-C-A-05-0032-A. The respondents specifically named in Administrative Case No. OMB-C-A-05-0032-Awere Saturnino F. Enriquez, Salome O. Esagunde, Federico Aquino, Eleuterio Ulatan and herein respondent Jesus D. Francisco, Sr., all of whom were members of the Prequalification, Bids and Awards Committee (PBAC) of the Municipality of Bacoor, Cavite.

Francisco was then the Municipal Planning and Development Officer of the Municipality of Bacoor, Cavite. On May 30, 2005, Director Joaquin F. Salazar of the Office of the Deputy Ombudsman for Luzon issued an Order preventively suspending the above PBAC members. Consequently, respondent filed before the Court of Appeals a Petition for Certiorari with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction. He argued that the Office of the Deputy Ombudsman for Luzon committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered his preventive suspension since the transactions questioned in the case had already been passed upon in OMB-1-98-2365 entitled, Naval v. Castillo, which was dismissed for lack of merit.

The CA ruled in favor of Francisco. The Office of the Deputy Ombudsman filed the instant petition, praying for the reversal of the adverse rulings of the Court of Appeals. Upon elevation of the records to this Court, it became apparent that the Office of the Deputy Ombudsman dismissed Administrative Case No. OMB-C-A-05-0032-A for lack of probable cause.

ISSUE:

Whether or not the instant petition has been rendered moot and academic.

RULING:

YES. The Court finds that the petition at bar, which seeks the reinstatement of the Order of preventive suspension dated May 30, 2005 of the Office of the Deputy Ombudsman for Luzon, has been rendered moot. In view of this supervening event that occurred after the filing of the instant petition, the same has ceased to present a justiciable controversy.

Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation; the purpose thereof is to prevent the accused from using his position and the powers and

prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him.

The fact that Administrative Case No.OMB-C-A-05-0032-A was already terminated by the Office of the Deputy Ombudsman for Luzon when it dismissed the case in a Joint Resolution, approved by the Acting Ombudsman on February 28, 2008.Consequently, the Order of the Office of the Deputy Ombudsman for Luzon placing Francisco and his co-respondents under preventive suspension in Administrative Case No.OMB-C-A-05-0032-A has already lost its significance.

Time and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value. While the Court is mindful of the principle that the moot and academic principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first,* there is a grave violation of the Constitution; *second,* the exceptional character of the situation and the paramount public interest is involved; *third,* when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and *fourth*, the case is capable of repetition yet evading review, the above exceptions do not find application in the instant case.

CESAR S. DUMDUMA *v.* CIVIL SERVICE COMMISSION
G.R. No. 182606, 4 December 2011, *EN BANC* (*Per Curiam*)

In 1999, Cesar Dumduma, pursuant to his appointment as Police Inspector, accomplished a Personal Data Sheet (PDS) in which he affirmed that he passed the Career Service Professional Examination Computer-Assisted Test. It was later discovered that Dumduma was not eligible as his name was not included in the Civil Service Commission-National Capital Region (CSC-NCR) Regional Register of Eligibles but his name was found in the Regional List of Passing/Failing Examinees with a rating of 25.82%. Consequently, Dumduma's appointment was denied and he was charged with Dishonesty.

In his defense, Dumduma alleged that before taking the examination, he met one Salome Dilodilo who claimed that he was a retired CSC director. With the aid of Dilodilo, Dumduma was able to take the examination earlier and one week after, Dumduma received his Certificate of Eligibility.

CSC-NCR rendered a decision against Dumduma, holding that Regional List prevails over the Certificate of Eligibility, the former being presumed to be accurate unless otherwise proven. This decision was later affirmed by the CSC.

Dumduma maintained his innocence by raising his alleged good faith when he relied on the Certificate of Eligibility given to him. Upon appeal to the Court of Appeals (CA), the court held that Dumduma failed to rebut the presumption that possession and use of the falsified certificate for his own benefit equates to him being its author.

ISSUE:

Was Dumduma in good faith when he relied upon the Certificate of Eligibility issued to him by Dilodilo?

RULING:

NO. Good faith is ordinarily used to describe that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render [a] transaction unconscientious. In short, good faith is actually a question of intention. Although this is something internal, we can ascertain a persons intention not from his own protestation of good faith, which is self-serving, but from evidence of his conduct and outward acts.

In the instant case, the facts and circumstances surrounding Dumduma's acquisition of the Certificate of Eligibility cast serious doubts on his good faith. He made a deal with a retired CSC official and accepted the Certificate of Eligibility from her representative. These circumstances reveal Dumduma's knowledge that Dilodilo could have pulled strings in order to obtain his Certificate of Eligibility and have it delivered to his residence. How else would a retired employee obtain the said certificate? Dumduma cannot feign innocence given his unquestioning cooperation with Dilodilo.

Besides, whether some CSC personnel should be held administratively liable for falsifying Dumdumas Certificate of Eligibility is beside the point. The fact that someone else falsified the certificate will not excuse Dumduma for knowingly using the same for his career advancement.

The Court holds that the CA did not err in affirming the penalty of dismissal and all its accessory penalties imposed by the CSC. Only those who can live up to the constitutional exhortation that public office is a public trust deserve the honor of continuing in public service.

GEMMA P. CABALIT v. COA-REGION VII
G.R. Nos. 180326, 180341 & 180342, 17 January 2012, EN BANC (Villarama, Jr, J.)

Philippine Star News, a local newspaper in Cebu City, reported that employees of the LTO in Jagna, Bohol, are shortchanging the government by tampering with their income reports.Accordingly, Regional Director Ildefonso T. Deloria of the Commission on Audit (COA) directed State Auditors Teodocio D. Cabalit and Emmanuel L. Coloma of the Provincial Revenue Audit Group to conduct a fact-finding investigation. A widespread tampering of official receipts of Motor Vehicle Registration during the years 1998, 1999, 2000 and 2001 was then discovered by the investigators.

In a Joint Evaluation Report, Graft Investigators Pio R. Dargantes and Virginia Palanca-Santiago found grounds to conduct a preliminary investigation.Hence, a formal charge for dishonesty was filed against Olaivar, Cabalit, Apit and Alabat before the Office of the Ombudsman-Visayas.

Olaivar, Cabalit, Apit and Alabat submitted separate counter-affidavits, all essentially denying knowledge and responsibility for the anomalies.

Office of the Ombudsman-Visayas rendered judgment finding petitioners liable for dishonesty for tampering the official receipts to make it appear that they collected lesser amounts than they actually collected.

Petitioners sought reconsideration of the decision, but their motions were denied by the Ombudsman.Thus, they separately sought recourse from the CA.

CA promulgated the assailed Decision DISMISSING the instant consolidated petitions.

ISSUES:

1. Whether or not there was a violation of the right to due process when the hearing officer at the Office of the Ombudsman-Visayas adopted the procedure under A.O. No. 17 notwithstanding the fact that the said amendatory order took effect after the hearings had started?
2. Whether or not Cabalit, Apit and Olaivar are administratively liable?

RULING:

1. Petitioners were not denied due process of law when the investigating lawyer proceeded to resolve the case based on the affidavits and other evidence on record. Section 5(b)(1) Rule 3, of the Rules of Procedure of the Office of the Ombudsman, as amended by A.O. No. 17, plainly provides that the hearing officer may issue an order directing the parties to file, within ten days from receipt of the order, their respective verified position papers on the basis of which, along with the attachments thereto, the hearing officer may consider the case submitted for decision. It is only when the hearing officer determines that based on the evidence, there is a need to conduct clarificatory hearings or formal investigations under Section 5(b)(2) and Section 5(b)(3) that such further proceedings will be conducted. But the determination of the necessity for further proceedings rests on the sound discretion of the hearing officer. As the petitioners have utterly failed to show any cogent reason why the hearing officer's determination should be overturned, the determination will not be disturbed by this Court. We likewise find no merit in their contention that the new procedures under A.O. No. 17, which took effect while the case was already undergoing trial before the hearing officer, should not have been applied.

Since petitioners have been afforded the right to be heard and to defend themselves, they cannot rightfully complain that they were denied due process of law. Well to remember, due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. It is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. More often, this opportunity is conferred through written pleadings that the parties submit to present their charges and defenses. But as long as a party is given the opportunity to defend his or her interests in due course, said party is not denied due process.

2. Neglect of duty implies only the failure to give proper attention to a task expected of an employee arising from either carelessness or indifference. However, the facts of this case show more than a failure to mind one's task. Rather, they manifest that Olaivar committed acts of dishonesty, which is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle. Hence, the CA should have found Olaivar liable for dishonesty.

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty, like gross neglect of duty, is classified as a grave offense punishable by dismissal even if committed for the first time. Under Section 58,such penalty likewise carries with it the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and disqualification from re-employment in the government service.

The duty and privilege of the Ombudsman to act as protector of the people against the illegal and unjust acts of those who are in the public service emanate from no less than the 1987 Constitution. Section 12 of Article XI thereof states:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

In the exercise of his duties, the Ombudsman is given full administrative disciplinary authority. His power is not limited merely to receiving, processing complaints, or recommending penalties. He is to conduct investigations, hold hearings, summon witnesses and require production of evidence and place respondents under preventive suspension. This includes the power to impose the penalty of removal, suspension, demotion, fine, or censure of a public officer or employee.

The provisions in R.A. No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty. Thus, it is settled that the Office of the Ombudsman can directly impose administrative sanctions.

COCOFED v. REPUBLIC OF THE PHILIPPINES
G.R. Nos. 177857-58 & G.R. No. 178193, 24 January 2012, EN BANC (Velasco, Jr. J)

Philippine Coconut Producers Federation, Inc. (COCOFED) filed a motion for the conversion of the sequestered 753,848,312 Class "A" and "B" common shares of San Miguel Corporation (SMC), registered in the name of Coconut Industry Investment Fund (CIIF) Holding Companies (hereunder referred to as SMC Common Shares), into 753,848,312 SMC Series 1 Preferred Shares. Oppositors-intervenors Salonga, et al. anchor their plea for reconsideration on the following submission or issues: The conversion of the shares is patently disadvantageous to the government and the coconut farmers, given that SMC's option to redeem ensures that the shares will be bought at less than their market value.

ISSUE:

Whether or not the contentions of the oppositors are shall be given credence.

RULING:

NO. The conversion may be viewed as a sound business strategy to preserve and conserve the value of the government's interests in CIIF SMC shares.

Due to the nature of stocks in general and the prevailing business conditions, the government, through the Presidential Commission on Good Government (PCGG), chose not to speculate with the CIIF SMC shares. It is the executive branch, either pursuant to the residual power of the President or by force of her enumerated powers under the laws, that has control over all matters pertaining to the disposition of government property or, in this case, sequestered assets under the administration of the PCGG. Surely, such control is neither legislative nor judicial. Well settled is the rule that the courts cannot inquire into the wisdom of an executive act but must respect the decision of the executive department, absent a clear showing of grave abuse of discretion.

NATIONAL POWER CORPORATION v. CIVIL SERVICE COMMISSION
G.R. No. 152093, 24 January 2012, EN BANC (Abad, J.)

President of petitioner National Power Corporation (NPC) filed an administrative action against respondent Rodrigo A. Tanfelix, a Supervising Mechanical Engineer, for rigging the bidding for the construction of the windbreak fence of its thermal power plants coal storage in Calaca, Batangas.

After hearing, the NPCs Board of Inquiry and Discipline (BID) found Tanfelix guilty of grave misconduct for rigging the bidding to favor ALC Industries, Inc. (ALC), one of the five pre-qualified contractors. With this finding, the NPC discipline board ordered Tanfelix dismissed from the service.

Acting on Tanfelix's appeal, the Civil Service Commission (CSC) rendered a decision, affirming the NPC-BID ruling. But, on motion for reconsideration, the CSC reversed itself and exonerated Tanfelix. The CSC ruled in the main that the misconduct which warrants removal must have direct relation to and be connected with the performance of official duties. As it happened, Tanfelix was neither a member of the NPC bids committee nor was there any proof that he influenced the members of that committee.

The NPC appealed to the Court of Appeals (CA) but the latter affirmed the ultimate ruling of the CSC.

ISSUE:

Whether or not tanfelix is absolved of any administrative liability for rigging the bids on an npc construction contract since he was not a member of the bids committee that awarded it to a pre-selected bidder?

RULING:

Court of Appeals decision is set aside.

Grave misconduct, of which Tanfelix has been charged, consists in a government officials deliberate violation of a rule of law or standard of behavior. It is regarded as grave when the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present. In particular, corruption as an element of grave misconduct consists in the official's unlawful and wrongful use of his station or character [reputation]to procure some benefit for himself or for another person, contrary to duty and the rights of others. Rigging by a public official at a bidding in the organization where he belongs is a specie of corruption.

The court adjudges respondent Rodrigo A. Tanfelix guilty of grave misconduct, and imposes on him the penalty of dismissal with the accessory penalties.

DOUGLAS CAGAS v. COMELEC
G.R. No. 194139 24 January 2012, EN BANC (Bersamin, J)

Petitioner Douglas R. Cagas was proclaimed the winner for the gubernatorial race for the province of Davao del Sur. Respondent Claude P. Bautista, his rival, filed an electoral protest alleging fraud, anomalies, irregularities, vote-buying and violations of election laws, rules and resolutions. The protest was raffled to the COMELEC First Division.

In his affirmative defense, Cagas argued that Bautista did not make the requisite cash deposit on time and that Bautista did not render a detailed specification of the acts or omissions complained of. The COMELEC First Division denied the special affirmative defences. Thus, Cagas prayed that the matter be certified to the COMELEC En Banc. Bautista countered that the assailed orders, being merely interlocutory, could not be elevated to the COMELEC En Banc. The COMELEC First Division issued an order denying Cagas' motion for reconsideration, prompting him to file a petition for certiorari before the Supreme Court.

ISSUE:

Whether or not the Supreme Court has the power to review on certiorari an interlocutory order issued by a Division of the COMELEC

RULING:

Petition DENIED. Although Section 7, Article IX of the 1987 Constitution confers on the Court the power to review any decision, order or ruling of the COMELEC, it limits such power to a final decision or resolution of the COMELEC en banc, and does not extend to an interlocutory order issued by a Division of the COMELEC. Otherwise stated, the Court has no power to review on certiorari an interlocutory order or even a final resolution issued by a Division of the COMELEC.

There is no question, therefore, that the Court has no jurisdiction to take cognizance of the petition for certiorari assailing the denial by the COMELEC First Division of the special affirmative defenses of the petitioner. The proper remedy is for the petitioner to wait for the COMELEC First Division to first decide the protest on its merits, and if the result should aggrieve him, to appeal the denial of his special affirmative defenses to the COMELEC En Banc along with the other errors committed by the Division upon the merits.

It is true that there may be an exception to the general rule, which is when an interlocutory order of a Division of the COMELEC was issued without or in excess of jurisdiction or with grave abuse of discretion, as the Court conceded in Kho v. Commission on Elections. However, the said UST Law Review, Vol. LVII No. 1, November 2012 case has no application herein because the COMELEC First Division had the competence to determine the lack of detailed specifications of the acts or omissions complained of as required by Rule 6, Section 7 of COMELEC Resolution No. 8804, and whether such lack called for the outright dismissal of the protest.

REPUBLIC OF THE PHILIPPINES v. RURAL BANK OF KABACAN, INC., et al.
G. R. No. 185124, 25 January 2012, SECOND DIVISION (Sereno, J.)

The National Irrigation Administration (NIA) filed with the Regional Trial Court of Kabacan

(RTC) a complaint for expropriation of a portion of three parcels of land covering a total of 14,497.91 square meters for its Malitubog-Marigadao irrigation project. The committee formed by the RTC pegged the fair market value of the land at Php 65.00 per square meter. It also added to its computation the value of soil excavated from portions of two lots. RTC adopted the findings of the committee despite the objections of NIA to the inclusion of the value of the excavated soil in the computation of the value of the land.

NIA, through the Office of the Solicitor General, appealed to the Court of Appeals (CA) which affirmed with modification the RTC's decision. CA deleted the value of the soil in determination of compensation but affirmed RTC's valuation of the improvements made on the properties.

ISSUE:

Whether or not the value of the excavated soil should be included in the computation of just compensation

RULING:

Petition DENIED. There is no legal basis to separate the value of the excavated soil from that of the expropriated properties, contrary to what the trial court did. In the context of expropriation proceedings, the soil has no value separate from that of the expropriated land. Just compensation ordinarily refers to the value of the land to compensate for what the owner actually loses. Such value could only be that which prevailed at the time of the taking.

In National Power Corporation v. Ibrahim, et al. The SC held that rights over lands are indivisible. This conclusion is drawn from Article 437 of the Civil Code which provides: "The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation." Thus, the ownership of land extends to the surface as well as to the subsoil under it.

Hence, the CA correctly modified the trial court's Decision when it ruled it is preposterous that NIA will be made to pay not only for the value of the land but also for the soil excavated from UST Law Review, Vol. LVII No. 1, November 2012 such land when such excavation is a necessary phase in the building of irrigation projects. That NIA will make use of the excavated soil is of no moment and is of no concern to the landowner who has been paid the fair market value of his land. As pointed out by the OSG, the law does not limit the use of the expropriated land to the surface area only. To sanction the payment of the excavated soil is to allow the landowners to recover more than the value of the land at the time when it was taken, which is the true measure of the damages, or just compensation, and would discourage the construction of important public improvements.

SAMUEL ONG v. OFFICE OF THE PRESIDENT
G.R. No. 184219, 30 January 2012, SECOND DIVISION (Reyes, J.)

Petitioner Ong joined the National Bureau of Investigation (NBI) as a career employee in 1978. He held the position of NBI Director I from July 14, 1998 to February 23, 1999 and NBI Director II from February 24, 1998 to September 5, 2001. On September 6, 2001, petitioner was appointed Director III by the President.

On June 3, 2004, the petitioner received from respondent Reynaldo Wycoco Memorandum Circular No. 02-S.2004 informing him that his appointment, being co-terminus with the appointing authority's tenure, would end effectively at midnight on June 30, 2004 and, unless a new appointment would be issued in his favor by the President consistent with her new tenure effective July 1, 2004, he would be occupying his position in ade facto/hold- over status until his replacement would be appointed.

On December 01, 2004, the President appointed respondent Victor A. Bessat as NBI Director III as replacement of the petitioner. Ong filed before the CA a petition for quo warranto. He sought for the declaration as null and void of (a) his removal from the position of NBI Director III; and (b) his replacement by respondent Victor Bessat (Bessat). Ong likewise prayed for reinstatement and backwages.

The CA denied the petition. Hence, this petition.

ISSUE:

Whether or not the CA erred in sustaining the validity of Ong's removal

RULING:

No. CA Decision Affirmed. In the hands of the appointing authority are lodged the power to remove. This Court notes that MC No. 02-S.2004 did not in effect remove Ong from his post. It merely informed Ong that records of the NBI showed that his co-terminous appointment had lapsed into a de facto/hold-over status. It likewise apprised him of the consequences of the said status.

Be that as it may, if we were to assume for argument's sake that Wycoco removed Ong from his position as Director III by virtue of the former's issuance of MC No. 02-S.2004, still, the defect was cured when the President herself issued Bessat's appointment on December 1, 2004. The appointing authority, who in this case was the President, had effectively revoked Ong's appointment.

Ong lacked the CES eligibility required for the position of Director III and his appointment was "co-terminus with the appointing authority." His appointment being both temporary and co-terminous in nature, it can be revoked by the President even without cause and at a short notice.

It is established that no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law. However, this admits of exceptions for it is likewise settled that the right to security of tenure is not available to those employees whose appointments are contractual and co-terminous in nature.

In the case at bar, Ong's appointment as Director III falls under the classifications provided in (a) Section 14(2) of the Omnibus Rules Implementing Book V of the Administrative Code, to wit, that

which is "co-existent with the tenure of the appointing authority or at his pleasure"; and (b) Sections 13(b) and 14(2) of Rule V, CSC Resolution No. 91-1631, or that which is both a temporary and a co-terminous appointment. The appointment is temporary as Ong did not have the required CES eligibility.

At this juncture, what comes unmistakably clear is the fact that because petitioner lacked the proper CES eligibility and therefore had not held the subject office in a permanent capacity, there could not have been any violation of petitioners supposed right to security of tenure inasmuch as he had never been in possession of the said right at least during his tenure as Deputy Director for Hospital Support Services. Hence, no challenge may be offered against his separation from office even if it be for no cause and at a moments notice.

Petition Denied.

RUBEN DEL CASTILLO v. PEOPLE OF THE PHILIPPINES
G.R. No. 185128, 30 January 2012, THIRD DIVISION (Peralta, J.)

Police Officers headed by SPO3 Bienvenido Masnayon went to serve a search warrant from the Regional Trial Court (RTC) to Petitioner Ruben Del Castillo in search of illegal drugs. Upon arrival, somebody shouted "raid" which prompted the police officers to immediately disembark from the jeep they were riding and go directly to Del Castillo's house and cordoned it off. Police men found nothing incriminating in Del Castillo's residence, but one of the barangay tanods was able to confiscate from the hut several articles including four (4) plastic packs of methamphetamine hydrochloride, or shabu.

An Information was filed before RTC against Del Castillo, charging him with violation of Section 16, Article III of R.A. 6425 (The Dangerous Drugs Act of 1972). During the arraignment, Del Castillo pleaded not guilty. The RTC found Del Castillo guilty beyond reasonable of the charge against him in the information. The Court of Appeals (CA) affirmed the decision.

Del Castillo appealed his case to the CA, insisting that there was a violation of his constitutional guaranty against unreasonable searches and seizure. On the contrary, the Office of the Solicitor General argued that the constitutional guaranty against unreasonable searches and seizure is applicable only against government authorities. Hence, assuming that the items seized were found in another place not designated in the search warrant, the same items should still be admissible as evidence because the one who discovered them was a barangay tanod who is a private individual.

ISSUE:

Whether or not there was a violation of Del Castillo's right against unreasonable searches and Seizure

RULING:

Petition GRANTED. It must be remembered that the warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid. A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.

In the present case, the search warrant specifically designates or describes the residence of the petitioner as the place to be searched. Incidentally, the items were seized by a barangay tanod in a nipahut, 20 meters away from the residence of the Del Castillo. The confiscated items, having been foundin a place other than the one described in the search warrant, can be considered as fruits of an invalid warrantless search, the presentation of which as an evidence is a violation of Del Castillo's constitutional guaranty against unreasonable searches and seizure.

The OSG argued that, assuming that the items seized were found in another place not designated in the search warrant, the same items should still be admissible as evidence because the one who discovered them was a barangay tanod who is a private individual, the constitutional guaranty against unreasonable searches and seizure being applicable only against government authorities. The

contention is devoid of merit. It was testified to during trial by the police officers who effected the search warrant that they asked the assistance of the barangay tanods. Having been established that the assistance of the barangay tanods was sought by the police authorities who effected the search warrant, the same barangay tanods therefore acted as agents of persons in authority. Article 152 of the Revised Penal Code defines persons in authority and agents of persons in authority as "any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board or commission, shall be deemed a person in authority. A barangay captain and a barangay chairman shall also be deemed a person in authority. A person who, by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barrio councilman, barrio policeman and barangay leader, and any person who comes to the aid of persons in authority, shall be deemed an agent of a person in authority."

The Local Government Code also contains a provision which describes the function of a barangay tanod as an agent of persons in authority. Section 388 of the Local Government Code reads: "For purposes of the Revised Penal Code, the punong barangay, sangguniang barangay members, and members of the lupong tagapamayapa in each barangay shall be deemed as persons in authority in their jurisdictions, while other barangay officials and members who may be designated by law or ordinance and charged with the maintenance of public order, protection and security of life and property, or the maintenance of a desirable and balanced environment, and any barangay member who comes to the aid of persons in authority, shall be deemed agents of persons in authority.

By virtue of the above provisions, the police officers, as well as the barangay tanods were acting as agents of a person in authority during the conduct of the search. Thus, the search conducted was unreasonable and the confiscated items are inadmissible in evidence.

UNITED CLAIMANT ASSOCIATION OF NEA (UNICAN), et al. v. NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), et al.
G.R. No. 187107 31 January 2012, EN BANC (Velasco, Jr, J.)

Respondent NEA is a government-owned and/or controlled corporation. Under PD 269, the NEA Board is empowered to organize or reorganize NEAs staffing structure. Thereafter, Resolutions Nos. 46 and 59 was enacted and all the NEA employees and officers are considered terminated and the 965 plantilla positions of NEA vacant.

Hence, This is an original action for Injunction to restrain and/or prevent the implementation of Resolution Nos. 46 and 59 otherwise known as the National Electrification Administration (NEA) Termination Pay Plan, issued by respondent NEA Board of Administrators (NEA Board).

ISSUE:

Whether the NEA Board had the power to pass Resolution Nos. 46 and 59 terminating all of its employees.

RULING:

Yes. Under of the Implementing Rules and Regulations of the EPIRA Law, all NEA employees shall be considered legally terminated with the implementation of a reorganization program pursuant to a law enacted by Congress.

Petitioners argue that the power granted unto the NEA Board to organize or reorganize does not include the power to terminate employees but only to reduce NEAs manpower complement. Such contention is erroneous.

Reorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. It could result in the loss of ones position through removal or abolition of an office. However, for a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, it must pass the test of good faith; otherwise, it is void ab initio.

Evidently, the termination of all the employees of NEA was within the NEA Boards powers and may not successfully be impugned absent proof of bad faith. The fact that the NEA Board resorted to terminating all the incumbent employees of NPC and, later on, rehiring some of them, cannot, on that ground alone, vitiate the bona fides of the reorganization.

VERSOSA, JR v. CARAGUE, et al.
G.R. No. 157838, 7 February 2012, EN BANC (Villarama, Jr., J.)

This resolves the motion for reconsideration dated March 8, 2011 affirming COA Decision ruling that petitioner is personally and solidarily liable for the amount of P881,819.00 under Notice of Disallowance.

The Office of the Solicitor General (OSG) filed its Comment reiterating its position that petitioner should not have been made liable for the disallowed amount since there was no substantial evidence of his direct responsibility because he did not have any participation in the bidding that was conducted by the PBAC, nor did he have any participation in influencing Mr. A. Quintos, Jr., the DAP-TEC evaluator, to change the evaluation results. The OSG also cites the discussion in the dissenting opinion of Justice Sereno that the standards set in Arriola should have been observed by the COA.

Respondents filed their Comment asserting that the arguments raised by the petitioner in his motion for reconsideration do not warrant reversal of the decision rendered by this Court. The result of the technical evaluation of the bidders' computer units. As to the contention that petitioner's act of signing the documents for the processing of the purchase was merely a ministerial function, respondents noted that the Certification in the Disbursement Voucher for the payment of the computer states that "Expenses necessary, lawful and incurred under my direct supervision." Such certification definitely involves the exercise of discretion and is not a ministerial act.

Issues:

1. whether the COA violated its own rules and jurisprudence in the determination of overpricing;
2. whether petitioner may be ordered to reimburse the disallowed amount in the purchase of the subject computers.

RULING:

Commission on Audit; authority to determine if price is excessive; power to conduct post-audit. The COA, under the Constitution, is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis. For this purpose, the Constitution has provided that the COA "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." Candelario Verzosa Jr. v. Guillermo Carague and COA, et. al, G.R. No. 157838, February 7, 2012.

Commission on Audit; Memorandum No. 07-012; relevance of brand of an equipment as basis for what is reasonable. The COA, under the Constitution, is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis. For this purpose, the Constitution has provided that the COA "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." As such, CDA's decisions regarding procurement of equipment for its own use, including computers and its accessories, is subject to the COA's auditing rules and regulations for the prevention and disallowance of irregular, unnecessary, excessive and extravagant expenditures. Necessarily, CDA's preferences regarding brand of its equipment have to conform to the criteria set by the COA rules on what is reasonable price for the items purchased. Candelario Verzosa Jr. v. Guillermo Carague and COA, et. al, G.R. No. 157838, February 7, 2012.

Commission on Audit; Memorandum No. 97-012 (guidelines on evidence to support audit findings of over-pricing). 3.1 When the price/prices of a transaction under audit is found beyond the allowable ten percent (10%) above the prices indicated in reference price lists referred to in pa[r].2.1 as market price indicators, the auditor shall secure additional evidence to firm-up the initial audit finding to a reliable degree of certainty. 3.2 To firm-up the findings to a reliable degree of certainty, initial findings of over-pricing based on market price indicators mentioned in pa[r]. 2.1 above have to be supported with canvass sheets and/or price quotations indicating: a) the identities/names of the suppliers or sellers; b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency; c) the specifications of the items which should match those involved in the finding of over-pricing; and d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction. Candelario Verzosa Jr. v. Guillermo Carague and COA, et. al, G.R. No. 157838, February 7, 2012.

Commission on Audit; Memorandum No. 97-012; no retroactive effect. In Arriola v. COA, this Court ruled that the disallowance made by the COA was not sufficiently supported by evidence, as it was based on undocumented claims. The documents that were used as basis of the COA Decision were not shown to petitioners therein despite their repeated demands to see them; they were denied access to the actual canvass sheets or price quotations from accredited suppliers. Absent due process and evidence to support COA's disallowance, COA's ruling on petitioners' liability has no basis. We categorically ruled in Nava v. Palattao that neither Arriola nor the COA Memorandum No. 97-012 can be given any retroactive effect. Thus, although Arriolawas already promulgated at the time, it is not correct to say that the COA in this case violated the afore-quoted guidelines which have not yet been issued at the time the audit was conducted in 1993. Candelario Verzosa Jr. v. Guillermo Carague and COA, et. al, G.R. No. 157838, February 7, 2012.

PEOPLE OF THE PHILIPPINES v. SANDIGANBAYAN, MARCOS, BENITEZ and DULAY
G.R. No. 153304-05, 7 February 2012, EN BANC (Brion, J.)

The petition stemmed from two criminal informations filed before the Sandiganbayan, charging the respondents with the crime of malversation of public funds. The charges arose from the transactions that the respondents participated in, in their official capacities as Minister and Deputy Minister of the Ministry of Human Settlements (MHS) under the MHS Kabisig Program.

The prosecutions chief evidence was based on the lone testimony of Commission of Audit (COA) Auditor Iluminada Cortez and the documentary evidence used in the audit examination of the subject funds. COA Auditor Cortez admitted that the audit team did not conduct a physical inventory of these motor vehicles; it based its report on the information given by the Presidential Task Force.

Zagala and the respondents filed a separate motions to dismiss the criminal cases, by way of demurrers to evidence, the prosecution filed a Manifestation stating that it was not opposing the demurrers to evidence. The Sandiganbayan granted the motion for insufficiency of evidence to prove their guilt beyond reasonable doubt.

The petitioner claims that the State was denied due process because of the nonfeasance committed by the special prosecutor in failing to present sufficient evidence to prove its case. It claims that the prosecutor failed to protect the States interest in the proceedings before the Sandiganbayan.

ISSUE/S: Whether the prosecutors actions and/or omissions in these cases effectively deprived the State of its right to due process

RULING: NO. In People v. Leviste, we stressed that the State, like any other litigant, is entitled to its day in court; in criminal proceedings, the public prosecutor acts for and represents the State, and carries the burden of diligently pursuing the criminal prosecution in a manner consistent with public interest. The States right to be heard in court rests to a large extent on whether the public prosecutor properly undertook his duties in pursuing the criminal action for the punishment of the guilty.

The petitioner claims that the special prosecutor failed in her duty to give effective legal representation to enable the State to fully present its case against the respondents, citing Merciales v. Court of Appeals where we considered the following factual circumstances - (1) the public prosecutor rested the case knowing fully well that the evidence adduced was insufficient; (2) the refusal of the public prosecutor to present other witnesses available to take the stand; (3) the knowledge of the trial court of the insufficiency of the prosecutions evidence when the demurrer to evidence was filed before it; and (4) the trial courts failure to require the presentation of additional evidence before it acted on the demurrer to evidence. All these circumstances effectively resulted in the denial of the States right to due process, attributable to the inaction of the public prosecutor and/or the trial court.

In the present case, we find that the State was not denied due process in the proceedings before the Sandiganbayan. There was no indication that the special prosecutor deliberately and willfully failed to present available evidence or that other evidence could be secured.

DELA LLANA v. THE CHAIRPERSON, COA, THE EXECUTIVE SECRETARY and THE NATIONAL TREASURER
G.R. No. 180989 7 February 2012, EN BANC (Sereno, J.)

Petitioner Gualberto Dela Llana, as a taxpayer, wrote to the Commission on Audit (COA) regarding the recommendation of the Senate Committee on Agriculture and Food that the Department of Agriculture set up an internal pre-audit service. The COA replied to Dela Llana informing him of the prior issuance of Circular No. 89-299 which provides that whenever the circumstances warrant, the COA may reinstitute pre-audit or adopt such other control measures as necessary and appropriate to protect the funds and property of an agency Dela Llana filed a petition for certiorari alleging that the pre-audit duty on the part of the COA cannot be lifted by a mere circular, considering that the pre-audit is a constitutional mandate enshrined in Section 2 of Article IX-D of the 1987 Constitution.

ISSUES:

1. Whether or not the petition for certiorari filed by Dela Llana is proper
2. Whether or not it is the constitutional duty of COA to conduct a pre-audit before the consummation of government transaction

RULING:

The petition for certiorari filed by Dela Llana is not proper Dela Llana is correct in that decisions and orders of the COA are reviewable by the Court via a petition for certiorari. However, these refer to decisions and orders which were rendered by the COA in its quasi-judicial capacity. Circular No. 89-299 was promulgated by the COA under its quasi-legislative or rule-making powers. Hence, Circular No. 89-299 is not reviewable by certiorari.

Nonetheless, the Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein. In this case, Dela Llana averred that the conduct of pre-audit by the COA could have prevented the occurrence of the numerous alleged irregularities in government transactions that involved substantial amounts of public money. This is a serious allegation of a grave deficiency in observing a constitutional duty if proven correct. The Court can use its authority to set aside errors of practice or technicalities of procedure, including the aforementioned technical defects of the petition, and resolve the merits of a case with such serious allegations of constitutional breach.

It is not the constitutional duty of the COA to conduct a pre-audit.

Dela Llana claimed that the constitutional duty of COA includes the duty to conduct pre-audit. A pre-audit is an examination of financial transactions before their consumption or payment. It seeks to determine whether the following conditions are present: (1) the proposed expenditure complies with an appropriation law or other specific statutory authority; (2) sufficient funds are available for the purpose; (3) the proposed expenditure is not unreasonable or extravagant, and the unexpended balance of appropriations to which it will be charged is sufficient to cover the entire amount of the expenditure; and (4) the transaction is approved by the proper authority and the claim is duly supported by authentic underlying evidence. It could, among others, identify government agency transactions that are suspicious on their face prior to their implementation and prior to the disbursement of funds.

Dela Llana's allegations find no support in the Section 2 of Article IX-D of the 1987 Constitution. There is nothing in the said provision that requires the COA to conduct a pre-audit of all government transactions and for all government agencies. The only clear reference to a pre-audit requirement is found in Section 2, paragraph 1, which provides that a post-audit is mandated for certain government or private entities with state subsidy or equity and only when the internal control system of an audited entity is inadequate. In such a situation, the COA may adopt measures, including a temporary or special pre-audit, to correct the deficiencies.

Hence, the conduct of a pre-audit is not a mandatory duty that this Court may compel the COA to perform. This discretion on its part is in line with the constitutional pronouncement that the COA has the exclusive authority to define the scope of its audit and examination. When the language of the law is clear and explicit, there is no room for interpretation, only application. Neither can the scope of the provision be unduly enlarged by this Court.

CHINA NATIONAL MACHINERY & EQUIPMENT CORP v. HON. CESAR D. SANTA MARIA, et al.
G.R. No. 185572, 7 February 2012, EN BANC (Sereno, J.)

The Export Import Bank of China (EXIM Bank) and the Department of Finance of the Philippines (DOF) entered into a Memorandum of Understanding (Aug 30 MOU), EXIM Bank agreed to extend an amount not exceeding USD 400,000,000 in favor of the DOF, payable in 20 years, with a 5-year grace period, and at the rate of 3% per annum.

The China National Machinery & Equipment Corp. (CNMEG) was designated as the Prime Contractor for the Northrail Project. Northrail and CNMEG executed a Contract Agreement for the construction of Section I, Phase I of the North Luzon Railway System from Caloocan to Malolos on a turnkey basis (the Contract Agreement).

Respondents filed a Complaint for Annulment of Contract and Injunction with Urgent Motion for Summary Hearing to Determine the Existence of Facts and Circumstances Justifying the Issuance of Writs of Preliminary Prohibitory and Mandatory Injunction and/or TRO against CNMEG, the Office of the Executive Secretary, the DOF, the Department of Budget and Management, the National Economic Development Authority and Northrail.

In the Complaint, respondents alleged that the Contract Agreement and the Loan Agreement were void for being contrary to (a) the Constitution; (b) Republic Act No. 9184 (R.A. No. 9184), otherwise known as the Government Procurement Reform Act; (c) Presidential Decree No. 1445, otherwise known as the Government Auditing Code; and (d) Executive Order No. 292, otherwise known as the Administrative Code.

Before RTC Br. 145 could rule thereon, CNMEG filed a Motion to Dismiss dated 12 April 2006, arguing that the trial court did not have jurisdiction over (a) its person, as it was an agent of the Chinese government, making it immune from suit, and (b) the subject matter, as the Northrail Project was a product of an executive agreement.

ISSUE/S:

1. Whether CNMEG is entitled to immunity, precluding it from being sued before a local court.

2. Whether the Contract Agreement is an executive agreement, such that it cannot be questioned by or before a local court.

RULING:

1. No. In the the doctrine of sovereign immunity, a sovereign cannot, without its consent, be made a respondent in the courts of another sovereign. According to the newer or restrictive theory, the immunity of the sovereign is recognized only with regard to public acts or acts jure imperii of a state, but not with regard to private acts or acts jure gestionis. CNMEG is engaged in a proprietary activity.

2. No. The Contract Agreement was not concluded between the Philippines and China, but between Northrail and CNMEG. By the terms of the Contract Agreement, Northrail is a government-owned or -controlled corporation, while CNMEG is a corporation duly organized and created under the

laws of the Peoples Republic of China. Thus, both Northrail and CNMEG entered into the Contract Agreement as entities with personalities distinct and separate from the Philippine and Chinese governments, respectively.

Petitioner China National Machinery & Equipment Corp. (Group) is not entitled to immunity from suit, and the Contract Agreement is not an executive agreement.

CELSO M. MANUEL, et al. v. SANDIGANBAYAN, et al.
G.R. No. 158413 & G.R. No. 161133, 8 February 2012, THIRD DIVISION (Mendoza, J.)

On October 4, 1999, an Information was filed before the Sandiganbayan charging Melchor M. Mallare and Elizabeth M. Gosudan, Mayor and Treasurer, respectively, of the Municipality of Infanta, Pangasinan with the crime of Malversation of Public Funds, to wit: 1) ₱995,686.09 for unlawful personal loans to several municipal officials and employees including themselves; 2) ₱291,421.31 for payments without the requisite appropriation; and 3) ₱200,000.00 for withdrawals recorded as cash disbursements.

Upon being arraigned on January 4, 2000, the accused pleaded Not Guilty. During the pre-trial, the parties stipulated and agreed: 1) that the accused were public officers; 2) that there was an audit report; 3) that there was restitution in the amount of ₱110,000.00; 4) that there was a written demand on the accused to pay the shortage; and 5) that the shortage was in the amount of ₱1,487,107.40.

On September 17, 2001, the Sandiganbayan rendered a decision finding Mallare and Gosudan guilty beyond reasonable doubt of the crime of Malversation of Public Funds.

On January 9, 2002, Mallare and Gosudan filed their Motion To Re-Open Proceedings[11] arguing that their counsel committed a misjudgment by not presenting Mallare at the witness stand. Such circumstance justified re-opening of proceedings to avoid a miscarriage of justice. The Ombudsman Prosecutor filed his Comment/Opposition contending that the subject motion to re-open proceedings was without merit because it was filed late and after the decision convicting the accused had already attained finality.

The Sandiganbayan issued its Resolution granting the Motion To Re-open Proceedings and allowing the reception of Mallares testimony. The grant of the subject motion was based on 1) Section 24, Rule 119 of the Revised Rules of Court on Criminal Procedure; and 2) in the interest of justice.

ISSUE:

Whether or not the Sandiganbayan was correct in finding Mallare and Gosudan guilty beyond reasonable doubt of the crime of Malversation of Public Funds.

RULING:

To sustain a criminal conviction for the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended, all the following elements must be present: 1. That the offender is a public officer; 2. That he had custody or control of funds or property by reason of the duties of his office; 3. That those funds or property were public funds or property for which he was accountable; and 4. That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

Unquestionably, the source of the subject funds taken by Mallare and Gosudan came from the municipal funds. As Municipal Mayor and Treasurer, respectively, they had the sworn duty to safely keep said funds and disburse the same in accordance with standard procedure because the subject funds belong to the municipality and must only be used for the benefit of the municipality. The standard practice in the disbursement of public funds is that they cannot be released and disbursed without the signatures of the Mayor and the Treasurer. In this case, the written approvals of Mallare and Gosudan

were essential before any release and disbursement of municipal funds could be made. Hence, any unlawful disbursement or misappropriation of the subject funds would make them accountable.

The Court agrees with the Sandiganbayans ruling that there was more than enough evidence to prove that Gosudan abused her position as Municipal Treasurer of Infanta, Pangasinan, by committing the crime of Malversation of Public Funds when she gave out loans in the total amount of ₱774,285.78 to several co-employees including herself.

When COA Auditor Emilie S. Ritua (Ritua) requested Gosudan to immediately produce the missing funds and to explain why there was a shortage in the accounting of municipal funds, she failed to immediately do so. The best that she could do was to explain that the subject amount was lent to the said municipal officials and employees.

Clearly, the subject loans that Gosudan extended to the said municipal officials and employees including herself were unofficial and unauthorized loans and, therefore, anomalous in nature. The Sandiganbayan was correct in ruling that said loans were nothing but personal loans taken from the cash account of the Municipality of Infanta, Pangasinan. Gosudan unlawfully disbursed funds from the coffers of the municipality and, therefore, guilty of the crime of Malversation of Public Funds.

MANILA INTERNATIONAL AIRPORT AUTHORITY v. COMMISSION ON AUDIT
G.R. No. 194710, 14 FEBRUARY 2012, EN BANC (Reyes, J.)

Manila International Airport Authority (MIAA) is the operator of the Ninoy International Airport located at Paranaque City. The Officers of Paranaque City sent notices to MIAA due to real estate tax delinquency. MIAA then settled some of the amount. When MIAA failed to settle the entire amount, the officers of Paranaque city threatened to levy and subject to auction the land and buildings of MIAA, which they did. MIAA sought for a Temporary Restraining Order from the CA but failed to do so within the 60 days reglementary period, so the petition was dismissed. MIAA then sought for the TRO with the Supreme Court a day before the public auction, MIAA was granted with the TRO but unfortunately the TRO was received by the Paranaque City officers 3 hours after the public auction.

MIAA claims that although the charter provides that the title of the land and building are with MIAA still the ownership is with the Republic of the Philippines. MIAA also contends that it is an instrumentality of the government and as such exempted from real estate tax. That the land and buildings of MIAA are of public dominion therefore cannot be subjected to levy and auction sale. On the other hand, the officers of Paranaque City claim that MIAA is a government owned and controlled corporation therefore not exempted to real estate tax.

ISSUES:

1. Whether or not MIAA is an instrumentality of the government and not a government owned and controlled corporation and as such exempted from tax.
2. Whether or not the land and buildings of MIAA are part of the public dominion and thus cannot be the subject of levy and auction sale.

RULING:

Under the Local government code, government owned and controlled corporations are not exempted from real estate tax. MIAA is not a government owned and controlled corporation, for to become one MIAA should either be a stock or non-stock corporation. MIAA is not a stock corporation for its capital is not divided into shares. It is not a non-stock corporation since it has no members. MIAA is an instrumentality of the government vested with corporate powers and government functions.

Under the civil code, property may either be under public dominion or private ownership. Those under public dominion are owned by the State and are utilized for public use, public service and for the development of national wealth. The ports included in the public dominion pertain either to seaports or airports. When properties under public dominion cease to be for public use and service, they form part of the patrimonial property of the State.

The court held that the land and buildings of MIAA are part of the public dominion. Since the airport is devoted for public use, for the domestic and international travel and transportation. Even if MIAA charge fees, this is for support of its operation and for regulation and does not change the character of the land and buildings of MIAA as part of the public dominion. As part of the public dominion the land and buildings of MIAA are outside the commerce of man. To subject them to levy and public auction is contrary to public policy. Unless the President issues a proclamation withdrawing the airport land and buildings from public use, these properties remain to be of public dominion and are inalienable. As long as the land and buildings are for public use the ownership is with the Republic of the Philippines.

DATU MICHAEL ABAS KIDA v. SENATE OF THE PHILIPPINES, et al.
G.R. Nos. 196271, 196305, 197221, 197280, 197282, 197392 & 197545, 28 February 2012 (Brion, J.)

Several laws pertaining to the Autonomous Region in Muslim Mindanao (ARMM) were enacted by Congress. Republic Act (RA) No. 6734 is the organic act that established the ARMM and scheduled the first regular elections for the ARMM regional officials. RA No. 9054 amended the ARMM Charter and reset the regular elections for the ARMM regional officials to the second Monday of September 2001. RA No. 9140 further reset the first regular elections to November 26, 2001. RA No. 9333 reset for the third time the ARMM regional elections to the 2nd Monday of August 2005 and on the same date every 3 years thereafter.

Pursuant to RA No. 9333, the next ARMM regional elections should have been held on August 8, 2011. COMELEC had begun preparations for these elections and had accepted certificates of candidacies for the various regional offices to be elected. But on June 30, 2011, RA No. 10153 was enacted, resetting the next ARMM regular elections to May 2013 to coincide with the regular national and local elections of the country.

In these consolidated petitions filed directly with the Supreme Court, the petitioners assailed the constitutionality of RA No. 10153.

ISSUES:

1. Does the 1987 Constitution mandate the synchronization of elections [including the ARMM elections]?

2. Does the passage of RA No. 10153 violate the three-readings-on-separate-days rule under Section 26(2), Article VI of the 1987 Constitution?

3. Is the grant [to the President] of the power to appoint OICs constitutional?

RULING:

[The Supreme Court] DISMISSED the petitions and UPHELD the constitutionality of RA No. 10153 in toto.]

1. YES, the 1987 Constitution mandates the synchronization of elections.

While the Constitution does not expressly state that Congress has to synchronize national and local elections, the clear intent towards this objective can be gleaned from the Transitory Provisions (Article XVIII) of the Constitution, which show the extent to which the Constitutional Commission, by deliberately making adjustments to the terms of the incumbent officials, sought to attain synchronization of elections. The Constitutional Commission exchanges, read with the provisions of the Transitory Provisions of the Constitution, all serve as patent indicators of the constitutional mandate to hold synchronized national and local elections, starting the second Monday of May 1992 and for all the following elections.

In this case, the ARMM elections, although called "regional" elections, should be included among the elections to be synchronized as it is a "local" election based on the wording and structure of the Constitution.

Thus, it is clear from the foregoing that the 1987 Constitution mandates the synchronization of elections, including the ARMM elections.

2. NO, the passage of RA No. 10153 DOES NOT violate the three-readings-on-separate-days requirement in Section 26(2), Article VI of the 1987 Constitution.

The general rule that before bills passed by either the House or the Senate can become laws they must pass through three readings on separate days, is subject to the EXCEPTION when the President certifies to the necessity of the bill's immediate enactment. The Court, in Tolentino v. Secretary of Finance, explained the effect of the President's certification of necessity in the following manner:

The presidential certification dispensed with the requirement not only of printing but also that of reading the bill on separate days. The phrase "except when the President certifies to the necessity of its immediate enactment, etc." in Art. VI, Section 26[2] qualifies the two stated conditions before a bill can become a law: [i] the bill has passed three readings on separate days and [ii] it has been printed in its final form and distributed three days before it is finally approved.

In the present case, the records show that the President wrote to the Speaker of the House of Representatives to certify the necessity of the immediate enactment of a law synchronizing the ARMM elections with the national and local elections. Following our Tolentino ruling, the President's certification exempted both the House and the Senate from having to comply with the three separate readings requirement.

3. YES, the grant [to the President] of the power to appoint OICs in the ARMM is constitutional

[During the oral arguments, the Court identified the three options open to Congress in order to resolve the problem on who should sit as ARMM officials in the interim [in order to achieve synchronization in the 2013 elections]: (1) allow the [incumbent] elective officials in the ARMM to remain in office in a hold over capacity until those elected in the synchronized elections assume office; (2) hold special elections in the ARMM, with the terms of those elected to expire when those elected in the [2013] synchronized elections assume office; or (3) authorize the President to appoint OICs, [their respective terms to last also until those elected in the 2013 synchronized elections assume office.]

3.1. 1st option: Holdover is unconstitutional since it would extend the terms of office of the incumbent ARMM officials

We rule out the [hold over] option since it violates Section 8, Article X of the Constitution. This provision states:

Section 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. [emphases ours]

Since elective ARMM officials are local officials, they are covered and bound by the three-year term limit prescribed by the Constitution; they cannot extend their term through a holdover. xxx.

If it will be claimed that the holdover period is effectively another term mandated by Congress, the net result is for Congress to create a new term and to appoint the occupant for the new term. This view – like the extension of the elective term – is constitutionally infirm because Congress cannot do indirectly what it cannot do directly, i.e., to act in a way that would effectively extend the term of the incumbents. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory. Congress cannot also create a new term and effectively appoint the occupant of the position for the new term. This is effectively an act of appointment by Congress and an unconstitutional intrusion into the constitutional appointment power of the President. Hence, holdover – whichever way it is viewed – is a constitutionally infirm option that Congress could not have undertaken.

Even assuming that holdover is constitutionally permissible, and there had been statutory basis for it (namely Section 7, Article VII of RA No. 9054) in the past, we have to remember that the rule of holdover can only apply as an available option where no express or implied legislative intent to the contrary exists; it cannot apply where such contrary intent is evident.

Congress, in passing RA No. 10153, made it explicitly clear that it had the intention of suppressing the holdover rule that prevailed under RA No. 9054 by completely removing this provision. The deletion is a policy decision that is wholly within the discretion of Congress to make in the exercise of its plenary legislative powers; this Court cannot pass upon questions of wisdom, justice or expediency of legislation, except where an attendant unconstitutionality or grave abuse of discretion results.

3.2. 2nd option: Calling special elections is unconstitutional since COMELEC, on its own, has no authority to order special elections.

The power to fix the date of elections is essentially legislative in nature. [N]o elections may be held on any other date for the positions of President, Vice President, Members of Congress and local officials, except when so provided by another Act of Congress, or upon orders of a body or officer to whom Congress may have delegated either the power or the authority to ascertain or fill in the details in the execution of that power.

Notably, Congress has acted on the ARMM elections by postponing the scheduled August 2011 elections and setting another date – May 13, 2011 – for regional elections synchronized with the presidential, congressional and other local elections. By so doing, Congress itself has made a policy decision in the exercise of its legislative wisdom that it shall not call special elections as an adjustment measure in synchronizing the ARMM elections with the other elections.

After Congress has so acted, neither the Executive nor the Judiciary can act to the contrary by ordering special elections instead at the call of the COMELEC. This Court, particularly, cannot make this call without thereby supplanting the legislative decision and effectively legislating. To be sure, the Court is not without the power to declare an act of Congress null and void for being unconstitutional or for having been exercised in grave abuse of discretion. But our power rests on very narrow ground and is merely to annul a contravening act of Congress; it is not to supplant the decision of Congress nor to mandate what Congress itself should have done in the exercise of its legislative powers.

Thus, in the same way that the term of elective ARMM officials cannot be extended through a holdover, the term cannot be shortened by putting an expiration date earlier than the three (3) years that the Constitution itself commands. This is what will happen – a term of less than two years – if a call for special elections shall prevail. In sum, while synchronization is achieved, the result is at the cost of a violation of an express provision of the Constitution.

3.3. 3rd option: Grant to the President of the power to appoint ARMM OICs in the interim is valid.

The above considerations leave only Congress' chosen interim measure – RA No. 10153 and the appointment by the President of OICs to govern the ARMM during the pre-synchronization period pursuant to Sections 3, 4 and 5 of this law – as the only measure that Congress can make. This choice itself, however, should be examined for any attendant constitutional infirmity.

At the outset, the power to appoint is essentially executive in nature, and the limitations on or qualifications to the exercise of this power should be strictly construed; these limitations or qualifications must be clearly stated in order to be recognized. The appointing power is embodied in Section 16, Article VII of the Constitution, which states:

Section 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards. [emphasis ours]

This provision classifies into four groups the officers that the President can appoint. These are:

First, the heads of the executive departments; ambassadors; other public ministers and consuls; officers of the Armed Forces of the Philippines, from the rank of colonel or naval captain; and other officers whose appointments are vested in the President in this Constitution;

Second, all other officers of the government whose appointments are not otherwise provided for by law;

Third, those whom the President may be authorized by law to appoint; and

Fourth, officers lower in rank whose appointments the Congress may by law vest in the President alone.

Since the President's authority to appoint OICs emanates from RA No. 10153, it falls under the third group of officials that the President can appoint pursuant to Section 16, Article VII of the Constitution. Thus, the assailed law facially rests on clear constitutional basis.

If at all, the gravest challenge posed by the petitions to the authority to appoint OICs under Section 3 of RA No. 10153 is the assertion that the Constitution requires that the ARMM executive and legislative officials to be "elective and representative of the constituent political units." This requirement indeed is an express limitation whose non-observance in the assailed law leaves the appointment of OICs constitutionally defective.

After fully examining the issue, we hold that this alleged constitutional problem is more apparent than real and becomes very real only if RA No. 10153 were to be mistakenly read as a law that changes the elective and representative character of ARMM positions. RA No. 10153, however, does not in any way amend what the organic law of the ARMM (RA No. 9054) sets outs in terms of structure of governance. What RA No. 10153 in fact only does is to "appoint officers-in-charge for the Office of the Regional Governor, Regional Vice Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office." This power is far different from appointing elective ARMM officials for the abbreviated term ending on the assumption to office of the officials elected in the May 2013 elections.

[T]he legal reality is that RA No. 10153 did not amend RA No. 9054. RA No. 10153, in fact, provides only for synchronization of elections and for the interim measures that must in the meanwhile prevail. And this is how RA No. 10153 should be read – in the manner it was written and based on its unambiguous facial terms. Aside from its order for synchronization, it is purely and simply an interim measure responding to the adjustments that the synchronization requires.

JELBERT B. GALICTO v. H.E. PRESIDENT BENIGNO SIMEON C. AQUINO III, ATTY. PAQUITO N. OCHOA, JR. and FLORENCIO B. ABAD
G.R. No. 193978, 28 February 2012, EN BANC (Brion, J.)

Pres. Aquino made public in his first State of the Nation Address the alleged excessive allowances, bonuses and other benefits of Officers and Members of the Board of Directors of the Manila Waterworks and Sewerage System a government owned and controlled corporation (GOCC) which has been unable to meet its standing obligations. Subsequently, the Senate conducted an inquiry in aid of legislation on the reported excessive salaries, allowances, and other benefits of GOCCs and government financial institutions (GFIs). Based on its findings, officials and governing boards of various GOCCs and GFIs have been granting themselves unwarranted allowances, bonuses, incentives, stock options, and other benefits as well as other irregular and abusive practices. Consequently, the Senate issued Senate Resolution No. 17 urging the President to order the immediate suspension of the unusually large and apparently excessive allowances, bonuses, incentives and other perks of members of the governing boards of GOCCs and GFIs. Heeding the call of Congress, Pres. Aquino, on September 8, 2010, issued EO 7, entitled Directing the Rationalization of the Compensation and Position Classification System in the GOCCs and GFIs, and for Other Purposes. EO 7 provided for the guiding principles and framework to establish a fixed compensation and position classification system for GOCCs and GFIs.

EO 7 was published and precluded the Board of Directors, Trustees and/or Officers of GOCCs from granting and releasing bonuses and allowances to members of the board of directors, and from increasing salary rates of and granting new or additional benefits and allowances to their employees.

The respondents pointed out the following procedural defects as grounds for the petition's dismissal: (1) the petitioner lacks locus standi; and (2) certiorari is not applicable to this case.

Meanwhile, on June 6, 2011, Congress enacted Republic Act (R.A.) No. 10149, otherwise known as the GOCC Governance Act of 2011. Section 11 of RA 10149 expressly authorizes the President to fix the compensation framework of GOCCs and GFIs.

ISSUE:

Whether the petitioner has locus standi.

RULING:

Petition is dismissed.

Locus standi or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

In the present case, the petitioner has not demonstrated that he has a personal stake or material interest in the outcome of the case because his interest, if any, is speculative and based on a mere expectancy. In this case, the curtailment of future increases in his salaries and other benefits cannot but be characterized as contingent events or expectancies. To be sure, he has no vested rights to salary

increases and, therefore, the absence of such right deprives the petitioner of legal standing to assail EO 7.

The petition has been mooted by supervening events.

Because of the transitory nature of EO 7, it has been pointed out that the present case has already been rendered moot by the enactment of R.A. No. 10149 amending the provisions in the charters of GOCCs and GFIs empowering their board of directors/trustees to determine their own compensation system, in favor of the grant of authority to the President to perform this act. With the enactment of the GOCC Governance Act of 2011, the President is now authorized to fix the compensation framework of GOCCs and GFIs.

ROLANDO D. LAYUG v. COMISSION ON ELECTIONS, MARIANO VELARDE and BUHAY PARTY-LIST
G.R. No. 192984, 28 February 2012, EN BANC (Perlas-Bernabe, J.)

On March 31, 2010, petitioner Rolando D. Layug (Layug), in his capacity as a taxpayer and concerned citizen, filed pro se a Petition to Disqualify Buhay Party-List from participating in the May 10, 2010 elections, and Brother Mike from being its nominee. He argued that Buhay Party-List is a mere extension of the El Shaddai, which is a religious sect and as such, it is disqualified from being a party-list under Section 5, Paragraph 2, Article VI of the 1987 Constitution,as well as Section 6, Paragraph 1 of Republic Act (R.A.) No. 7941, otherwise known as the Party-List System Act. Neither does Brother Mike, who is allegedly a billionaire real estate businessman and the spiritual leader of El Shaddai, qualify as one who belongs to the marginalized and underrepresented sector, as required of party-list nominees under Section 6 (7) of COMELEC Resolution No. 8807, the Rules on Disqualification Cases Against Nominees of Party-List Groups/Organizations Participating in the May 10, 2010 Automated National and Local Elections.

In their Answer thereto, Buhay Party-List and Brother Mike claimed that Buhay Party-List is not a religious sect but a political party possessing all the qualifications of a party-list and Brother Mike belongs to the marginalized and underrepresented elderly group. They likewise argued that nominees from a political party such as Buhay Party-List need not even come from the marginalized and underrepresented sector.

Record shows that Layug received a copy of the aforesaid Answer only at the hearing conducted on April 20, 2010 after his lawyer, Atty. Rustico B. Gagate, manifested that his client has not received the same. Counsel for private respondents explained that their liaison officer found Layug's given address to be inexistent.

On June 15, 2010, the COMELEC Second Division issued a Resolution denying the petition for lack of substantial evidence. A copy thereof was sent to Layug via registered mail at #70 Dr. Pilapil Street, Barangay San Miguel, Pasig City. However, the mail was returned unserved. Subsequently, the COMELEC Second Division found Layug to be a phantom petitioner by seeing to it that pleadings, orders and judicial notices addressed to him are not received by him because the address he gave and maintains is fictitious. Accordingly, Layug was deemed to have received on June 23, 2010 a copy of the Resolution dated June 15, 2010 and, there being no motion for reconsideration filed within the reglementary period, said Resolution was declared final and executory. Consequently, the COMELEC En Banc proclaimed Buhay Party-List as a winner entitled to two (2) seats in the House of Representatives. Being the fifth nominee, however, Brother Mike was not proclaimed as the representative of Buhay Party-List. Layug moved for reconsideration of the Resolution dated June 15, 2010 before the COMELEC En Banc claiming denial of due process for failure of the COMELEC to serve him, his representatives or counsels a copy of said Resolution. He alleged that it was only on July 26, 2010, after learning about it in the newspapers, that he personally secured a copy of the Resolution from the COMELEC. His motion for reconsideration, however, was denied by the COMELEC Second Division, for being filed out of time.

ISSUE:

Whether or not Layug was not afforded due process of law.

RULING:

Dismissed. Layug was not denied due process. A judicious perusal of the records shows that Layug filed pro se both the Petition to Disqualify and his Position Paper before the COMELEC Second Division. In the Petition to Disqualify, he stated his address as #70 Dr. Pilapil Street, Barangay San Miguel, Pasig City. While Atty. Rustico B. Gagate appeared as counsel for Layug during the hearing conducted on April 20, 2010, he nonetheless failed to provide either his or his client's complete and correct address despite the manifestation that counsel for private respondents could not personally serve the Answer on Layug due to the inexistence of the given address. Neither did the Position Paper that was subsequently filed pro se on April 23, 2010 indicate any forwarding address.

It should be stressed that a copy of the Resolution dated June 15, 2010 was mailed to Layug at his stated address at #70 Dr. Pilapil Street, Barangay San Miguel, Pasig City, which however was returned to sender (COMELEC) after three attempts due to insufficiency of said address, as evidenced by certified true copies of the registry return receipt, as well as the envelope containing the Resolution. Consequently, the COMELEC deemed Layug to have received a copy of the Resolution on June 23, 2010, the date the postmaster made his first attempt to serve it. There being no motion for reconsideration filed, the COMELEC issued an Order declaring the Resolution final and executory, which thereafter became the basis for the issuance of the assailed COMELEC En Bancs NBC Resolution No. 10-034 dated July 30, 2010.

From the fact alone that the address which Layug furnished the COMELEC was incorrect, his pretensions regarding the validity of the proceedings and promulgation of the Resolution dated June 15, 2010 for being in violation of his constitutional right to due process are doomed to fail. His refusal to rectify the error despite knowledge thereof leads to the conclusion that he deliberately stated an inexistent address with the end in view of delaying the proceedings upon the plea of lack of due process. As the COMELEC aptly pointed out, Layug contemptuously made a mockery of election laws and procedure by appearing before the Commission by himself or by different counsels when he wants to, and giving a fictitious address to ensure that he does not receive mails addressed to him.He cannot thus be allowed to profit from his own wrongdoing. To rule otherwise, considering the circumstances in the instant case, would place the date of receipt of pleadings, judgments and processes within Layug's power to determine at his pleasure.

LAND BANK OF THE PHILIPPINES v. HONEYCOMB FARMS CORPORATION
G.R. No. 169903, 29 February 2012, SECOND DIVISION (Brion, J.)

Honeycomb Farms Corp. (HFC) voluntarily offered their two parcels of land to the Department of Agrarian Reform (DAR) for P 10,480,000.00 and P21,165.00. The Landbank of the Philippines (LBP) used the guidelines set forth in DAR Administrative Order (AO) No. 3 series of 1991 in fixing the value of these lands. HFC rejected the valuation. The voluntary offer to sell was referred to the DAR adjudication Board. The Regional adjudicator fixed the value of landholdings at P 5,324,529.00.

HFC filed a case with the Regional Trial Court (RTC) acting as Special Agrarian Court against the DAR Secretary and LBP, praying to compensate HFC for its landholdings amounting to P 12,440,000.00. In its amended complaint, HFC increased the valuation to P 20,000,000.00. LBP, on the other hand, revalued one of the lands to P 1,373,244.78, which was formerly fixed at P 2,527,749.60; and the other to P 1,513,097.57, which was previously fixed at P 2,796,800.00. The RTC made its own valuation when the Board of Commissioners could not agree on the common valuation. The RTC took judicial notice of the fact that a portion of 10 hectares of that land is a commercial land because it is near the commercial district of Cataingan, Masbate.

The Court of Appeals (CA) decided in favor of HFC. CA held that lower courts are not bound by the factors enumerated in Section 17 of RA 6657. LBP filed a Petition for Review before the Supreme Court thereafter.

ISSUES:

1. Whether or not the application of DAR's formula is mandatory in determining just compensation
2. Whether or not the compensation to be paid should be less than the market value of the property because the taking was not done in LBP's traditional exercise of the power of eminent domain
3. Whether or not a hearing is necessary before the RTC can take judicial notice of the nature of the land

RULING:

Mandatory application of the DAR formula

To guide the RTC in its function as Special Agrarian Court, Section 17 of RA 6657 enumerates the factors that have to be taken into consideration to accurately determine just compensation. This provision states:

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

The DAR is the administrative agency tasked with the implementation of the agrarian reform program. The RTC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant To its rule-making power under Section 49 of R.A. No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law.

Special Agrarian Courts are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it. The courts cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation.

The compensation to be paid should not be less than the market value of the property

When the State exercises its inherent power of eminent domain, the Constitution imposes the corresponding obligation to compensate the landowner for the expropriated property. This principle is embodied in Section 9, Article III of the Constitution, which provides: " Private property shall not be taken for public use without just compensation."

When the State exercises the power of eminent domain in the implementation of its agrarian reform program, the constitutional provision which governs is Section 4, Article XIII of the Constitution, which provides that the State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof.

Notably, this provision also imposes upon the State the obligation of paying the landowner compensation for the land taken, even if it is for the government's agrarian reform purposes. Specifically, the provision makes use of the phrase "just compensation," the same phrase used in Section 9, Article III of the Constitution. That the compensation mentioned here pertains to the fair and full price of the taken property.

PEOPLE OF THE PHILIPPINES v. ROSEMARIE MAGUNDAYAO y ALEJANDRO alias ROSE
G.R. No. 188132, February 29, 2012, FIRST DIVISION (Leonardo-De Castro, J.)

On April 18, 2005, two separate informations were filed against the accused-appellant for violations of the provisions of Republic Act No. 9165. PO3 Danilo B. Arago testified that on April 14, 2005, at around 5:30 p.m., he was at the office of the SAID-SOTF when a reliable informant (pinagkakatiwalaang impormante) came in and gave information about a certain alias Rose who was peddling illegal drugs, particularly shabu, along M. L. Quezon Street, at the corner of Paso Street, Bagumbayan, Taguig City. PO3 Arago said that the information was relayed to the leader of his team, Police Chief Inspector (P/Chief Insp.) Romeo Paat, who conducted a briefing with the informant.

The members of the team present were P/Chief Insp. Paat, PO3 Antonio Reyes, PO2 Memoracion and PO3 Arago himself. A buy-bust operation was planned whereby PO2 Memoracion was designated as the poseur-buyer and he was to act as the back-up. He saw P/Chief Insp. Paat give the buy-bust money to PO2 Memoracion, consisting of two pieces of P100 bills, and the latter signed the initials RBM on the upper right hand of the bills. The team also faxed a pre-coordination report to the Philippine Drug Enforcement Agency (PDEA). PO3 Arago related that the team then proceeded to the subject area and arrived there at 8:30 p.m. They parked their vehicle along M. L. Quezon Street, around a hundred meters from Paso Street. PO2 Memoracion and the informant alighted and walked to Paso Street.

The pre-arranged signal was for PO2 Memoracion to remove his bull cap. When he saw PO2 Memoracion talking to the accused-appellant, PO3 Arago went out of the car and walked towards them. He situated himself at about 15 meters away from PO2 Memoracion and the accused-appellant. He saw them talking and, after a while, PO2 Memoracion handed something to the accused-appellant, who in turn took something from her short pants and handed it to PO2 Memoracion. The latter then removed his bull cap.PO3 Arago thereafter ran to the place where PO2 Memoracion was standing. The latter already effected the arrest of the accused-appellant and ordered her to empty the contents of her right front pocket.

They saw another plastic sachet, which they believed contained shabu, and the buy-bust money. PO2 Memoracion told him to place the accused-appellant in handcuffs and the former marked the evidence obtained. PO3 Arago said that he was able to see the object of the buy-bust in the custody of PO2 Memoracion, which was a small plastic sachet containing white crystalline substance suspected as shabu. He was beside PO2 Memoracion while the latter was marking the evidence. The marking RAM-1 was placed at the plastic sachet subject of the buy-bust and the marking RAM-2 was placed at the other plastic sachet that was also confiscated from the accused-appellant further alleged that, on the afternoon of April 14, 2005, she did not even go out of her house.

The defense formally rested its case without the presentation of any documentary evidence for the accused-appellant. On June 27, 2007, the RTC rendered a Joint Decision, finding the accused-appellant guilty of the offenses charged. This was appealed to the CA but the said court affirmed the lower court's decision.

ISSUE:

Whether the Court a quo gravely erred in convicting Magundayao whose guilt has not been proven beyond reasonable doubt.

RULING:

NO. In People v. Santos, the Court ruled as follows: Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals. After a thorough review of the records of this case, SC held that the factual findings and conclusions of the trial court, which were upheld by the appellate court, are fully supported by the evidence. As held in People v. Padasin, SC stressed that the objective test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.

RODEL LUZ y ONG *v.* PEOPLE OF THE PHILIPPINES
G. R. No. 197788, February 29, 2012, SECOND DIVISION (Sereno, J.)

PO2 Alteza saw Luz driving a motorcycle without a helmet; this prompted him to flag down Luz for violating a municipal ordinance which requires all motorcycle drivers to wear helmet while driving said motor vehicle. He invited Luz to come inside their sub-station; while he and SPO1 Brillante were issuing a citation ticket for violation of municipal ordinance, he noticed that Luz was uneasy and kept on getting something from his jacket; he told Luz to take out the contents of the pocket of his jacket as the latter may have a weapon inside it. Luz obliged and slowly put out the contents of the pocket of his jacket, one of which was a nickel-like tin or metal container; PO2 Alteza asked Luz to open it, the latter spilled out the contents of the container on the table which turned out to be four plastic sachets, the two of which were empty while the other two contained suspected *shabu*.

ISSUE:

Whether the warrantless search was illegal.

RULING:

Yes. The following are the instances when a warrantless search is allowed: (i) a warrantless search incidental to a lawful arrest; (ii) search of evidence in plain view; (iii) search of a moving vehicle; (iv) consented warrantless search; (v) customs search; (vi) a stop and frisk search; and (vii) exigent and emergency circumstances.None of the mentioned instances, especially a search incident to a lawful arrest, are applicable to this case.

It must be noted that the evidence seized, although alleged to be inadvertently discovered, was not in plain view. It was actually concealed inside a metal container inside Luz's pocket. Clearly, the evidence was not immediately apparent. Neither was there a consented warrantless search. Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence. It must be voluntary in order to validate an otherwise illegal search; that is, the consent must be unequivocal, specific, intelligently given and uncontaminated by any duress or coercion. While the prosecution claims that Luz acceded to the instruction of PO3 Alteza, this alleged accession does not suffice to prove valid and intelligent consent. Whether consent to the search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances.

The Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. Any evidence obtained in violation of said right shall be inadmissible for any purpose in any proceeding. The subject items seized during the illegal arrest are inadmissible. The drugs are the very corpus delicti of the crime of illegal possession of dangerous drugs. Thus, their inadmissibility precludes conviction and calls for the acquittal of the accused.

TUNA PROCESSING v. PHILIPPINE KINGFORD
G.R. No. 185582, February 29, 2012, SECOND DIVISION (Perez, J.)

Philippine Kingford, Inc. (Kingford) is a corporation duly organized and existing under the laws of the Philippines while Tuna Processing, Inc. (TPI) is a foreign corporation not licensed to do business in the Philippines. Due to circumstances not mentioned in the case, Kingford withdrew from petitioner TPI and correspondingly, reneged on their obligations. Petitioner submitted the dispute for arbitration before the International Centre for Dispute Resolution in the State of California, United States and won the case against respondent. To enforce the award, petitioner TPI filed a Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award before the RTC of Makati City. The RTC dismissed the petition on the ground that the petitioner lacked legal capacity to sue in the Philippines.

ISSUE*:*

Can a foreign corporation not licensed to do business in the Philippines, but which collects royalties from entities in the Philippines, sue here to enforce a foreign arbitral award?

RULING:

The Alternative Dispute Resolution Act of 2004 shall apply in this case as the Act, as its title - An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes - would suggest, is a law especially enacted to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. It specifically provides exclusive grounds available to the party opposing an application for recognition and enforcement of the arbitral award. The Corporation Code is the general law providing for the formation, organization and regulation of private corporations. As between a general and special law, the latter shall prevail generalia specialibus non derogant.

The Special Rules of Court on Alternative Dispute Resolution provides that any party to a foreign arbitration may petition the court to recognize and enforce a foreign arbitral award.Indeed, it is in the best interest of justice that in the enforcement of a foreign arbitral award, the losing party can not avail of the rule that bars foreign corporations not licensed to do business in the Philippines from maintaining a suit in our courts. When a party enters into a contract containing a foreign arbitration clause and, as in this case, in fact submits itself to arbitration, it becomes bound by the contract, by the arbitration and by the result of arbitration, conceding thereby the capacity of the other party to enter into the contract, participate in the arbitration and cause the implementation of the result.

CIVIL SERVICE COMMISSION v. CLAVE
G.R. No. 194645, March 6, 2012, EN BANC (Per Curiam)

GSIS filed a complaint against Clave alleging that Clave, without proper authority or valid reason and in gross violation of pertinent rules and procedure, cancelled the header of Tornea's loan as appearing in the MSLS. Clave used her operator ID and the computer terminal assigned to her. By cancelling the loan, Clave made it appear that the loan had not been granted to Tornea.The GSIS found Clave guilty of simple neglect of duty. Clave filed an appeal from the GSIS Decision to the Civil Service Commission (CSC). The latter dismissed the appeal and affirmed the GSIS Decision dismissing Clave from service. On appeal, the CA found Clave guilty of simple neglect of duty. However, the Court of Appeals modified the CSC Resolution by reducing the penalty imposed on Clave from dismissal from service to suspension from office without salary and other benefits for one year.

ISSUE:

Whether the Court of Appeals committed a reversible error in reducing the penalty imposed on Clave from dismissal from service to suspension for one year.

RULING:

The Court of Appeals found that while Clave was not specifically authorized to delete headers, she had authority to cancel granted loans through the transaction code LSLC. Further, Clave was one of the users of the computer terminal SI42 that was used to cancel the header of Tornea's loan. The Court of Appeals found that the computer terminal SI42 that was used to cancel the header of Tornea's loan was also used by two persons, including Estoque who was previously found guilty of dishonesty and grave misconduct for cancelling the loans and headers of some GSIS members. Thus, it might be possible that Estoque used Claves operator ID and password in cancelling the header of Tornea's loan. However, granting that this might be true, Clave still failed to explain why other persons knew her operator ID and password that were used in the cancellation of the header. The Court of Appeals correctly ruled that Clave was neglectful in safeguarding information that should have been known only to herself.

Simple neglect of duty is a less grave offense punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense. Section 53 of the Uniform Rules on Administrative Cases in the Civil Service is clear that length of service may be considered either as mitigating or aggravating depending on the circumstances of the case. Here, it was shown that Clave was previously found guilty by the GSIS of simple neglect of duty for unauthorized cancellation of the loan and header of one Basilio C. Benitez. In that case, the GSIS suspended Clave for three months. Earlier, in another Decision, the GSIS found Clave guilty of conduct prejudicial to the interest of the service for her participation in a mass action that resulted in the disruption of GSIS operations, for which she was meted the penalty of suspension for six months and one day. Hence, Claves length of service in the government could not mitigate her liability considering that the present offense is not her first offense but her third offense.

OFFICE OF THE OMBUDSMAN v. NELLIE R. APOLONIO
G.R. No. 165132, March 7, 2012, SECOND DIVISION (Brion, J.)

Dr. Apolonio served as the Executive Officer of the National Book Development Board (NBDB). In December 2000, NBDB's Governing Board approved the conduct of a Team Building Seminar Workshop for its officers and employees. Prior to the conduct of the workshop, some of the employees/participants approached Dr. Apolonio to ask whether a part of their allowance, instead of spending the entire amount on the seminar, could be given to them as cash. After consulting Rogelio Montealto, then Finance and Administrative Chief of NBDB, about the proposal and the possible legal repercussions of the proposal and concluding the proposal to be legally sound and in the spirit of the yuletide season, Dr. Apolonio approved the request. Thus, after the end of the workshop, SM gift cheques were distributed to the participants in lieu of a portion of their approved allowance.

Nicasio I. Marte, an NBDB Consultant, filed a complaint against Dr. Apolonio and Mr. Montealto before the Ombudsman alleging that Dr. Apolonio and Mr. Montealto committed grave misconduct, dishonesty and conduct prejudicial to the best interest of the service for the unauthorized purchase and disbursement of the gift cheques. Mr. Marte alleged that the NBDB's Governing Board never authorized the disbursement of the funds for the purchase of the gift cheques and that the purchases were never stated in Dr. Apolonio's liquidation report.

In her response, Dr. Apolonio invoked good faith in the purchase of the gift cheques, having in mind the best welfare of the employees who, in the first place, requested the use of part of the budget for distribution to the employees.

Graft Investigation Officer (GIO) Calderon found Dr. Apolonio and Mr. Montealto guilty of gross misconduct and dishonestly, in addition to the charge of conduct grossly prejudicial to the best interest of the service and recommended that Dr. Apolonio and Mr. Montealto be dismissed from the service. The Acting Ombudsman approved the findings of GIO Calderon, thereby imposing the penalty of removal against Dr. Apolonio. The CA reversed the Ombudsman's decision stating that the Ombudsman does not possess the power to directly impose the penalty of removal against a public official.

ISSUES:

1. Does the Ombudsman have the power to directly impose the penalty of removal from office against public officials?
2. Do Dr. Apolonio's acts constitute Grave Misconduct?

RULING:

Court of Appeals decision is modified.

The Ombudsman has the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee, in the exercise of its administrative disciplinary authority. The challenge to the Ombudsman's power to impose these penalties, on the allegation that the Constitution only grants it recommendatory powers, had already been rejected.

The Ombudsman has been statutorily granted the right to impose administrative penalties on erring public officials. That the Constitution merely indicated a recommendatory power in the text of

Section 13(3), Article XI of the Constitution did not deprive Congress of its plenary legislative power to vest the Ombudsman powers beyond those stated.

Dr. Apolonio's use of the funds to purchase the gift cheques cannot be said to be grave misconduct. Dr. Apolonio's actions were not attended by a willful intent to violate the law or to disregard established rules. Although the Court agrees that Dr. Apolonio's acts contravene the clear provisions of Section 89 of PD 1445, otherwise known as the Government Auditing Code of the Philippines, such was not attended by a clear intent to violate the law or a flagrant disregard of established rules. Several circumstances militate in favor of this conclusion.

Dr. Apolonio merely responded to the employees clamor to utilize a portion of the workshop budget as a form of Christmas allowance. To ensure that she was not violating any law, Dr. Apolonio even consulted Mr. Montealto, then Finance and Administrative Chief of the NBDB, on the possible legal repercussions of the proposal. Likewise, aside from receiving the same benefit, there is no evidence in the record that Dr. Apolonio unlawfully appropriated in her favor any amount from the approved workshop budget. Therefore, there is no willful intent in Dr. Apolonio's actions.

DEPARTMENT OF AGRARIAN REFORM (DAR) v. HEIRS OF ANGEL T. DOMINGO
G.R. No. 188670. March 7, 2012, SECOND DIVISION (Reyes, J.)

Angel T. Domingo was the registered owner of a 70.3420-hectare rice land situated at Macapabellag, Guimba, Nueva Ecija, covered by Transfer Certificate of Title No. NT-97157. On October 21, 1972, Presidential Decree No. 27 (P.D. No. 27) was issued, pursuant to which actual tenant farmers of private agricultural lands devoted to rice and corn were deemed as full owners of the land they till. It was subsequently implemented by Executive Order No. 228 (E.O. No. 228) which was issued on July 17, 1987. Consequently, out of the 70.3420 hectares of the said rice land, 34.9128 hectares (subject land) were taken by the government under its land transfer program and awarded the same to tenant farmers. Several Emancipation Patents were then issued to qualified tenant farmers on various dates.

On April 26, 2000, Domingo filed with the Regional Trial Court (RTC) of Guimba, Nueva Ecija a complaint for determination and payment of just compensation against the Land Bank of the Philippines (LBP) and DAR. The LBP and DAR initially pegged the amount of just compensation for the subject land at P127,298.61. Domingo opposed the said valuation and claimed that the subject land should be computed using the parameters set forth under Republic Act No. 6657 (R.A. No. 6657). Thus, the subject land should not be less than P5,236,920.00 He asserted that the subject land is a fully irrigated rice land capable of one-half harvest in two years, yielding an average harvest of 50 *cavans* per hectare. He likewise claimed that he has yet to receive the just compensation for the subject land.

The LBP and DAR disputed Domingos valuation and claimed that the determination of just compensation should be governed by the provisions of P.D. No. 27 in relation to E.O. No. 228, *i.e.* Land Value = Average Gross Production (AGP) x 2.5 x P35.00, the latter amount representing the Government Support Price (GSP) on October 21, 1972. Thus, using this formula, they claimed that the just compensation for the subject land should be P459,091.60 inclusive of the benefit of DAR Administrative Order No. 13 (A.O. No. 13). Further, the LBP asserted that it had already paid Domingo the just compensation for the subject land, the latter having withdrawn the amounts of P419,438.17 and P39,653.43.

On January 21, 2004, the RTC rendered a Decision which, *inter alia*, fixed the just compensation for the subject land at P3,709,999.49. Evidently, the RTC used the method set forth under P.D. No. 27 in relation to E.O. No. 228 except that it used the GSP rate at the time of issuance of the various Emancipation Patents. The LBP and DAR filed their respective motions for reconsideration, which were partially granted by the RTC in its Order dated March 29, 2004. Accordingly, the RTC, after deleting the 6% additional increment it imposed, directed the LBP and DAR to pay Domingo the total amount of P2,032,075.91 as just compensation for the subject land.

The LBP and DAR then appealed wherein the CA affirmed RTC's decision but with modification.

ISSUE:

Whether the method set forth under R.A. No. 6657 in the computation of just compensation may be applied to private agricultural lands taken by the government under the auspices of P.D. No. 27 in relation to E.O. No. 228.

RULING:

The SC rule in the affirmative. In *Land Bank of the Philippines v. Natividad*, this Court held that just compensation for private agricultural lands acquired by the government under the auspices of P.D. No. 27 in relation to E.O. No. 228 should be computed in accordance with the method set forth under R.A. No. 6657. In *Office of the President, Malacaang, Manila v. Court of Appeals,* we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation. Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled.

Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect. In the case at bar The date of taking of the subject land for purposes of computing just compensation should be reckoned from the issuance dates of the emancipation patents. An emancipation patent constitutes the conclusive authority for the issuance of a Transfer Certificate of Title in the name of the grantee. It is from the issuance of an emancipation patent that the grantee can acquire the vested right of ownership in the landholding, subject to the payment of just compensation to the landowner.

When RA 6657 was enacted into law in 1988, the agrarian reform process in the present case was still incomplete as the amount of just compensation to be paid to Domingo had yet to be settled. Just compensation should therefore be determined and the expropriation process concluded under RA 6657.Guided by this precept, just compensation for purposes of agrarian reform under PD 27 should adhere to Section 17 of RA 6657 which states:

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

FERNANDEZ v. OMBUDSMAN, et al.
G.R. No. 193983, March 14, 2012, SECOND DIVISION, (Carpio, J.)

On 25 November 1994, the then Aklan Gov.Cabagnot entered into a contract with Jireh Construction, for the construction of the Alibagon-Baybay Bridge (Phase II) for a total contract price of P933,335.90to be completed within 90 calendar days from 28 November 1994 to 25 November 1995. On 15 February 1995, petitioner Victory M. Fernandez, the provincial engineer, endorsed to Gov.Cabagnot for her approval the request of Jireh Construction for a contract time extension of 30 calendar days to complete the AB Bridge Project since the original contract period did not take into account the work stoppage caused by tide variations of the river. Thereafter, Gov.Cabagnot approved the requested 30-day extension.

Meanwhile, the provincial government of Aklan launched four government infrastructure projects. Public bidding for the Four Projects was conducted and after the submission and evaluation of the bids, the Pre-Qualification Bids and Awards Committee (PBAC) awarded the construction of the Four Projects to Jireh Construction, as the best qualified bidder with the bid most advantageous to the government. On July 5, 1995, respondent Gov.Miraflores issued Memorandum No. 004 directing the petitioner to temporarily suspend the implementation of the AB Bridge Project and the Four Projects awarded to Jireh Construction. After COA conducted an audit and ocular inspection of Aklan spending government projects, it found out that Jireh Construction had abandoned the construction of the AB Bridge Project and the Four Projects.

All five projects were incomplete and could not be used for their designated purpose at their current state of completion. The Summary of Actual Accomplishment and Costing as submitted and certified by Fernandez showed that the AB Bridge Project was already almost halfway completed with an accomplishment rating of 48.57%. However, the COA auditors found the AB Bridge Project to be only 22.89%completed based on the Statement of Time Elapsed and Percentage Accomplishment dated 20 December 1994. Moreover, the COA auditors found that the provincial government did not take any action against Jireh Construction.

Thus, the COA auditors recommended the filing of a case for neglect of duty against the responsible government officers. On 10 November 2003, Gov.Miraflores, filed with the Office of the Ombudsman(Visayas) an administrative complaint for gross neglect of duty against Evan L.Timtiman, as Provincial Treasurer and regular member of the PBAC. The Office of the Ombudsman likewise impleaded the other government officials including the petitioner. The Office of the Ombudsman found Fernandez and his co-respondents administratively liable. It also found that petitioner was the one who presented documents to the PBAC showing that Jireh Construction did not have any abandoned project at the time of the bidding for the Four Projects.

ISSUE:

Whether or not the petitioner is guilty of gross neglect of duty?

RULING:

The petition lacks merit. In the present case,Jireh Construction started work on the AB Bridge Project on 28 November 1994. The contract provided that the bridge should be completed within 90 calendar days or specifically on 25 February 1995. However, due to some unforeseen circumstances, JirehConstruction requested for an extension of 30 calendar days to complete the project. The provincial

governor promptly approved the 30-day extension. At the time of the bidding for the Four Projects, held on 24 February, 28 February, 7 March and 15 March 1995, the completion period for the AB Bridge Project had not yet expired due to the 30-day extension.

The 30-day extension meant that the construction of the bridge was supposed to have been completed on 27 March 1995, twelve days after the completion of all the bidding for the Four Projects. However, petitioner based his premise that the construction of AB Bridge Project was ongoing during the bidding of the Four Projects on two grounds: (1) the request for 30-day extension by Jireh Construction, and (2) the approval of the extension by the governor. Petitioner did not submit any other evidence to show that the construction of the AB Bridge Project took place continuously and without interruption. From 20 December 1994, the COA auditors found that no further work was made.

Thus, regardless of the 30-day extension to complete the AB Bridge Project, it is clear that Jireh Construction abandoned the construction of the AB Bridge Project since 20 December 1994. Petitioner, as the provincial engineer who oversees all the infrastructure projects of the province, has direct knowledge of the status of each projects progress. Clearly, he was in a position to inform the PBAC that Jireh Construction not only had not met the required deadline of the completion of the AB Bridge Project but also had abandoned the project, with only 22.89% completion and not the 48.57% completion that petitioner had certified. Petitioner gave a false report to the PBAC when he attested that Jireh Construction had no abandoned project at the time of the bidding of the Four Projects.

It is sufficiently evident that petitioner was grossly negligent in failing to give a complete and truthful report to the PBAC of Jireh Constructions actual progress and abandonment of the AB Bridge Project, which could have been a crucial element in awarding the Four Projects to a qualified and capable contractor. Also, petitioner had been remiss in his duties to monitor slippages of Jireh Constructions performance and to take the necessary steps to ensure minimal loss to the provincial government. Given the short time frame of 45 to 90 days for the completion of the projects, petitioner should have immediately reported the poor performance of Jireh Construction to the governor.

Moreover, petitioner could have recommended the take over of the construction of the projects and the termination of the contracts to prevent further loss of funds to the province. Gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. (Brucalv. Desierto, 501 Phil. 453) In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.

In sum, the decision of the Office of the Ombudsman, as affirmed by the CA, finding petitioner equally responsible with the members of PBAC for gross neglect of duty,is correct. Pursuant to Section 23,Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 or the Administrative Code of 1987, gross negligence in the performance of duty is classified as a grave offense for which the penalty of dismissal is imposed. Section 9 of the said Rule likewise provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of leave credits and retirement benefits and disqualification from reemployment in government service.

The decision and resolution of the Court of Appeals is affirmed.

ROGELIO ABERCA v. MAJ. GEN. FABIANVER
G.R. No. 166216, March 14, 2012, THIRD DIVISION, (Mendoza, J.)

In 1983, petitioners who were arrested, detained and tortured by the military for alleged subversive acts filed a complaint for damages with the RTC against respondents. Respondents through their counsel then Solicitor General Estelito Mendoza, filed a motion to dismiss on the following grounds: (1) since the privilege of the writ of habeas corpus was then suspended, the trial court cannot inquire into the circumstances surrounding petitioners' arrests; (2) respondents are immune from liability for the reason that they were then performing their official duties; and (3) the complaint states no cause of action. The RTC granted the motion and filed petition with the Supreme Court.

While the case was pending with the SC, the so-called EDSA revolution took place. Respondents lost their official positions and were no longer in their respective office addresses as appearing in the record. The Supreme Court reversed the dismissal and remanded the trial court for further proceedings. On remand, the record of the case was destroyed when fire razed the City Hall of Quezon City in 1988. Records were later reconstituted at the instance of petitioners. For lack of an opposition from respondents, the petition for reconstitution was granted. In 1990, RTC directed petitioners to report the addresses and whereabouts of petitioners so that they could be properly notified. Instead, petitioners filed a motion to declare respondents in default.

RTC then instead issued an order directing that a copy of the order dated be furnished to new Solicitor General Francisco Chavez to enable him to take action pursuant to Section 18, Rule 3 of the Rules of Court, and to former Solicitor General Estelito Mendoza to enable him to give notice as to whether he [would] continue to represent petitioners in his private capacity. Former Solicitor General Mendoza manifested that his appearance as respondents' counsel terminated when he ceased to be Solicitor General. Solicitor General Chavez filed a notice of withdrawal of appearance but such notice was not furnished respondents.

For failure of the petitioners to comply with the RTC orders, it dismissed the case. The dismissal order waslater set aside and case reinstated upon motion for reconsideration by the RTC. It also approved petitioners request to serve the notice to file answer or responsive pleading by publication. Respondents were then declared in default for failure to answer. A judgment was rendered in favour of petitioners holding respondents' solidarily liable for damages. The CA reversed RTC's decision holding that RTC committed errors in declaring the respondents in default and proceeding to hear the case. It remanded the case for further proceedings in accordance with the foregoing disquisition.

ISSUE:

Whether respondents were denied of due process when RTC declared them in default for failure to answer of the service made through publication?

RULING:

Yes. The basic question is whether the constitutional right to procedural due process was properly observed or was unacceptably violated in this case when the respondents were declared in default for failing to file their answer within the prescribed period and when the petitioners were allowed to present their evidence ex-parte.

Section 1, Article III of the 1987 Constitution guarantees that:

No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.

Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property. Moreover, pursuant to the provisions of Section 5(5) of Article VIII of the 1987 Constitution,the Court adopted and promulgated the following rules concerning, among others, the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts:

Rule 13

SEC. 5. Modes of service.—Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

SEC. 6. Personal service.—Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

SEC. 7. Service by mail.—Service by registered mail shall be made by depositing the copy in the office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.

SEC. 8. Substituted service.—If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

The above rules, thus, prescribe the modes of service of pleadings, motions, notices, orders, judgments, and other papers, namely: (1) personal service; (2) service by mail; and (3) substituted service, in case service cannot be effected either personally or by mail. The Rules of Court has been laid down to insure the orderly conduct of litigation and to protect the substantive rights of all party litigants. It is for this reason that the basic rules on the modes of service provided under Rule 13 of the Rules of Court have been made mandatory and, hence, should be strictly followed. Under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception.

Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. In the case at bench, the respondents were completely deprived of due process when they were declared in default based on a defective mode of service – service of notice to file answer by publication. The rules on service of pleadings, motions, notices, orders, judgments, and other papers were not strictly followed in declaring the respondents in default. The Court agrees with the CA that the RTC committed procedural lapses in declaring the respondents in default and in allowing the petitioners to present evidence ex-parte.

As correctly observed by the CA, the RTC's Order was an attempt to serve a notice to file answer on the respondents by personal service and/or by mail.Nevertheless, there was still another less preferred but proper mode of service available – substituted service - which is service made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. Unfortunately, this substitute mode of service was not resorted to by the RTC after it failed to effect personal service and service by mail. Instead, the RTC authorized an unrecognized mode of service under the Rules, which was service of notice to file answer by publication.

The RTC, thus, erred when it ruled that the publication of a notice to file answer to the respondents substantially cured the procedural defect equivalent to lack of due process. The RTC cannot just abandon the basic requirement of personal service and/or service by mail. To stress, the only modes of service of pleadings, motions, notices, orders, judgments and other papers allowed by the rules are personal service, service by mail and substituted service if either personal service or service by mail cannot be made, as stated in Sections 6, 7 and 8 of Rule 13 of the Rules of Court. Nowhere under this rule is service of notice to file answer by publication is mentioned, much less recognized.

Furthermore, the Court would like to point out that service by publication only applies to service of summons stated under Rule 14 of the Rules of Court where the methods of service of summons in civil cases are: (1) personal service; (2) substituted service;and (3) service by publication.Similarly, service by publication can apply to judgments, final orders and resolutions as provided under Section 9, Rule 13 of the Rules of Court. As a final point, this Court commiserates with the petitioners' plight and cry for justice. They should not be denied redress of their grievances. The Court, however, finds itself unable to grant their plea because the fundamental law clearly provides that no person shall be deprived of life, liberty and property without due process of law.

LAND BANK v. OBIAS, et al.
G.R. No. 184406, March 14, 2012, SECOND DIVISION, (Perez, J.)

Pursuant to the Operation Land Transfer (OLT) Program of P.D. No. 27, an aggregate area of 34.6958 hectares composing three parcels of agricultural land located at Himaao, Pili, Camarines Sur owned by Perfecto, Nellie, OFe, Gil, Edmundo and Nelly, all surnamed Obias, (landowners) were distributed to the farmers-beneficiaries namely: Victor Bagasina, Sr., Elena Benosa, Sergio Nagrampa, Claudio Galon, Prudencio Benosa, Santos Parro, Guillermo Breboneria, Flora Villamer, Felipe de Jesus, Mariano Esta, Benjamin Bagasina, Andres Tagum, Pedro Galon, Clara Padua, Rodolfo Competente, Roberto Parro, Melchor Brandes, Antonio Buizon, Rogelio Montero, Maria Villamer, Claudio Resari, Victor Bagasina, Jr., Francisco Montero and Pedro Montero.

As a result, the owners had to be paid just compensation for the property taken.The Department of Agrarian Reform, using the formula under P.D. 27 and E.O. 228, came up with a computation of the value of the acquired property atP1, 397,578.72.However, the amount was contested by the landowners as an inadequate compensation for the land. Thus, they filed a complaint for determination of just compensation before the RTC of Naga City, as the assigned Special Agrarian Court (SAC). To ascertain the amount of just compensation, a committee was formed by the trial court.The Provincial Assessor recommended the above average value ofP40,065.31 per hectare as just compensation;LBP Representative Edgardo Malazarte recommended the amount ofP38,533.577 per hectare; andthe representative of the landowners, Atty. Fe Rosario P. Buevasubmitted aP180,000.00 per hectare valuation of the land.

However, none of these recommendations was adopted in the 3 October 2000 judgment of the trial court in fixing the just compensation at (P91,657.50) per hectare or in the total amount of P3,180,130.29. thus, directing the LBP to pay the said amount. Both the landowners and LBP appealed before the CA. On 31 January 2008, the appellate court vacated the decision of the trial court.It relied heavily onGabatin v. Land Bank of the Philippines (G.R. No. 148223, 25 November 2004)ruling wherein the Court fixed the rate of the government support price (GSP) for one cavan of palay atP35.00, the price of the palay at the time of the taking of the land.Following the formula,Land Value= 2.5 multiplied by the Average Gross Production (AGP) multiplied by the Government Support Price (GSP),provided by P.D. No. 27 and E.O. 228, the value of the total area taken will beP371,015.20 plus interest thereon at the rate of 6% interest per annum, compounded annually, starting 21 October 1972,until fully paid.

ISSUE:

Whether or not the CA erred in ruled that the payment of interest shall be made until full payment of compensation?

RULING:

The appeal is denied.

Administrative orders

It is correct that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statuteand have in their favor a presumption of legality. S literal reading of A.O. No. 13, as amended, will be in favor of the LBP. However, these administrative

issuances or orders, though they enjoy the presumption of legalities, are still subject to the interpretation by the Supreme Court pursuant to its power to interpret the law. While rules and regulation issued by the administrative bodies have the force and effect of law and are entitled to great respect, courts interpret administrative regulations in harmony with the law that authorized them and avoid as much as possible any construction that would annul them as invalid exercise of legislative power.

The rationale for the interpretation that the payment of interest shall be up to the time of full payment and not up to actual payment as defined by the Administrative Order.

Just compensation

To answer the contention of LBP that there should be no payment of interest when there is already a prompt payment of just compensation, the Court discussed that even though the LBP immediately paid the remaining balance on the just compensation due to the petitioners after the Court had fixed the value of the expropriated properties, it overlooks one essential fact from the time that the State took the petitioners properties until the time that the petitioners were fully paid, almost 12 long years passed. This is the rationale for imposing the 12% interest in order to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking.

This Court is not oblivious of the purpose of our agrarian laws particularly P.D. No. 27,that is, to emancipate the tiller of the soil from his bondage; to be lord and owner of the land he tills. Section 4, Article XIII of the 1987 Constitution mandates that the State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. It also provides that the State shall encourage and undertake the just distribution of all agricultural lands subject to the payment of just compensation.

Further, the deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not do violence to the Bill of Rights, but should also not make an insurmountable obstacle to a successful agrarian reform program. Hence, the landowner's right to just compensation should be balanced with agrarian reform. The mandate of determination of just compensation is a judicial function,hence, the Court will exert all efforts to consider and interpret all the applicable laws and issuances in order to balance the right of the farmers to own a land subject to the award the proper and just compensation due to the landowners.

The decision of the Court of Appeals is affirmed.

PHILIPPINE TOURISM AUTHORITY v. PHILIPPINE GOLF DEVELOPMENT & EQUIPMENT, INC
G.R. No. 176628, March 19, 2012, SECOND DIVISION (Brion, J.)

On April 3, 1996, PTA, an agency of the Department of Tourism, whose main function is to bolster and promote tourism, entered into a contract with Atlantic Erectors, Inc. (AEI) for the construction of the Intramuros Golf Course Expansion Projects (PAR 60-66) for a contract price of Fifty-Seven Million Nine Hundred Fifty-Four Thousand Six Hundred Forty-Seven and 94/100 Pesos (P57,954,647.94). On October 2, 2003, PHILGOLF filed a collection suit against PTA amounting to Eleven Million Eight Hundred Twenty Thousand Five Hundred Fifty and 53/100 Pesos (P11,820,550.53), plus interest, for the construction of the golf course.

Despite the RTC's liberality of granting two successive motions for extension of time, PTA failed to answer the complaint. Hence, on April 6, 2004, the RTC rendered a judgment of default.
On July 11, 2005, PTA filed a petition for annulment of judgment under Rule 47 of the Rules of Court. The petition for annulment of judgment was premised on the argument that the gross negligence of PTA's counsel prevented the presentation of evidence before the RTC. The CA dismissed the petition for annulment of judgment for lack of merit.

ISSUE:

Whether or not PTA,as a government entity, should be bound by the inactions or negligence of its counsel.

RULING:

PTA was acting in a proprietary character. PTA erred in invoking state immunity simply because it is a government entity. The application of state immunity is proper only when the proceedings arise out of sovereign transactions and not in cases of commercial activities or economic affairs. The State, in entering into a business contract, descends to the level of an individual and is deemed to have tacitly given its consent to be sued. Since the Intramuros Golf Course Expansion Projects partakes of a proprietary character entered into between PTA and PHILGOLF, PTA cannot avoid its financial liability by merely invoking immunity from suit.

PHILIP SIGFRID A. FORTUN and ALBERT LEE G. ANGELES v. GLORIA MACAPAGAL-ARROYO, et al.
G.R. No. 190293, March 20, 2012, EN BANC (Abad, J.)

On Nov. 23, 2009 heavily armed men, believed to be led by the ruling Ampatuan family, gunned down and buried 57 innocent civilians in Maguindanao. On Dec. 4, 2009 President Arroyo issued Presidential Proclamation 1959 declaring martial law and suspending the privilege of the writ of habeas corpus in Maguindanao. She submitted her report to Congress stating that she acted based on her finding that lawless men have taken up arms in Maguindanao and risen against the government. The Congress, in joint session, convened to review the validity of the President's action. However, two days later or before Congress could act, the President issued Presidential Proclamation 1963, lifting martial law and restoring the privilege of the writ of habeas corpus in Maguindanao. Petitioners challenge the constitutionality of Proclamation 1959.

ISSUE:

Whether or not Proclamation 1959 is constitutional.

RULING:

The Court deems any review of its constitutionality the equivalent of beating a dead horse. Under the 1987 Constitution, the President and the Congress act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of habeas corpus. They exercise the power, not only sequentially, but in a sense jointly since, after the President has initiated the proclamation or the suspension, only the Congress can maintain the same based on its own evaluation of the situation on the ground, a power that the President does not have. Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of habeas corpus is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court. Since President Arroyo withdrew her proclamation before the joint houses of Congress could fulfill their automatic duty to review and validate or invalidate the same, then the petitions in these cases have become moot and the Court has nothing to review. The lifting of martial law and restoration of the privilege of the writ of habeas corpus in Maguindanao was a supervening event that obliterated any justiciable controversy.

STRADCOM CORP. v. JUDGE LAQUI and DTECH MANAGEMENT
G.R. No. 172712, March 21, 2012, SECOND DIVISION (Perez, J.)

On 19 June 2003, respondent DTech Management Incorporated (DTECH), filed a complaint for injunction, with prayer for Issuance of a Preliminary Injunction and Temporary Restraining Order against the LTO. The complaint alleged, among other matters that, on 1 July 2002, a Memorandum of Understanding (MOU) was executed by the LTO, IC and ISAP which affirmed, among other matters, DTECHs accreditation and qualification as an entity that could effectively and efficiently provide the required IT services in the verification end of the COCAS. Consistent with the MOU, the LTO, IC, ISAP and DTECH also executed a Memorandum of Agreement (MOA) on the same date, specifying the terms and conditions of DTECHs engagement as the sole IT service provider for the verification of COC for a term of five (5) years commencing on July 24, 2002 until July 24, 2007.

Under the MOA, verification was defined as the act of having an authenticated COC validated through the process of the on-line verification via the internet, SMS and other present day information technology and telecommunications applications. DTECH further claimed that, on 17 January 2003, LTO wrote ISAP, suggesting the termination of DTECHs services in view of its supposed failure to interconnect with the LTO IT Motor Vehicle Registration System (LTO IT MVRS) owned and operated by STRADCOM under a Build Operate and Own (BOO) contract with the Department of Transportation and Communication (DOTC)/LTO.

Accordingly, LTOs termination of its services and cancellation of the COCAS is violative of its contractual rights, the law as well as principles of fairness and due process. Since it was never a part of the parties agreement, DTECHs alleged failure to interconnect with LTO MVRS is neither a valid ground for the termination of its services nor a reason to give undue advantage to STRADCOM. On June 25, 2003, the RTC issued an order granting DTECHs application for the issuance of a TRO against the termination of the implementation of the parties 1 July 2002 MOA. LTO filed an urgent motion to dismiss dated 8 July 2003, with opposition to DTECHs application for a writ of preliminary injunction for lack of showing of a right in ease and the resultant irreparable injury from the act complained against.

On 1 August 2003, the RTC issued two (2) resolutions, denying LTO's motion to dismiss and granting DTECHs application for a writ of preliminary injunction which was deemed necessary pending the determination of the validity of the MOAs termination at the trial of the case on the merits. Upon DTECHs posting of the bond which was fixed atP1,500,000.00, the RTC went on to issue the corresponding writ of preliminary prohibitory injunction dated 4 August 2003, restraining LTO from implementing the termination of the MOA. On 6 August 2003, STRADCOM filed a motion for leave to admit its answer-in-intervention, manifesting its legal interest in the matter in litigation and its intent to unite with LTO in resisting the complaint. In its attached answer-in-intervention, STRADCOM averred that, on 26 March 1998, it executed with the DOTC a BOO Agreement for the implementation of infrastructure facilities in accordance with R.A. No. 6957, as amended by R.A. 7718.

Having been authorized to design, construct and operate the IT system for the DOTC/ LTO, STRADCOM argued that the 1 July 2002 MOU and MOA breached the BOO Agreement which included the verification of COCs granted to DTECH without the requisite public bidding. With the latter's failure to comply with its contractual undertakings despite repeated warnings, STRADCOM claimed that LTO validly terminated the MOA on 26 May 2003 and effectively mooted DTECHs cause of action for injunction. STRADCOM likewise called attention to the prohibition against the issuance of a TRO and/or preliminary injunction against national infrastructure projects like those Covered by R.A. Nos. 6957 and 7718.

On 21 August 2003, LTO moved for the reconsideration of the RTCs 1 August 2003 Resolution. With the admission of its answer-in-intervention, STRADCOM, in turn, filed its 15 October 2003 motion for the dissolution of the preliminary injunction issued in the case. On 3 March 2004, the RTC issued a resolution, denying the motions filed by LTO and STRADCOM. nied for lack of merit in the RTCs Resolution dated 16 August 2004. Aggrieved, STRADCOM filed the Rule 65 petition forcertiorari and prohibition which was dismissed for lack of merit in the herein assailed Decision dated 8 May 2006.In affirming the RTCs Resolutions dated 3 March 2004 and 16 August 2004, the CAs ruled that the writ of preliminary prohibitory injunction issued a quo was directed against the pre-termination of the 1 July 2002 MOA and not STRADCOMs BOO Agreement with the LTO. Finding that the scope of the BOO Agreement had yet to be threshed out in the trial of the case on the merits, the CA discounted the grave abuse of discretion STRADCOM imputed against the RTC which, in issuing the injunctive writ, was found to be exercising a discretionary act outside the ambit of a writ of prohibition. Absent showing of manifest abuse, the CA desisted from interfering with the RTCs exercise of its discretion in issuing the injunctive writ as it involved determination of factual issues which is not the function of appellate courts.

ISSUE:

Whether or not the RTCs grant of the writ of preliminary injunction sought by DTECH amounted to grave abuse of discretion?

RULING:

The petition is denied, moot and academic.

Where a case has become moot and academic, there is no more justiciable controversy, so that a declaration thereon would be of no practical value. A case becomes moot and academic when, by virtue of supervening events, there is no more actual controversy between the parties and no useful purpose can be served in passing upon the merits. Since they are constituted to pass upon substantial rights, courts of justice will not consider questions where no actual interests are involved. As a rule, courts decline jurisdiction over such cases or dismiss them on the ground of mootness. Records show that STRADCOMs petition assailing the CAs decision which upheld the validity of the writ of preliminary injunction issued by the RTC had been rendered moot and academic.

It is beyond dispute, after all, that DTECH commenced its main action for injunction for no other purpose than to restrain the LTO from putting into effect its termination of the 1 July 2002 MOA and, with it, DTECHs services as sole IT provider of the verification aspect of the COCAS. As may be gleaned from the MOA, however, the engagement of DTECH as exclusive IT service provider for the verification aspect of the COCAS was only for a limited period of five years. In specifying the term of the agreement, Section 2 of the MOA provides that, (t)he engagement of [DTECH] by ISAP as the sole IT service provider for the verification of COCs shall be five (5) years commencing on July 24, 2002 until July 24, 2007, renewable for the same period of time under such terms and conditions mutually acceptable, subject to the provisions of sections 7and 8 hereof. Having been prompted by LTOs supposed wrongful pre-termination of the MOA on26 May 2003, it cannot, therefore, be gainsaid that DTECHs cause of action for injunction had been mooted by the supervening expiration of the term agreed upon by the parties.

Considering that DTECHs main case has been already mooted, it stands to reason that the issue of the validity of the writ of preliminary injunction issued by the RTC had likewise been mooted. Indeed, a preliminary injunction is a provisional remedy, an adjunct to the main case subject to the latter's outcome. It is resorted to by a litigant for the preservation or protection of his rights or interest and for no other purpose during the pendency of the principal action. Under the above-discussed factual milieu, the Court finds no more reason to determine whether or not the RTCs grant of the writ of preliminary injunction sought by DTECH amounted to grave abuse of discretion.

While courts should abstain from expressing its opinion where no legal relief is needed or called for, we are well aware of the fact that the moot and academic principle is not a magical formula that should automatically dissuade courts from resolving a case. Accordingly, it has been held that a court will decide a case, otherwise moot and academic, if it finds that:(a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review. None of these exceptions is, however, present in this case.

LAND BANK OF THE PHILIPPINES v. HEIRS OF JESUS S. YUJUICO, MARIETTA V. YUJUICO and DR. NICOLAS VALISNO, SR
G.R. No. 184719, March 21, 2012, SECOND DIVISION (Sereno, J.)

By virtue of P.D. 27 and E.O. 228,Lots 3, 4, and 7 and parts of Lots 1, 5, and 6 owned by respondent spouses were placed under the Operation Land Transfer (OLT) program of the government. The remaining parts of Lots 1, 5, and 6 were covered by R.A. 6657. Thus, the properties were acquired by the DAR and thereafter distributed to the proper farmer-beneficiaries. The LBP offered respondents the amount of₱2,422,883.88 as payment for their properties. Thus, respondents filed an action for the payment of just compensation with the DARAB of Nueva Ecija, Cabanatuan City. They subsequently filed respondents filed a complaint for determination and payment of just compensation before the Special Agrarian Court (SAC) of the RTC even before the DARAB could resolve the case.

Pending resolution of the Complaint, initial payments for some of the lots were accepted by respondents from the LBP. The parties agreed that these amounts should be deducted from whatever total amount the court would award to respondents. DAR contended that the determination of the just compensation for the Lots placed under the OLT program should be governed by the provisions of P.D. 27 and E.O. 228. LBP concurred with the formula presented by DAR. As the taking of the other properties were carried out through the application of the provisions of the CARL, the DAR submits that it is the CARL that should be used or applied in determining the value of these properties.

The LBP asserts that in determining the value of respondents properties, it merely applied and conformed to the mandate of Section 17 of the CARL as implemented by A.O. 5. The RTC, in its decision, asserted that the Supreme Court had already declared the application of E.O. 228 and P.D. 27 in valuing expropriated properties as unfair and unjust to landowners. But no pronouncement was made in its Decision on Lot 8. The LBP and the DAR filed Petitions for Review, which were later consolidated by the appellate court. On appeal, the CA ruled that it should be the law in effect on the date of payment and not as the LBP insists, the law in effect at the time of the taking In determining whether to apply the formula ordered by P.D. 27 and E.O. 28 or that found in Section 17 of the CARL in relation to its implementing regulation A.O. 5.

Hence, for lands taken under PD 27, the formula in PD 27 should be followed, for those under EO 228, the formula in EO 228 should be used, and for those under RA 6657, the formula of that statue should apply. However, from the very records of Land Bank, the earliest payment was made in March 1992 long after CARP was in effect. Subsequent payments were effected until 2003. Following judicial doctrine, the valuation must be determined under RA 6657 as implemented by AO 5.

ISSUE:

Whether or not E.O. 27 and E.O. 228 or Section 17 of R.A. 6657 and A.O. 5 should be applied to determine the value of just compensation?

RULING:

The petition is partly granted.

The Court has already categorically declared in LBP v. Domingo Soriano (G.R. Nos. 180772 and 180776, 6May 2010)that if the issue of just compensation is not settled prior to the passage of the CARL, it should be computed in accordance with the said law, although the property was acquired under P.D.

27. The same rule holds true for the present case. While some of the lands were acquired under P.D. 27, the Complaint for just compensation was lodged before the court only on 20 August 2001, long after the passage of the CARL, or on 15 June 1988. The Court, in several cases by reason of equity, applied the CARL in determining just compensation for lands acquired under P.D. 27 and before the effectivity of the CARL.

It is necessary to determine the actual time of taking, as it is the value of the properties at that time that should be used to compute the just compensation. It will also be the date when the applicable interest in expropriation cases begins to accrue. The exact date when each property was taken from respondents cannot be determined from the evidence already presented by the parties. The exact amount already paid to and received by respondents as initial payment should also be determined, as this amount will be deducted from whatever amount will be awarded to them as just compensation. However, neither the RTC nor the appellate court made a pronouncement as to the total amount already received by respondents as initial payment.

Thus, the evidence on record is not sufficient to enable this Court to determine the said amount. Thus, since some of the lands had already been acquired even before the CARL became effective, the acceleration of the final disposition of this case is warranted. The he just compensation shall be ascertained due in accordance with this Decision, applying Section 17 of R.A. 6657 and A.O. 5.

The case is remanded to the Court of Appeals.

PAMBANSANG KOALISYON NG MGA SAMAHANG MAGSASAKA AT MANGGAGAWA SA NIYUGAN v. EXECUTIVE SECRETARY
G.R. Nos. 147036-37, April 10, 2012, EN BANC (Abad, J.)

These are consolidated petitions to declare unconstitutional certain presidential decrees and executive orders of the martial law era and under the incumbency of Pres. Estrada relating to the raising and use of coco-levy funds, particularly: Section 2 of P.D. 755, (b)Article III, Section 5 of P.D.s 961 and 1468, (c) E.O. 312, and (d) E.O. 313. On June 19, 1971 Congress enacted R.A. 6260 that established a Coconut Investment Fund (CI Fund) for the development of the coconut industry through capital financing. Coconut farmers were to capitalize and administer the Fund through the Coconut Investment Company (CIC) whose objective was, among others, to advance the coconut farmers interests.

For this purpose, the law imposed a levy ofP0.55on the coconut farmers first domestic sale of every 100 kilograms of copra, or its equivalent, for which levy he was to get a receipt convertible into CIC shares of stock. In 1975 President Marcos enacted P.D. 755 which approved the acquisition of a commercial bank for the benefit of the coconut farmersto enable such bank to promptly and efficiently realize the industry's credit policy.Thus, the PCA bought 72.2% of the shares of stock of First United Bank, headed by Pedro Cojuangco.Dueto changes in its corporate identity and purpose, the banks articles of incorporation were amended in July 1975, resulting in a change in the banks name from First United Bank United Coconut Planters Bank (UCPB).

In November 2000 then President Joseph Estrada issued Executive Order (E.O.) 312, establishing a Sagip Niyugan Program which sought to provide immediate income supplement to coconut farmers and encourage the creation of a sustainable local market demand for coconut oil and other coconut products.The Executive Order sought to establish aP1-billion fund by disposing of assets acquired using coco-levy funds or assets of entities supported by those funds.A committee was created to manage the fund under this program.A majority vote of its members could engage the services of a reputable auditing firm to conduct periodic audits.

At about the same time, President Estrada issued E.O. 313, which created an irrevocable trust fund known as the Coconut Trust Fund (the Trust Fund).This aimed to provide financial assistance to coconut farmers, to the coconut industry, and to other agri-related programs.The shares of stock of SMC were to serve as the Trust Funds initial capital.These shares were acquired with CII Funds and constituted approximately 27% of the outstanding capital stock of SMC.E.O. 313 designated UCPB, through its Trust Department, as the Trust Funds trustee bank.The Trust Fund Committee would administer, manage, and supervise the operations of the Trust Fund.

The Committee would designate an external auditor to do an annual audit or as often as needed but it may also request the Commission on Audit (COA) to intervene. To implement its mandate, E.O. 313 directed the Presidential Commission on Good Government, the Office of the Solicitor General, and other government agencies to exclude the 27% CIIF SMC shares from Civil Case 0033, entitled Republic of the Philippines v. Eduardo Cojuangco, Jr., et al.,which was then pending before the Sandiganbayan and to lift the sequestration over those shares. On January 26, 2001, however, former President Gloria Macapagal-Arroyo ordered the suspension of E.O.s 312 and 313.

This notwithstanding, on March 1, 2001 petitioner organizations and individuals brought the present action in G.R. 147036-37 to declare E.O.s 312 and 313 as well as Article III, Section 5 of P.D. 1468 unconstitutional.On April 24, 2001 the other sets of petitioner organizations and individuals

instituted G.R. 147811 to nullify Section 2 of P.D. 755 and Article III, Section 5 of P.D.s 961 and 1468 also for being unconstitutional.

ISSUES:

1. Whether or not the coco-levy funds are public funds?
2. Whether or not(a) Section 2 of P.D. 755, (b)Article III, Section 5 of P.D.s 961 and 1468, (c) E.O. 312, and (d) E.O. 313 are unconstitutional?
3. Whether or not petitioners have legal standing to bring the same to court?

RULING:

1. Coco levy as public funds. The Court was satisfied that the coco-levy funds were raised pursuant to law to support a proper governmental purpose. They were raised with the use of the police and taxing powers of the State for the benefit of the coconut industry and its farmers in general. The COA reviewed the use of the funds. The BIR treated them as public funds and the very laws governing coconut levies recognize their public character. The Court has also recently declared that the coco-levy funds are in the nature of taxes and can only be used for public purpose. Taxes are enforced proportional contributions from persons and property, levied by the State by virtue of its sovereignty for the support of the government and for all its public needs.

Here, the coco-levy funds were imposed pursuant to law, namely, R.A. 6260 and P.D. 276.The funds were collected and managed by the PCA, an independent government corporation directly under the President. And, as the respondent public officials pointed out, the pertinent laws used the term levy, which means to tax, in describing the exaction. R.A. 6260 and P.D. 276 did not raise money to boost the governments general funds but to provide means for the rehabilitation and stabilization of a threatened industry, the coconut industry, which is so affected with public interest as to be within the police power of the State.

The funds sought to support the coconut industry, one of the main economic backbones of the country, and to secure economic benefits for the coconut farmers and farm workers. Lastly, the coco-levy funds are evidently special funds. Its character as such fund was made clear by the fact that they were deposited in the PNB (then a wholly owned government bank) and not in the Philippine Treasury.

2. The Court has already passed upon this question in Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic of the Philippines. It held as unconstitutional Section 2 of P.D. 755 for effectively authorizing the PCA to utilize portions of the CCS Fund to pay the financial commitment of the farmers to acquire UCPB and to deposit portions of the CCS Fund levies with UCPB interest free. And as there also provided, the CCS Fund, CID Fund and like levies that PCA is authorized to collect shall be considered as non-special or fiduciary funds to be transferred to the general fund of the Government, meaning they shall be deemed private funds.

In any event, such declaration is void. There is ownership when a thing pertaining to a person is completely subjected to his will in everything that is not prohibited by law or the concurrence with the rights of another. An owner is free to exercise all attributes of ownership: the right, among others, to possess, use and enjoy, abuse or consume, and dispose or alienate the thing owned. The owner is free to waive all or some of these rights in favor of others. But in the case of the coconut farmers, they could not, individually or collectively, waive what have not been and could not be legally imparted to them.

Section 2 of P.D. 755, Article III, Section 5of P.D. 961, and Article III, Section 5 of P.D. 1468 completely ignore the fact that coco-levy funds are public funds raised through taxation.

And since taxes could be exacted only for a public purpose, they cannot be declared private properties of individuals although such individuals fall within a distinct group of persons. These assailed provisions, which removed the coco-levy funds from the general funds of the government and declared them private properties of coconut farmers, do not appear to have a color of social justice for their purpose. The levy on copra that farmers produce appears, in the first place, to be a business tax judging by its tax base. The concept of farmers-businessmen is incompatible with the idea that coconut farmers are victims of social injustice and so should be beneficiaries of the taxes raised from their earnings.

On another point, in stating that the coco-levy fund shall not be construed or interpreted, under any law or regulation, as special and/or fiduciary funds, or as part of the general funds of the national government, P.D.s 961 and 1468 seek to remove such fund from COA scrutiny. This is also the fault of President Estradas E.O. 312 which deals with P1 billion to be generated out of the sale of coco-fund acquired assets. E.O. 313 has a substantially identical provision governing the management and disposition of the Coconut Trust Fund capitalized with the substantial SMC shares of stock that the coco-fund acquired.

But, since coco-levy funds are taxes, the provisions of P.D.s755,961 and 1468 as well as those of E.O.s 312 and 313 that remove such funds and the assets acquired through them from the jurisdiction of the COA violate Article IX-D, Section 2(1) of the 1987 Constitution. Section 2(1) vests in the COA the power and authority to examine uses of government money and property. The cited P.D.s and E.O.s also contravene Section 2 of P.D. 898 (Providing for the Restructuring of the Commission on Audit), which has the force of a statute. And there is no legitimate reason why such funds should be shielded from COA review and audit. The PCA, which implements the coco-levy laws and collects the coco-levy funds, is a government-owned and controlled corporation subject to COA review and audit.

E.O. 313 suffers from an additional infirmity. Apparently, it intends to create a trust fund out of the coco-levy funds to provide economic assistance to the coconut farmers and, ultimately, benefit the coconut industry. But on closer look, E.O. 313 strays from the special purpose for which the law raises coco-levy funds in that it permits the use of coco-levy funds for improving productivity in other food areas. Clearly, E.O.313 above runs counter to the constitutional provision which directs that all money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. Assisting other agriculturally-related programs is way off the coco-funds objective of promoting the general interests of the coconut industry and its farmers.

A final point, the E.O.s also transgress P.D. 1445,Section 84(2),the first part by the previously mentioned sections of E.O. 313 and the second part by Section 4 of E.O. 312 and Sections 6 and 7 of E.O. 313.E.O. 313 vests the power to administer, manage, and supervise the operations and disbursements of the Trust Fund it established (capitalized with SMC shares bought out of coco-levy funds) in a Coconut Trust Fund Committee. Section 4 ofE.O. 312 does essentially the same thing.It vests the management and disposition of the assistance fund generated from the sale of coco-levy fund-acquired assets into a Committee of five members.

In effect, the provision transfers the power to allocate, use, and disburse coco-levy funds that P.D. 232 vested in the PCA and transferred the same, without legislative authorization and in violation of P.D. 232, to the Committees mentioned above. An executive order cannot repeal a presidential decree which has the same standing as a statute enacted by Congress.

3. The Court has to uphold petitioners right to institute these petitions. The petitioner organizations in these cases represent coconut farmers on whom the burden of the coco-levies attaches. It is also primarily for their benefit that the levies were imposed. The individual petitioners, on the other hand, join the petitions as taxpayers. The Court recognizes their right to restrain officials from wasting public funds through the enforcement of an unconstitutional statute. This so-called taxpayers suit is based on the theory that expenditure of public funds for the purpose of executing an unconstitutional act is a misapplication of such funds.

SORIANO v. REPUBLIC OF THE PHILIPPINES
G.R. No. 184282, April 11, 2012, FIRST DIVISION (Villarama, Jr., J.)

The Spouses Francisco and Dalisay Soriano were the registered owners of two parcels of agricultural land located in Hijo, Maco, Compostela Valley Province. In October 1999, the two parcels of land were compulsorily acquired by the government pursuant to Republic Act (R.A.) No. 6657 or the Comprehensive Agrarian Reform Law. The Land Bank of the Philippines (LBP) made a preliminary determination of the value of the subject lands in the amount of P351,169.34 for the first parcel and P70,729.28 for the second parcel. Petitioners, however, disagreed with the valuation and brought the matter before the Department of Agrarian Reform Adjudication Board (DARAB) for a summary administrative proceeding to fix the just compensation.

The DARAB rendered its decisions affirming the LBPs preliminary determination. As evidenced by the return cards, notices of the two decisions were received by counsel for petitioners on March 8, 2001 and February 22, 2001, respectively. However, it was only on April 6, 2001 that petitioners filed a petition before the RTC of Tagum City, acting as SAC, for the fixing of just compensation. Thus, the DAR, through the Provincial Agrarian Reform Office (PARO) of Tagum City, filed a motion to dismiss the petition. The DAR argued that the petition was filed beyond the 15-day reglementary period provided in Section 11, Rule XIII of the 1994 DARAB Rules of Procedure. Section 11 reads:

Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation*. The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

Petitioners admit that their petition was filed late but insist that there exist special and compelling reasons to relax the otherwise stringent application of the 15-day reglementary period to file the petition for the fixing of just compensation. They likewise contend that there is no statutory basis for the promulgation of the DARAB procedure providing for a mode of appeal, let alone for a reglementary period to appeal. Petitioners also argue that there exists compelling reason to relax the application of the rules because the offered compensation package by the LBP for the expropriated lands is unconscionably low.

The RTC denied the motion to dismiss Agrarian and declared that the DARAB Rules of Procedure must give way to the laws on prescription of actions as mandated by the Civil Code. The DAR sought reconsideration but was denied Thus, the DAR lodged a petition for certiorari with the CA, alleging grave abuse of discretion on the part of the trial court.

The CA granted the petition and dismissed the Agrarian Case. The CA likewise denied petitioners motion for reconsideration. Hence, petitioners filed the present petition alleging that the CA committed serious errors of law.

ISSUE:

Whether the CA erred in dismissing the Agrarian case

RULING:

The petition lacks merit. The appellate court correctly granted the writ of certiorari and nullified the Order of the RTC acting as SAC, as the RTC gravely abused its discretion when it denied the motion to dismiss filed by the DAR. Rule XIII, Section 11 of the 1994 DARAB Rules of Procedure, which was then applicable, explicitly provides that:

Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation.* The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts *within fifteen (15) days from receipt of the notice thereof*. Any party shall be entitled to only one motion for reconsideration.

In *Phil. Veterans Bank v. Court of Appeals,* we explained that the consequence of the said rule is that the adjudicators decision on land valuation attains finality after the lapse of the 15-day period. The case at bar was filed 29 days after petitioners receipt of the DARABs decision in the first parcel of land and 43 days on the 2nd parcel of land. The DARABs decisions had already attained finality.

In *Republic v. Court of Appeals*, The Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Through notice sent to the landowner pursuant to 16(a) of R.A. No. 6657, the DAR makes an offer. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. If the landowner does not agree to the price fixed, he may bring the matter to the RTC acting as Special Agrarian Court.

Primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

Furthermore, Petitioners have not shown any exceptional circumstance warranting a relaxation of the prescribed period for the filing of a petition for judicial determination of just compensation.

WHEREFORE, the petition for review on certiorari is DENIED. Decision of CA, AFFIRMED and UPHELD.

OFFICE OF THE COURT ADMINISTRATOR v. MS. ESTRELLA NINI
A.M. No.P-11-3002, April 11, 2012, THIRD DIVISION (Mendoza, J.)

Ms. Estrella Nini is a clerk of court II in MTC, Bogo City Cebu. The Office of the Court Administrator *(OCA)* conducted a financial audit on the books of accounts of the said MTC. The books were last audited in view of the retirement of former Clerk of Court, Rosela M. Condor. The audit noted an under-remittance of ₱367.80 for the Judiciary Development Fund *(JDF)* account which was already restituted on December 14, 1995.

In a previous audit conducted by the Regional Commission on Audit *(RCOA),* it appeared that Nini disclosed cash shortages amounting to ₱125,050.20 for the Fiduciary Fund. The said amount was deposited the next day.

According to OCA, all Supreme Court official receipts requisitioned from the Property Division, Office of Administrative Services *(OAS)* - Office of the Court Administrator were duly accounted for and The courts file copies of financial reports were organized, orderly and complete, thus, the team had no difficulty in verifying the accuracy and correctness of the courts financial reports. Moreover, all transactions affecting the collections, deposits and withdrawals of the funds maintained by the court were properly recorded in their respective Official Cashbooks.

However, some shortages and late deposits were also discovered such as:

The cash examination conducted on April 4, 2011 disclosed a shortage of ₱1,400.00, while undeposited collections of ₱153,750.00 were deposited to their respective accounts immediately after the cash count.

In the Fiduciary Fund, the books of the Clerk of Court revealed an over withdrawal of the cash bond posted in Criminal Case No. 8664 amounting to ₱30,000.00. Nini admitted that she inadvertently released the said amount to the bondsman on June 11, 2009. When she asked the bondsman for the return of the amount, it was returned on installment. Hence, the amount was fully returned only in March 2011 and was kept inside her vault which was deposited only on April 12, 2011, upon the instruction of the audit team.

Nini likewise withdrew several forfeited bailbonds including interests from the fiduciary funds during the period of March 31, 2008 to September 30, 2010 amounting to ₱52,000.00 and ₱35,665.00, respectively which was not deposited to the GF-New Account, but rather kept inside the vault. Nini explained that she forgot about the envelopes kept inside the vault because of her voluminous office tasks and duties and admitted that she did not know to what account she should deposit the same. Upon the instructions of the audit team, the forfeited bailbonds plus interests were deposited only on April 13, 2011.

Collections made from February 4, 2011 to March 23, 2011 were only deposited by the Clerk of Court on April 3 and 4, 2011.

The audit team discovered that Nini failed to collect the mandatory ₱1,000.00 Sheriffs Trust Fund *(STF),* for every civil case filed in court to defray the expenses incurred in the service of summons and other court processes. Nini reasoned that no guidelines were issued regarding the said fund.

The OCA recommended that Nini be: SUSPENDED for SIX (6) Months, for incurring cash shortages, FINED in the amount of Five Thousand Pesos (₱5,000.00) for delayed remittances of Fiduciary Fund collections and STERLY WARNED that a repetition of the same or similar offense shall be dealt with more severely.

OCA also recommended that Presiding Judge Dante R. Manreal be: DIRECTED to DESIGNATE an Acting Clerk of Court to COLLECT the mandatory One Thousand Pesos (P 1,000.00) for every case filed in court, OPEN a new account for STF transactions with the LBP under the name of the court, with the Executive/Presiding Judge and OIC/Clerk of Court as authorized signatories, ADVISED to STRICTLY MONITOR the financial transactions of MTC and STUDY and IMPLEMENT procedures that would strengthen internal control over financial transactions.

ISSUE:

Whether or not Nini is administratively liable for the shortages and late deposits of funds

RULING:

Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. Not only must their conduct at all times be characterized by propriety and decorum but, above all else, it must be beyond suspicion. Thus, the Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary.

It is clear in the findings of the audit team and Ninis admission, that irregularities in the administration of court funds were indeed committed. Nini chiefly blamed her heavy workload for the lapses discovered by the audit team.

Undoubtedly, Nini failed to perform her duty to the degree expected of her office. Hence, in case of a lapse in the performance of their sworn duties, the Court finds no room for tolerance and is then constrained to impose the necessary penalty to the erring officer. Nini must have been acquainted with the tasks of her office and is expected to have assumed her office with a degree of competence.

As a clerk of court, they are entrusted with the delicate function with regard to collection of legal fees. They are expected to correctly and effectively implement regulations relating to proper administration of court funds. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds.

Base on SC Circular Nos. 13-92 and 5-93 all fiduciary collections shall be deposited immediately by the Clerk of Court upon receipt thereof, with an authorized government depositary bank within twenty-four (24) hours. The latter circular designates the Landbank of the Philippines, as such. Delay in the remittance of collection constitutes neglect of duty. The fact that the collected amounts were kept in the safety vault does not reduce the degree of defiance of the rules.

On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the courts ministerial officers. It should be brought home *to both* that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds.

CRUZ v. GONZALEZ, DBP AND CA
G.R. No. 173844. April 11, 2012, SECOND DIVISION (Perez, J.)

On 27 January 1994, Hermosa Savings and Loans Bank, Inc. (HSLBI) availed of forty (40) loans from the Development Bank of the Philippines (DBP) pursuant to a Subsidiary Loan Agreement. In support of the loan agreement and applications, HSLBI, through bank officers and Atty. Ligaya P. Cruz, herein petitioner, as its legal counsel, submitted the required documents to assure DBP that the respective Investment Enterprises were actually existing and duly registered with the government; that the subsidiary loan will be exclusively used for relending to these Investment Enterprises and for the purposes stated in the applications; and that the concerned Investment Enterprises are amenable to the assignment of debt in favor of HSLBI.

On 31 March 2001, the Bangko Sentral ng Pilipinas (BSP) conducted an examination of HSLBIs loan portfolio. The BSP found out that most of HSLBIs loan documents and credit accounts were either forged or inexistent. Thus, on 19 December 2001, DBP filed a complaint for forty (40) counts of estafa through falsification of commercial documents or for large scale fraud of the Revised Penal Code (RPC) against the officers of HSLBI and herein petitioner Atty. Cruz. Atty. Cruz was included in the complaint for the reason that she, as in-house legal counsel of HSLBI, rendered an opinion that all the purported Investment Enterprises were duly organized, validly existing and in good standing under Philippine laws and that they have full legal rights, power and authority to carry on their present business and for notarizing two deeds of assignment utilized as supporting documents.

In a Joint Resolution State Prosecutors Tordilla-Castillo and Abad recommended the filing of informations for forty (40) counts of estafa under Article 315, paragraph 2(a) of the RPC against the respondent bank officers and petitioner.

The respondents and petitioner in the complaint, filed a petition for review before the DOJ

Petitioner argues that she should not be held liable for the offense since she only signed a pro-forma opinion prepared by the DBP and merely notarized the documents submitted by HSLBI to DBP. On their face, she found no indication of any irregularity or any taint of illegality on the documents she signed. She also claims that HSLBI was duly accredited as a participating financial institution of DBP which should have exercised due diligence and discovered the alleged illegal transactions and taken proper actions. She further argues that even if she is held liable, her liability is only civil and not criminal in view of the creditor-debtor relationship between HSLBI and DBP.

In a Resolution DOJ Undersecretary Gutierrez, dismissed the petition.

Respondents filed a motion for reconsideration which was granted in part.

The complaint against respondent Atty. Ligaya Cruz is hereby DISMISSED for want of probable cause and the Chief State Prosecutor is hereby directed to file an information for violation of Art. 315, par. 2(a), Revised Penal Code and to report the action taken hereon within ten (10) days from receipt hereof.

DBP filed a motion for reconsideration

By Resolution Acting Secretary Gutierrez ordered the filing of informations for Estafa/Large Scale Fraud against respondents and the filing of informations against Atty. Cruz.

Respondents and petitioner moved for reconsideration.

In a Resolution Secretary Gonzales partially granted their motion and ordered the filing against all respondents of informations only for forty (40) counts of estafa and file separate informations against respondents Cruz, et. al.

Atty. Cruz filed a petition for certiorari before the CA. CA dismissed the petition as well as the motion for reconsideration.

ISSUES:

Whether the CA erred in sustaining the Secretary of Justice in its ruling that there is probable cause to indict petitioner Atty. Cruz.

RULING:

The petition is bereft of merit. In the case of *Galario v. Office of the Ombudsman*, this Court held that:

[A] finding probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. It merely binds over the suspect to stand trial. It is not a pronouncement of guilt. It is merely based on opinion and reasonable belief.

We affirm the CA decision in line with the principle of non-interference with the prerogative of the Secretary of Justice to review the resolutions of the public prosecutor in the determination of the existence of probable cause. For reasons of practicality, this Court, does not interfere with the prosecutors determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutors findings in such investigations. In the absence of any showing that the Secretary of Justice committed manifest error, grave abuse of discretion or prejudice, courts will not disturb its findings. Moreover, this Court will decline to interfere when records show that the findings of probable cause is supported by evidence, law and jurisprudence.

In the instant case, the Secretary of Justice found sufficient evidence to indict petitioner. The findings of probable cause against petitioner was based on the document she issued entitled Opinion of Counsel to the Participating Financial Institution.Petitioner cannot conveniently blame DBP for allegedly not double-checking the documents submitted by HSLBI because by affixing her signature on these documents she actively represented that these entities were indeed existing and eligible for the loan. As a lawyer and in-house legal counsel of HSLBI, it is highly doubtful that she would have affixed her signature without knowing that there were defects in those documents.

Furthermore, the amendments in the resolutions does not mean that there was grave of discretion on the part of the Secretary of Justice.

NERWIN v. PNOC
G.R. No. 167057, April 11, 2012, FIRST DIVISION (Bersamin, J.)

In 1999, the National Electrification Administration (NEA) published an invitat ion to pre-qualify and to bid for a contract, otherwise known as IPB No. 80, for t he supply and delivery of about sixty thousand (60,000) pieces of woodpoles and twenty thousand (20,000) pieces of crossarms needed in the country s Rural Electri fication Project. Thereafter, the qualified bidders submitted their financial bids where privat e respondent [Nerwin] emerged as the lowest bidder for all schedules/components of the contract. NEA then conducted a pre-award inspection of private respondent s [N erwin s] manufacturing plants and facilities, including its identified supplier in M alaysia, to determine its capability to supply and deliver NEA s requirements.

Upon learning of the issuance of Requisition No. FGJ 30904R1 for the O-ILAW P roject, Nerwin filed a civil action in the RTC in Manila, docketed as Civil Case No. 03106921 entitled Nerwin Industries Corporation v. PNOC-Energy Development Corpo ration and Ester R. Guerzon, as Chairman, Bids and Awards Committee, alleging th at Requisition No. FGJ 30904R1 was an attempt to subject a portion of the items covered by IPB No. 80 to another bidding; and praying that a TRO issue to enjoin respondents proposed bidding for the wooden poles. Respondents sought the dismissal of Civil Case No. 03106921, stating that the c omplaint averred no cause of action, violated the rule that government infrastru cture projects were not to be subjected to TROs, contravened the mandatory prohi bition against non-forum shopping, and the corporate president had no authority to sign and file the complaint.

Thence, respondents commenced in the Court of Appeals (CA) a special civil ac tion for certiorari (CA-GR SP No. 83144), alleging that the RTC had thereby committe d grave abuse of discretion amounting to lack or excess of jurisdiction in holdi ng that Nerwin had been entitled to the issuance of the writ of preliminary inju nction despite the express prohibition from the law and from the Supreme Court; in issuing the TRO in blatant violation of the Rules of Court and established jurisp rudence; in declaring respondents in default; and in disqualifying respondents co unsel from representing them.

ISSUE:

Whether or not the CA erred in dismissing the case on the basis of Rep. Act 8 975 prohibiting the issuance of temporary restraining orders and preliminary injunctions, except if issued by the Supreme Court, on government projects.

RULING:

The petition fails. In its decision of October 22, 2004, the CA explained why it annulled and se t aside the assailed orders of the RTC issued on July 20, 2003 and December 29, 2003, and why it altogether dismissed Civil Case No. 03106921, as follows:

a. It is beyond dispute that the crux of the instant case is the propriety of respond Judge s issuance of a preliminary injunction, or the earlier TRO, for that matter.
b. Respondent Judge gravely abused his discretion in entertaining an application for preliminary injunction, and worse, in issuing a preliminary injunction through the assailed order enjoining petitioners sought bidding for its O-ILAW Project. The same is a palpable

violation of RA 8975 which was approved on November 7, 2000, thus, already existing at the time respondent Judge issued the assailed Orders dated Jul y 20 and December 29, 2003.

The said proscription is not entirely new. RA 8975 merely supersedes PD 1818 which underscored the prohibition to courts from issuing restraining orders or preliminary injunctions in cases involving infrastructure or National Resources Development projects of, and public utilities operated by, the government. This law was, in fact, earlier upheld to have such a mandatory nature by the Supreme Court in an administrative case against a Judge. WHEREFORE, the Court AFFIRMS the decision of the Court of Appeals; and ORDERS petitioner to pay the costs of suit.

LOCKHEED v. UNIVERSITY OF THE PHILIPPINES
G.R. No. 185918, April 18, 2012, FIRST DIVISION (Villarama, Jr., J.)

Petitioner Lockheed Detective and Watchman Agency, Inc. (Lockheed) entered into a contract for security services with respondent University of the Philippines (UP). In 1998, several security guards assigned to UP filed separate complaints against Lockheed and UP for payment of underpaid wages, 25% overtime pay, premium pay for rest days and special holidays, holiday pay, service incentive leave pay, night shift differentials, 13th month pay, refund of cash bond, refund of deductions for the Mutual Benefits Aids System (MBAS), unpaid wages from December 16-31, 1998, and attorneys fees. The LA held Lockheed and UP as solidarily liable to complainants.

As the parties did not appeal the NLRC decision, the same became final and executory. A writ of execution was then issued but later quashed by the Labor Arbiter upon motion of UP due to disputes regarding the amount of the award. Later, however, said order quashing the writ was reversed by the NLRC. The NLRC order and resolution having become final, Lockheed filed a motion for the issuance of an alias writ of execution which was subsequently granted. A Notice of Garnishment was issued to Philippine National Bank (PNB) UP Diliman Branch for the satisfaction of the award. UP filed an Urgent Motion to Quash Garnishment. UP contended that the funds being subjected to garnishment at PNB are government/public funds.

The Labor Arbiter, however, dismissed the urgent motion for lack of merit. UP filed a petition for certiorari before the CA. The CA held that although the subject funds do not constitute public funds, in light of the ruling in the case of National Electrification Administration v. Morales mandates that all money claims against the government must first be filed with the Commission on Audit (COA). Hence, petitioner filed this petition before the SC.

ISSUE:

Whether or not the garnishment is against the funds of UP is valid.

RULING:

No. It is the COA which has primary jurisdiction to examine, audit and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries. This Court finds that the CA correctly applied the NEA case. Like NEA, UP is a juridical personality separate and distinct from the government and has the capacity to sue and be sued. Thus, also like NEA, it cannot evade execution, and its funds may be subject to garnishment or levy. However, before execution may be had, a claim for payment of the judgment award must first be filed with the COA.

Under Commonwealth Act No. 327, as amended by Section 26 of P.D. No. 1445, it is the COA which has primary jurisdiction to examine, audit and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries. With respect to money claims arising from the implementation of Republic Act No. 6758,their allowance or disallowance is for COA to decide, subject only to the remedy of appeal by petition for certiorari to this Court. A reading of the pertinent Commonwealth Act provision clearly shows that it does not make any distinction as to which of the government subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries whose debts should be filed before the COA.

As to the fait accompli argument of Lockheed, contrary to its claim that there is nothing that can be done since the funds of UP had already been garnished, since the garnishment was erroneously carried out and did not go through the proper procedure (the filing of a claim with the COA), UP is entitled to reimbursement of the garnished funds plus interest of 6% per annum, to be computed from the time of judicial demand to be reckoned from the time UP filed a petition for certiorari before the CA which occurred right after the withdrawal of the garnished funds from PNB.

ADDITION HILLS v. MEGAWORLD PROPERTIES
G.R. No. 175039: April 18, 2012, FIRST DIVISION (Leonardo-De Castro, J.)

MEGAWORLD was the registered owner of a parcel of land located along Lee Street, Barangay Addition Hills, Mandaluyong City. It conceptualized the construction of a residential condominium complex on the said parcel of land called the Wack-Wack Heights Condominium consisting of a cluster of six (6) four-storey buildings and one (1) seventeen (17) storey tower. MEGAWORLD thereafter secured the necessary clearances, licenses and permits for the condominium project. Thereafter, construction of the condominium project began, but on June 30, 1995, the plaintiff-appellee AHMCSO filed a complaint before the Regional Trial Court of Pasig City, to annul the Building Permit, CLV, ECC and Development Permit granted to MEGAWORLD; to prohibit the issuance to MEGAWORLD of Certificate of Registration and License to Sell Condominium Units; and to permanently enjoin local and national building officials from issuing licenses and permits to MEGAWORLD.

MEGAWORLD filed a Motion to Dismiss the case for lack of cause of action and that jurisdiction over the case was with the public respondent HLURB and not with the regular courts. The trial court ruled in favor of petitioner. On appeal, the CA reversed the trial court decision. Hence, the petitioner filed the instant petition.

ISSUE:

Whether or not petitioner failed to exhaust all administrative remedies

RULING:

Yes.

The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed. In the case of Republic v. Lacap, the SC held that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes.

The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation. Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact..

What is apparent, however, is that petitioner unjustifiably failed to exhaust the administrative remedies available with the Housing and Land Use Regulatory Board (HLURB) before seeking recourse with the trial court. Under the rules of the HLURB which were then in effect.

LBP v. HEIRS OF ENCINAS AND DELGADO
G.R. No. 167735, April 18, 2012, SECOND DIVISION (Brion, J.)

The late Spouses Salvador and Jacoba Delgado Encinas were the registered owners of a 56.2733-hectare agricultural land in Tinago, Juban, Sorsogon, under Original Certificate of Title (*OCT*) No. P-058.When Republic Act No. (RA) 6657 took effect, the heirs of the spouses Encinas, Melchor and Simon (*respondents*), voluntarily offered to sell the land to the government through the Department of Agrarian Reform (*DAR*).

On August 21, 1992, the DAR conducted a field investigation of the land. On October 27, 1997, the DAR submitted the respondents claimfolder to the petitioner for computation of the lands valuation. The petitioner valued the land at P819,778.30.

Upon the DAR's application, accompanied by the petitioners certification of deposit of payment, the Register of Deeds of Sorsogon partially cancelled OCT No. P-058 Transfer Certificate of Title Nos. 49948 and 49949 in the name of the Republic of the Philippines on December 5, 1997.

Since the respondents rejected the petitioners valuation of P819,778.30, the DAR AB undertook a summary administrative proceeding for the determination of just compensation. Adjudicator Capellan fixed the value of just compensation at P3,590,714.00, adopting the DARABs valuation on the property of Virginia Balane in Rangas, Juban, Sorsogon that fixed the just compensation at P99,773.39 per hectare.

The petitioner filed on September 26, 2003 a petition for determination of just compensation with the *RTC*. At the trial, the petitioners witnesses testified on the condition of the subject land when the DAR conducted the field investigation in 1992, and that the petitioner based its P819,778.30 valuation on DAR AO No. 11, series of 1994.

The respondents witnesses testified on the current number of trees in the subject land and the estimated board feet each tree could produce as lumber, the cost of each fruit-bearing tree, and the previous offer to sell the land.

In the decision, the RTC fixed the just compensation at P4,470,554.00, based on: (1) comparable transactions in the nearby locality; (2) the DARABs valuation on Balanes property; (3) the updated schedule of fair market value of real properties in the Province of Sorsogon (4) the value and the produce of coconuts, fruits, narra, and other trees, (5) the lands current condition and potential productivity

The petitioner elevated its case to the CA via a petition for review under Rule 42 of the Rules of Court.

The CA dismissed the petition for review for lack of merit

The petitioner argues that the RTC failed to use the formula provided by Section 17 of RA 6657, the RTC erroneously considered the lands potential, not actual, use, years after the DAR conducted the field investigation.

The respondents invoked the RTCs judicial discretion in the determination of just compensation

ISSUES:

Whether the CA erred in affirming the RTC decision fixing the just compensation at P4,470,554.00

RULING:

We find merit in the petition. The taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding. In computing the just compensation for expropriation proceedings, the RTC should take into consideration the value of the land at the time of the taking, not at the time of the rendition of judgment. The time of taking is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic.

The determination of just compensation is a judicial function vested in the RTC acting as a SAC. The RTC is also required to consider the following factors enumerated in Section 17 of RA 6657: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.
Pursuant to its rule-making power under Section 49 of RA 6657, the DAR translated these factors into the following basic formula in computing just compensation:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)
Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

SACs are not at liberty to disregard the formula laid down by the DAR, because unless an administrative order is declared invalid, courts have no option but to apply it.
In this case, the RTC made use of no computation or formula to arrive at the P4,470,554.00 figure we cannot as well accept the petitioners P819,778.30 valuation since it was based not at the time of the taking of the subject land in 1997.

WHEREFORE, the petition is GRANTED. Resolution of the Court of Appeals are hereby REVERSED and SET ASIDE. The case is REMANDED to the RTC of Sorsogon City to determine the just compensation strictly in accordance with Section 17 of Republic Act No. 6657 and DARAO No. 02-09.

DU v. JAYOMA
G.R. No. 175042, April 23, 2012, FIRST DIVISION (Del Castillo, J.)

On July 7, 1988, the *Sangguniang Bayan* of the Municipality of Mabini, Bohol, enacted Municipal Ordinance No. 1, series of 1988,[4] requiring the conduct of a public bidding for the operation of a cockpit in the said municipality every four years.

For the period January 1, 1989 to December 31, 1992, the winning bidder was Engr. Edgardo Carabuena. However, he failed to comply with the legal requirements for operating a cockpit, the *Sangguniang Bayan*, through Resolution No. 127, series of 1988, authorized petitioner Danilo Du to continue his cockpit operation until the winning bidder complies with the requirements.

On July 9, 1997, the *Sangguniang Bayan* suspended petitioner's cockpit operation due to violation of Municipal Ordinance No. 1, series of 1988,

Respondent Venancio R. Jayoma, then Mayor of Mabini, ordered petitioner to desist from holding any cockfighting activity effective immediately through Municipal Resolution No. 065

Petitioner filed with RTC a Petition for Prohibition, against respondent mayor and nine members of the *Sangguniang Bayan* of Mabini. Petitioner prayed that a preliminary injunction and/or a temporary restraining order be issued to prevent respondents from suspending his cockpit operation. Petitioner claimed that he has a business permit to operate until December 31, 1997; and that the Municipal Resolution No. 065, was m issued as it deprived him of due process and was politically motivated. The resolution was unlawfully enforced by respondent mayor two days after its passage without the review or approval of the *Sangguniang Panlalawigan* of Bohol. He claims that as a result of the incident, he is entitled to actual, moral and exemplary damages as well as attorney's fees

Respondents interposed that, respondent mayor, in ordering the suspension of petitioners cockpit operation, was merely exercising his executive power to authorize and license the establishment, operation and maintenance of a cockpit under the Local Government Code (LGC) of 1991 and such resolution need not be approved by the *Sangguniang Panlalawigan* because it is not an ordinance but an expression of sentiments of the *Sangguniang Bayan* of Mabini.

RTC issued a Temporary Restraining Order enjoining respondents from suspending the cockpit operation of petitioner until further orders from the court. The RTC ruled in favour of the petitioner which includes damages.

CA reversed the Decision of the RTC.

Petitioner moved for reconsideration but was denied by CA

ISSUE:

Whether petitioner is entitled to damages

RULING:

The petition lacks merit. Petitioner has no legal right to operate a cockpit. The *Sangguniang Bayan* allowed him to continue to operate his cockpit only because the winning bidder failed to comply

with the legal requirements for operating a cockpit. Clearly, petitioners authority to operate the cockpit would end on December 31, 1992 or upon compliance by the winning bidder with the legal requirements for operating a cockpit, whichever comes first. The only reason he was able to continue operating until July 1997 was because the *Sangguniang Bayan* of Mabini failed to monitor the status of the cockpit in their municipality.

Even if he was able to get a business permit from respondent mayor for the period January 1, 1997 to December 31, 1997, this did not give him a license to operate a cockpit. Under Section 447(a)(3)(v) of the LGC, it is the *Sangguniang Bayan* which is empowered to authorize and license the establishment, operation and maintenance of cockpits, and regulate cockfighting and commercial breeding of gamecocks. Considering that no public bidding was conducted for the operation of a cockpit from January 1, 1993 to December 31, 1997, petitioner cannot claim that he was duly authorized by the *Sangguniang Bayan* to operate his cockpit in the municipality for the period January 1, 1997 to December 31, 1997.

The *Sangguniang Bayan*, therefore, had every reason to suspend the operation of petitioners cockpit by enacting Municipal Resolution No. 065, series of 1997. As the chief executive of the municipal government, respondent mayor was duty-bound to enforce the suspension

Since the petitioner has no legal right to operate a cockpit starting December 1992, he is not entitled to damages. Injury alone does not give petitioner the right to recover damages; he must also have a right of action for the legal wrong inflicted by the respondents.

In terms of the validity of the said resolution, no evidence was presented to show otherwise or was issued beyond the powers of the *Sangguniang Bayan* or mayor. Jurisprudence consistently holds that an ordinance or resolution is presumed valid in the absence of evidence showing that it is not in accordance with the law. Hence, we find no reason to invalidate Municipal Resolution No. 065, series of 1997.

HACIENDA LUISITA, INCORPORATED v. PRESIDENTIAL AGRARIAN REFORM COUNCIL
G.R. No. 171101 April 24, 2012, EN BANC (Velasco, Jr., J.)

The SC denied the petition for review of Hacienda Luisita, Inc. (HLI), but ordered that the original qualified farmworker-beneficiaries of Hacienda Luisita (FWBs) be still given the option to remain as stockholders of HLI. The said stock distribution option (SDO) was revoked upon motion for reconsideration, and the SC ordered compulsory acquisition in favor of the farmers. On "Motion to Clarify and Reconsider Resolution", HLI argues for the impropriety of the revocation of the SDO. But should the option stays revoked, HLI argues that the just compensation should be pegged at 2006 (the time when the lands were placed under compulsory acquisition due to HLI's failure to perform its obligations under the Stock Distribution Program). This was opposed by the Alyansa, which argued for the revocation of the SDO, and pegged the just compensation at 1989 (the time when the Stock Distribution Program was approved).

ISSUE:

Whether or not the SDO should remain revoked, and just compensation pegged at 1989.

RULING:

Yes. Just compensation should be pegged at 1989. Just compensation for the property should be based at the time it was taken from the owner and appropriated by the PARC. The "time of taking" does not only mean the time when the landowner was deprived of the use of his property, or when the title was issued to the Republic or the beneficiaries. "Taking" also occurs when agricultural lands voluntarily offered by a landowner are ***approved*** for CARP coverage through SDOs. The PARC of the SDO takes place over the notice of coverage ordinarily issued for compulsory acquisition, and is considered as the operative act to determine the time of "taking".

In this case, Tarlac Development Corporation (Tadeco), the original owner of the Hacienda Luisita agricultural lands, voluntarily ceded its ownership over the said lands to HLI (a corporation with a personality distinct from Tadeco), to comply with CARP through the SDO scheme. Hence, when the PARC approved for CARP coverage the said conveyed lands subject to the SDO scheme in 1989, the said date is also construed as the "time of taking" for purposes of determining just compensation.

LAWYERS AGAINST MONOPOLY AND POVERTY (LAMP) v. THE SECRETARY OF BUDGET AND MANAGEMENT
G.R. No. 164987, April 24, 2012, EN BANC (Mendoza, J.)

For consideration of the Court is an original action for certiorari assailing the constitutionality and legality of the implementation of the Priority Development Assistance Fund (PDAF) as provided for in Republic Act (R.A.) 9206 or the General Appropriations Act for 2004 (GAA of 2004).

Petitioner Lawyers Against Monopoly and Poverty(LAMP), a group of lawyers who have banded together with a mission of dismantling all forms of political, economic or social monopoly in the country. According to LAMP, the above provision is silent and, therefore, prohibits an automatic or direct allocation of lump sums to individual senators and congressmen for the funding of projects.

It does not empower individual Members of Congress to propose, select and identify programs and projects to be funded out of PDAF. For LAMP, this situation runs afoul against 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. Further, the authority to propose and select projects does not pertain to legislation. "It is, in fact, a non-legislative function devoid of constitutional sanction,"8 and, therefore, impermissible and must be considered nothing less than malfeasance.

RESPONDENT'S POSITION: the perceptions of LAMP on the implementation of PDAF must not be based on mere speculations circulated in the news media preaching the evils of pork barrel.

ISSUES:

1. Whether or not the mandatory requisites for the exercise of judicial review are met in this case

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

RULING:

1. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. In this case, the petitioner contested the implementation of an alleged unconstitutional statute, as citizens and taxpayers. The petition complains of illegal disbursement of public funds derived from taxation and this is sufficient reason to say that there indeed exists a definite, concrete, real or substantial controversy before the Court. LOCUS STANDI: The gist of the question of standing is whether a party alleges "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.

Here, the sufficient interest preventing the illegal expenditure of money raised by taxation required in taxpayers' suits is established. Thus, in the claim that PDAF funds have been illegally disbursed and wasted through the enforcement of an invalid or unconstitutional law, LAMP should be allowed to sue. Lastly, the Court is of the view that the petition poses issues impressed with paramount public interest. The ramification of issues involving the unconstitutional spending of PDAF deserves the consideration of the Court, warranting the assumption of jurisdiction over the petition.

2. 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. 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."

The petition is miserably wanting in this regard. 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. 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.

PORK BARREL:

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."33 This demonstrates the power given to the President to execute appropriation laws and therefore, to exercise the spending per se of the budget.

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. 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.

JALOSJOS v. COMELEC
G.R. No. 191970, April 24, 2012, EN BANC (Abad, J.)

Petitioner Rommel Jalosjos was born in Quezon City. He Migrated to Australia and acquired Australian citizenship. On November 22, 2008, at age 35, he returned to the Philippines and lived with his brother in Barangay Veterans Village, Ipil, Zamboanga Sibugay. Upon his return, he took an oath of allegiance to the Republic of the Philippines and was issued a Certificate of Reacquisition of Philippine Citizenship. He then renounced his Australian citizenship in September 2009. He acquired residential property where he lived and applied for registration as voter in the Municipality of Ipil. His application was opposed by the Barangay Captain of Veterans Village, Dan Erasmo, sr. but was eventually granted by the ERB.

A petition for the exclusion of Jalosjos' name in the voter's list was then filed by Erasmo before the MCTC. Said petition was denied. It was then appealed to the RTC who also affirmed the lower court's decision. On November 8, 2009, Jalosjos filed a Certificate of Candidacy for Governor of Zamboanga Sibugay Province. Erasmo filed a petition to deny or cancel said COC on the ground of failure to comply with R.A. 9225 and the one year residency requirement of the local government code. COMELEC ruled that Jalosjos failed to comply with the residency requirement of a gubernatorial candidate and failed to show ample proof of a bona fide intention to establish his domicile in Ipil.

ISSUE:

Whether or not the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that Jalosjos failed to present ample proof of a bona fide intention to establish his domicile in Ipil, Zamboanga Sibugay.

RULING:

The Local Government Code requires a candidate seeking the position of provincial governor to be a resident of the province for at least one year before the election. For purposes of the election laws, the requirement of residence is synonymous with domicile, meaning that a person must not only intend to reside in a particular place but must also have personal presence in such place coupled with conduct indicative of such intention. The question of residence is a question of intention. Jurisprudence has laid down the following guidelines: (a) every person has a domicile or residence somewhere; (b) where once established, that domicile remains until he acquires a new one; and (c) a person can have but one domicile at a time.

It is inevitable under these guidelines and the precedents applying them that Jalosjos has met the residency requirement for provincial governor of Zamboanga Sibugay. Quezon City was Jalosjos' domicile of origin, the place of his birth. It may be taken for granted that he effectively changed his domicile from Quezon City to Australia when he migrated there at the age of eight, acquired Australian citizenship, and lived in that country for 26 years. Australia became his domicile by operation of law and by choice. When he came to the Philippines in November 2008 to live with his brother in Zamboanga Sibugay, it is evident that Jalosjos did so with intent to change his domicile for good.

He left Australia, gave up his Australian citizenship, and renounced his allegiance to that country. In addition, he reacquired his old citizenship by taking an oath of allegiance to the Republic of the Philippines, resulting in his being issued a Certificate of Reacquisition of Philippine Citizenship by the Bureau of Immigration. By his acts, Jalosjos forfeited his legal right to live in Australia, clearly proving

that he gave up his domicile there. And he has since lived nowhere else except in Ipil, Zamboanga Sibugay. To hold that Jalosjos has not establish a new domicile in Zamboanga Sibugay despite the loss of his domicile of origin (Quezon City) and his domicile of choice and by operation of law (Australia) would violate the settled maxim that a man must have a domicile or residence somewhere.

The COMELEC concluded that Jalosjos has not come to settle his domicile in Ipil since he has merely been staying at his brother's house. But this circumstance alone cannot support such conclusion. Indeed, the Court has repeatedly held that a candidate is not required to have a house in a community to establish his residence or domicile in a particular place. It is sufficient that he should live there even if it be in a rented house or in the house of a friend or relative. To insist that the candidate own the house where he lives would make property a qualification for public office. What matters is that Jalosjos has proved two things: actual physical presence in Ipil and an intention of making it his domicile.

Further, it is not disputed that Jalosjos bought a residential lot in the same village where he lived and a fish pond in San Isidro, Naga, Zamboanga Sibugay. He showed correspondences with political leaders, including local and national party-mates, from where he lived. Moreover, Jalosjos is a registered voter of Ipil by final judgment of the Regional Trial Court of Zamboanga Sibugay. While the Court ordinarily respects the factual findings of administrative bodies like the COMELEC, this does not prevent it from exercising its review powers to correct palpable misappreciation of evidence or wrong or irrelevant considerations.

The evidence Jalosjos presented is sufficient to establish Ipil, Zamboanga Sibugay, as his domicile. The COMELEC gravely abused its discretion in holding otherwise. Jalosjos won and was proclaimed winner in the 2010 gubernatorial race for Zamboanga Sibugay. The Court will respect the decision of the people of that province and resolve all doubts regarding his qualification in his favor to breathe life to their manifest will.

SABILI v. COMELEC
G.R. No. 193261, April 24, 2012, EN BANC (Sereno, J.)

COMELEC denied Sabili's Certificate of Candidacy for mayor of Lipa due to failure to comply with the one year residency requirement. When petitioner filed his COC[1] for mayor of Lipa City for the 2010 elections, he stated therein that he had been a resident of the city for two (2) years and eight (8) months. However, it is undisputed that when petitioner filed his COC during the 2007 elections, he and his family were then staying at his ancestral home in Barangay (Brgy.) Sico, San Juan, Batangas. Respondent Florencio Librea (private respondent) filed a "Petition to Deny Due Course and to Cancel Certificate of Candidacy and to Disqualify a Candidate for Possessing Some Grounds for Disqualification

Allegedly, petitioner falsely declared under oath in his COC that he had already been a resident of Lipa City for two years and eight months prior to the scheduled 10 May 2010 local elections. In its Resolution dated 26 January 2010, the COMELEC Second Division granted the Petition of private respondent, declared petitioner as disqualified from seeking the mayoralty post in Lipa City, and canceled his Certificate of Candidacy for his not being a resident of Lipa City and for his failure to meet the statutory one-year residency requirement under the law. Petitioner moved for reconsideration of the 26 January 2010 Resolution of the COMELEC, during the pendency of which the 10 May 2010 local elections were held.

The next day, he was proclaimed the duly elected mayor of Lipa City after garnering the highest number of votes cast for the said position. He accordingly filed a Manifestation with the COMELEC en banc to reflect this fact. In its Resolution dated 17 August 2010, the COMELEC *en banc* denied the Motion for Reconsideration of petitioner. Hence, petitioner filed with this Court a Petition (Petition for Certiorari with Extremely Urgent Application for the Issuance of a Status Quo Order and for the Conduct of a Special Raffle of this Case) under Rule 64 in relation to Rule 65 of the Rules of Court, seeking the annulment of the 26 January 2010 and 17 August 2010 Resolutions of the COMELEC.

ISSUE:

Whether the COMELEC committed grave abuse of discretion in holding that Sabili failed to prove compliance with the one-year residency requirement for local elective officials.

RULING:

As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions thereto have been established, including when the COMELEC's appreciation and evaluation of evidence become so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error. As a concept, "grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;" the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty

Mere abuse of discretion is not enough; it must be grave. We have held, too, that the use of wrong or irrelevant considerations in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion. Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable. In light of our limited authority to review

findings of fact, we do not ordinarily review in a certiorari case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction.

In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse mutate from error of judgment to one of jurisdiction. Before us, petitioner has alleged and shown the COMELEC's use of wrong or irrelevant considerations in deciding the issue of whether petitioner made a material misrepresentation of his residency qualification in his COC as to order its cancellation.

Hence, in resolving the issue of whether the COMELEC gravely abused its discretion in ruling that petitioner had not sufficiently shown that he had resided in Lipa City for at least one year prior to the May 2010 elections, we examine the evidence adduced by the parties and the COMELEC's appreciation thereof. Basically, the allegations of the Petitioner Sabili are tantamount to allege that the COMELEC, in denying his COC committed grave abuse of discretion. The court here defined what grave abuse of discretion is; and by that chose and ruled to review the acts of COMELEC under its jurisdiction. Eventually he was able to prove that he was a resident of Lipa and the SC granted his petition.

LA CARLOTA CITY v. ATTY. REX G. ROJO
G.R. No. 181367, April 24, 2012, EN BANC (Carpio, J.)

Vice-Mayor Rex R. Jalandoon of La Carlota City, Negros Occidental appointed Atty. Rex G. Rojo (or Rojo) who had just tendered his resignation as member of the SangguniangPanlungsod the day preceding such appointment, as SangguniangPanlungsod Secretary. The status of the appointment was permanent. Vice-Mayor submitted Rojo's appointment papers to the Civil Service Commission Negros Occidental Field Office (CSCFO-Negros Occidental) for attestation. In a Letter dated March 24, 2004, the said CSCFO wrote Jalandoon to inform him of the infirmities the office found on the appointment documents, i.e. the Chairman of the Personnel Selection Board and the Human Resource Management Officer did not sign the certifications, the latter relative to the completeness of the documents as well as to the publication requirement.

In view of the failure of the appointing authority to comply with the directive, the said CSCFO considered the appointment of Rojo permanently recalled or withdrawn, in a subsequent Letter to Jalandoon dated April 14, 2004. Jalandoon deemed the recall a disapproval of the appointment, hence, he brought the matter to the CSC Regional Office No. 6 in Iloilo City, by way of an appeal. He averred that the Human Resource Management Officer of La Carlota City refused to affix his signature on Rojo's appointment documents but nonetheless transmitted them to the CSCFO. Such transmittal, according to Jalandoon, should be construed that the appointment was complete and regular and that it complied with the pertinent requirements of a valid appointment.

City of La Carlota represented by the newly elected mayor, Hon. Jeffrey P. Ferrer and the SangguniangPanlungsod represented by the newly elected Vice-Mayor, Hon. Demie John C. Honrado, collectively, the petitioners herein, intervened. They argued that Jalandoon is not the real party in interest in the appeal but Rojo who, by his inaction, should be considered to have waived his right to appeal from the disapproval of his appointment. CSC Regional Office No. 6 reversed and set aside the CSCFO's earlier ruling. The regional office likewise ruled that Rojo's appointment on March 18, 2004 was made outside the period of the election ban from March 26 to May 9, 2004, and that his resignation from the SangguniangPanlungsod was valid having been tendered with the majority of the council members in attendance (seven (7) out of the thirteen councilors were present).

Considering that the appointment of Rojo sufficiently complied with the publication requirement, deliberation by the Personnel Selection Board, certification that it was issued in accordance with the limitations provided for under Section 325 of R.A. 7160 and that appropriations or funds are available for said position, the regional office approved the same. Mayor Ferrer and Vice-Mayor Honrado appealed the foregoing Decision of the CSC Regional Office No. 6 to the Civil Service Commission (or Commission). Commission dismissed said appeal on the ground that the appellants were not the appointing authority and were therefore improper parties to the appeal.

Despite its ruling of dismissal, the Commission went on to reiterate CSC Regional Office's discussion on the appointing authority's compliance with the certification and deliberation requirements, as well as the validity of appointee's tender of resignation. It likewise denied the motion for reconsideration thereafter filed by the petitioners in a Resolution dated November 8, 2005. Petitioners filed a petition for review with the Court of Appeals. Court of Appeals denied the petition, and affirmed Resolution Nos. 050654 and 051646 of the Civil Service Commission, dated 17 May 2005 and 8 November 2005, respectively. Petitioners filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated 18 January 2008.

ISSUE:

1. Whether the appointment of respondent as sangguniang panlungsod secretary violated the constitutional proscription against eligibility of an elective official for appointment during his tenure
2. Whether respondent's appointment as sangguniang panlungsod secretary was issued contrary to existing civil service rules and regulations

RULING:

A quorum of the SangguniangPanlungsod should be computed based on the total composition of the SangguniangPanlungsod. In this case, the SangguniangPanlungsod 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 SangguniangPanlungsod, 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 SangguniangPanlungsod, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

The Perez case cited in the Dissenting Opinion was decided in 1969 prior to the 1987 Constitution, and prior to the enactment of RA 7160 or the Local Government Code of 1991. In fact, the Perez case was decided even prior to the old Local Government Code which was enacted in 1983. In ruling that the vice-mayor is not a constituent member of the municipal board, the Court in the Perez case relied mainly on the provisions of Republic Act No. 305 (RA 305) creating the City of Naga and the amendatory provisions of Republic Act No. 2259 (RA 2259) making the vice-mayor the presiding officer of the municipal board.

Under RA 2259, the vice-mayor was the presiding officer of the City Council or Municipal Board in chartered cities. **However, RA 305 and 2259 were silent on whether as presiding officer the vice-mayor could vote**. Thus, the applicable laws in Perez are no longer the applicable laws in the present case. On the other hand, the 2004 case of Zamora v. Governor Caballero, in which the Court interpreted Section 53 of RA 7160 to mean that the entire membership must be taken into account in computing the quorum of theSangguniangPanlalawigan, was decided under the 1987 Constitution and after the enactment of the Local Government Code of 1991.

In stating that there were fourteen (14) members of the SangguniangPanlalawigan of Compostela Valley, the Court in Zamora clearly included the Vice- Governor, as presiding officer, as part of the entire membership of the SangguniangPanlalawigan which must be taken into account in computing the quorum. On the issue that respondent's appointment was issued during the effectivity of the election ban, the Court agrees with the finding of the Court of Appeals and the Civil Service Commission that since the respondent's appointment was validly issued on 18 March 2004, then the appointment did not violate the election ban period which was from 26 March to 9 May 2004.

Indeed, the Civil Service Commission found that despite the lack of signature and certification of the Human Resource Management Officer of La Carlota City on respondent's appointment papers, respondent's appointment is deemed effective as of 18 March 2004 considering that there was substantial compliance with the appointment requirements, thus: Records show that Atty. Rojo's appointment was transmitted to the CSC Negros Occidental Field Office on March 19, 2004 by the

office of Gelongo without his certification and signature at the back of the appointment. Nonetheless, records show that the position to which Atty. Rojo was appointed was published on January 6, 2004.

The qualifications of Atty. Rojo were deliberated upon by the Personnel Selection Board on March 5, 2004, attended by Vice Mayor Jalandoon as Chairman and Jose Leofric F. De Paola, SP member and Sonia P. Delgado, Records Officer, as members. Records likewise show that a certification was issued by Vice Mayor Jalandoon, as appointing authority, that the appointment was issued in accordance with the limitations provided for under Section 325 of RA 7160 and the said appointment was reviewed and found in order pursuant to Section 5, Rule V of the Omnibus Rules Implementing Executive Order No. 292.

Further, certifications were issued by the City Budget Officer, Acting City Accountant, City Treasurer and City Vice Mayor that appropriations or funds are available for said position. Apparently, all the requirements prescribed in Section 1, Rule VIII in CSC Memorandum Circular No. 15, series of 1999, were complied with. Clearly, the appointment of respondent on 18 March 2004 was validly issued considering that: (1) he was considered resigned as SangguniangPanlungsod 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.

DENNIS A. FUNA v. THE CHAIRMAN, COMMISSION ON AUDIT and REYNALDO A. VILLAR
G.R. No. 192791 April 24, 2012, EN BANC (Velasco, Jr., J.)

On February 15, 2001, President Gloria Macapagal-Arroyo (GMA) appointed Guillermo N. Carague (Carague) as Chairman of the Commission on Audit (COA) for a term of seven years starting February 2, 2004 to February 2, 2008. Meanwhile, on February 7, 2004, she appointed Reynaldo A. Villar (Villar) as a third member of COA for a term of seven years starting from February 2, 2004, to February 2, 2011. Following the retirement of Carague on February 2, 2008 and during the fourth year of Villar as commissioner, the latter was designated acting chairman of the COA from February 4, 2008 to April 14, 2008. Subsequently, on April 18, 2008 Villar was appointed and nominated as Chairman of the COA. The Commission on Appointments confirmed his appointment. He was to serve chairman for the unexpired portion of his term as commissioner or on February 2, 2011. Herein petitioner opposes Villar's appointment saying that such appointment is invalid under Sec. 1(2), Art. IX(D) of the 1987 Constitution. He said that reappointment of any kind within the COA be it for the same position (Commissioner to Commissioner) or for an upgraded position (Commissioner to Chairman) is a prohibited appointment and therefore a nullity.

ISSUE:

Whether or not Villar's appointment is invalid under Sec. 1(2), Art.IX (D) of the 1987 Constitution.

RULING:

No, Villar's appointment is not prohibited under the Constitution. The Constitutional provision provides: The Chairman and Commissioners [on Audit] shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one commissioner for five years, and the other commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. The provision, on its face, does not prohibit a promotional appointment from commissioner to chairman as long as the commissioner has not served the full term of seven years, further qualified by the third sentence of Sec. 1(2), Article IX (D) that the appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.

In addition, such promotional appointment to the position of Chairman must conform to the rotational plan or the staggering of terms in the commission membership such that the aggregate of the service of the Commissioner in said position and the term to which he will be appointed to the position of Chairman must not exceed seven years so as not to disrupt the rotational system in the commission prescribed by Sec. 1(2), Art. IX(D). There is nothing in Sec. 1(2), Article IX(D) that explicitly precludes a promotional appointment from Commissioner to Chairman, provided it is made under the aforestated circumstances or conditions

NAPOCOR v. SPOUSES SALUDARES
G.R. No. 189127, April 25, 2012, SECOND DIVISION (Sereno, J.)

Sometime in the 1970s, NAPOCOR constructed high-tension transmission lines to implement the Davao-Manat 138 KV Transmission Line Project. These transmission lines traversed a 12,060-square meter portion of a parcel of agricultural land covered by Transfer Certificate of Title (TCT) No. T-15343 and owned by Esperanza Pereyras, Marciano Pereyras, Laureano Pereyras and Mindaluz Pereyras.

In 1981, NAPOCOR commenced expropriation proceedings in *National Power Corporation v. Esperanza Pereyras, Marciano Pereyras, Laureano Pereyras and Mindaluz Pereyras*. These proceedings culminated in a final Decision ordering it to pay the amount of ₱300,000 as just compensation for the affected property.

On 19 August 1999, respondents filed the instant Complaint against NAPOCOR and demanded the payment of just compensation. They alleged that it had entered and occupied their property by erecting high-tension transmission lines therein and failed to reasonably compensate them for the intrusion.

Petitioner averred that it already paid just compensation for the establishment of the transmission lines by virtue of its compliance with the final and executory Decision in *National Power Corporation v. Pereyras*. Furthermore, assuming that respondent spouses had not yet received adequate compensation for the intrusion upon their property, NAPOCOR argued that a claim for just compensation and damages may only be filed within five years from the date of installation of the transmission lines pursuant to the provisions of Republic Act (R.A.) No. 6395.
The court appointed Commissioners to determine the valuation of the subject land. The Commissioners recommended the amount of ₱750 per square meter as the current and fair market value of the subject property based on the Schedule of Market Values of Real Properties within the City of Tagum effective in the year 2000.

The Court rendered judgment in favor of respondent spouses, (₱4,920,750.00 plus interest at the rate of 12% per annum reckoned from January 01, 1982, until said amount is fully paid, or deposited in Court, as well as attorney's fees.

NAPOCOR appealed the trial courts Decision to the CA which was denied but reduced the rate of interest to 6% per annum.

ISSUES:

1. Whether NAPOCOR has previously compensated the spouses for establishing high-tension transmission lines over their property;
2. Whether the demand for payment of just compensation has already prescribed;
3. Whether petitioner is liable for only ten percent of the fair market value of the property or for the full value thereof; and
4. Whether the trial court properly awarded the amount of ₱4,920,750 as just compensation, based on the Approved Schedule of Market Values for Real Property in Tagum City for the Year 2000.

RULING:

We uphold the Decisions of the CA and the RTC.

1. NAPOCOR failed to prove that it had adequately compensated respondents for the establishment of high tension transmission lines over their property

2. The demand for payment of just compensation has not prescribed The right to recover just compensation is enshrined in no less than our Bill of Rights, which states in clear and categorical language that [p]rivate property shall not be taken for public use without just compensation. This constitutional mandate cannot be defeated by statutory prescription.I t was not the duty of respondent spouses to demand for just compensation. Rather, it was the duty of NAPOCOR to institute eminent domain proceedings before occupying their property

3. NAPOCOR is liable to pay the full market value of the affected property. While respondent spouses could still utilize the area beneath NAPOCORs transmission lines provided that the plants to be introduced underneath would not exceed three meters, danger is posed to the lives and limbs of respondents farm workers, such that the property is no longer suitable for agricultural production. Considering the nature and effect of the Davao-Manat 138 KV transmission lines, the limitation imposed by NAPOCOR perpetually deprives respondents of the ordinary use of their land.

4. The trial court did not err in awarding just compensation based on the Approved Schedule of Market Values for Real Property for the Year 2000. NAPOCOR should have instituted eminent domain proceedings before it occupied respondent spouses property. Because it failed to comply with this duty, respondent spouses were constrained to file the instant Complaint for just compensation before the trial court. From the 1970s until the present, they were deprived of just compensation, while NAPOCOR continuously burdened their property with its transmission lines. We therefore rule that, to adequately compensate respondent spouses from the decades of burden on their property, NAPOCOR should be made to pay the value of the property at the time of the filing of the instant Complaint when respondent spouses made a judicial demand for just compensation.

ESPERIDA, HIPOLITO and DE BELEN v. JURADO
G.R. No. 172538, April 25, 2012, THIRD DIVISION (Peralta, J.)

On February 5, 2001, petitioners Isabelo Esperida, Lorenzo Hipolito, and Romeo de Belen filed a Complaint for illegal dismissal against respondent Franco K. Jurado, Jr. before the Labor Arbiter.

The Labor Arbiter rendered a Decision in favor of petitioners and awarding them their corresponding backwages and separation pay. Respondent appealed the decision before the NLRC. The NLRC dismissed the appeal and the decision of the Labor Arbiter in *toto*.

Respondent filed an appeal before the CA . CA dismissed the petition and affirmed the decision of NLRC. Motion for reconsideration was also denied by the CA.

However, during the pendency of the motion for reconsideration, respondent filed before the CA a Petition to Declare Petitioners in Contempt of Court on the basis of their alleged acts of dishonesty, fraud, and falsification of documents to mislead the CA to rule in their favour.

CA ordered the petitioners to file their Answer within 15 days from notice, showing cause why they should not be adjudged guilty of indirect contempt of court.

Counsel for petitioners filed his entry of appearance, together with a motion for extension of time, seeking that petitioners be granted 15 days from February 3, 2006, or up to February 18, 2006, within which to submit their Answer to the petition.

CA denied the motion for extension considering that February 3, 2006 was the last day of filing yet, it was mailed only on February 8, 2006 and it did not contain any explanation why it was not served and filed personally.

Petitioner's counsel also filed an Omnibus Motion (For Reconsideration and For Admission of Respondents Answer), reasoning that the late filing of the motion for extension was because counsel was so tied up with the preparations of equally important paper works and pleadings for the other cases which he is also handling. Counsel explained that he failed to give instructions to his liaison officer to mail the motion on the same day. Also, personal service was not possible due to the considerable distance between the parties respective offices. Petitioners, through counsel, prayed that the Resolution be set aside and their Answer, which is attached to said Omnibus Motion, be admitted.

CA denied both the Omnibus Motion and Second Motion for Extension for lack of merit and for failing to file their Answer within the reglementary period. Hence, this petition

Petitioners argue that the reasoning submitted by its counsel in failing to submit their Answer on time, and their failure to submit the Explanation why their answer was not served personally, erases any legal defect for the admission of their Answer by the CA. Petitioners maintain that the CA should have practiced liberality in interpreting and applying the rules in the interest of justice, fair play and equity.

Petitioners contend that if their Answer would not be considered and appreciated in the disposition of the case, they will be adjudged guilty of falsification and misrepresentation without being afforded an opportunity to explain their side of the controversy, in gross violation of their constitutional right to due process of law.

ISSUES:

1. Whether or not the honorable court of appeals erred in denying petitioners motions for extension;
2. Whether or not the honorable court of appeals erred in considering the case submitted for decision without giving petitioners their inherent and inalienable right to due process of law
3. Whether or not the honorable court of appeals erred in denying both the motion for reconsideration and motion for admission of petitioners answer.

RULING:

1. The petition is meritorious. In the case at bar, petitioners were indeed given ample opportunity to file their Answer.

2. Yes. Due process does not always require a trial-type proceeding. It is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of ones defense. To be heard not only mean verbal arguments in court but also through pleadings.

This Court finds that the CA erred in considering the case deemed submitted for resolution *sans* the answer of petitioners without setting and conducting a hearing on a fixed date and time on which petitioners may personally, or through counsel, answer the charges against them.

Clearly, the contempt case against petitioners is still in the early stage of the proceedings. The proceedings have not reached that stage wherein the court below has set a hearing to provide petitioners with the opportunity to state their defenses. In fine, the proper procedure must be observed and petitioners must be afforded full and real opportunity to be heard.

3. Yes. Petitioners plead for the liberal application of the Rules. In their Omnibus Motion before the appellate court, petitioners counsel acknowledged his shortcomings in complying with the resolution of the court and took full responsibility for such oversight and omission. But More importantly, counsel's liaison officer attested such facts in his Explanation/Affidavit, which was attached to the Omnibus Motion as well as the petitioners Answer to the petition to cite them in contempt.

This Court has held that a strict and rigid application of technicalities must be avoided if it tends to frustrate rather than promote substantial justice. Considering the nature of contempt proceedings and the fact that petitioners actually filed their Answer, the CA should have been more liberal in the application of the Rules and admitted the Answer.

P/INSP. ARIEL S. ARTILLERO v. ORLANDO C. CASIMIRO
G.R. No. 190569 April 25, 2012, SECOND DIVISION (Sereno, J.)

On 6 August 2008, at about 6:45 in the evening, the municipal station received information that successive gun fires had been heard in Barangay Lanjagan, Ajuy Iloilo. Thus, petitioner, together with Police Inspector Idel Hermoso (Hermoso), and Senior Police Officer (SPO1) Arial Lanaque (Lanaque), immediately went to the area to investigate. Upon arriving, they saw Aguillon, wobbling and drunk, openly carrying a rifle. According to petitioner and Hermoso, although Aguillon was able to present his Firearm License Card, he was not able to present a PTCFOR. Petitioner and Hermoso executed a Joint Affidavit alleging the foregoing facts in support of the filing of a case for illegal possession of firearm against Aguillon.

Petitioner also endorsed the filing of a Complaint against Aguillon through a letter sent to the Provincial Prosecutor on 12 August 2008. For his part, Aguillon executed an Affidavit swearing that petitioner had unlawfully arrested and detained him for illegal possession of firearm, even though the former had every right to carry the rifle as evidenced by the license he had surrendered to petitioner. Aguillon further claims that he was duly authorized by law to carry his firearm within his barangay. According to petitioner, he never received a copy of the Counter-Affidavit Aguillon had filed and was thus unable to give the necessary reply.

In a Resolution dated 10 September 2008, the Office of the Provincial Prosecutor of Iloilo City recommended the dismissal of the case for insufficiency of evidence. Petitioner claims that he never received a copy of this Resolution. Thereafter, Provincial Prosecutor Bernabe D. Dusaban (Provincial Prosectuor Dusaban) forwarded to the Office of the Deputy Ombudsman the 10 September 2008 Resolution recommending the approval thereof. In a Resolution dated 17 February 2009, the Office of the Ombudsman, through Overall Deputy Ombudsman Orlando C. Casimiro (Deputy Ombudsman Casimiro), approved the recommendation of Provincial Prosectuor Dusaban to dismiss the case.

It ruled that the evidence on record proved that Aguillon did not commit the crime of illegal possession of firearm since he has a license for his rifle. Petitioner claims that he never received a copy of this Resolution either. On 22 June 2009, petitioner filed a Motion for Reconsideration (MR) of the 17 February 2009 Resolution, but it was denied through an Order dated 23 July 2009. Thus, on 8 December 2009, he filed the present Petition for Certiorari via Rule 65 of the Rules of Court. According to petitioner, he was denied his right to due process when he was not given a copy of Aguillon's Counter-affidavit, the Asst. Prosecutor's 10 September 2008 Resolution, and the 17 February 2009 Resolution of the Office of the Ombudsman.

Petitioner also argues that public respondents' act of dismissing the criminal Complaint against Aguillon, based solely on insufficiency of evidence, was contrary to the provisions of P.D. 1866 and its Implementing Rules and Regulations (IRR). He thus claims that the assailed Resolutions were issued "contrary to law, and/or jurisprudence and with grave abuse of discretion amounting to lack or excess of jurisdiction."

ISSUES:

1. Whether or not petitioner was denied due process when he was not given a copy of Aguillon's Counter-affidavit, the Asst. Prosecutor's 10 September 2008 Resolution, and the 17 February 2009 Resolution of the Office of the Ombudsman.
2. Whether or not respondent Aguillon is guilty of illegal possession of firearm.

RULING:

1. Petitioner's right of due process was not violated. Article III, Section 14 of the 1987 Constitution, mandates that no person shall be held liable for a criminal offense without due process of law. It further provides that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him. This is a right that cannot be invoked by petitioner, because he is not the accused in this case. It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. (U.S. vs. Yu Tuico, 34 Phil. 209; People vs. Badilla, 48 Phil. 716).

The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. (II Moran, Rules of Court, 1952 ed., p. 673). It is therefore clear that because a preliminary investigation is not a proper trial, the rights of parties therein depend on the rights granted to them by law and these cannot be based on whatever rights they believe they are entitled to or those that may be derived from the phrase "due process of law." A complainant in a preliminary investigation does not have a vested right to file a Reply—this right should be granted to him by law. There is no provision in Rule 112 of the Rules of Court that gives the Complainant or requires the prosecutor to observe the right to file a Reply to the accused's counter-affidavit.

Furthermore, we agree with Provincial Prosecutor Dusaban that there was no need to send a copy of the 10 September 2008 Resolution to petitioner, since it did not attain finality until it was approved by the Office of the Ombudsman. It must be noted that the rules do not state that petitioner, as complainant, was entitled to a copy of this recommendation. The only obligation of the prosecutor, as detailed in Section 4 of Rule 112, was to forward the record of the case to the proper officer within five days from the issuance of his Resolution. Even though petitioner was indeed entitled to receive a copy of the Counter-affidavit filed by Aguillon, whatever procedural defects this case suffered from in its initial stages were cured when the former filed an MR.

In fact, all of the supposed defenses of petitioner in this case have already been raised in his MR and adequately considered and acted on by the Office of the digest artillero vs casimiro Ombudsman. The essence of due process is simply an opportunity to be heard. "What the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard." We have said that where a party has been given a chance to be heard with respect to the latter's motion for reconsideration there is sufficient compliance with the requirements of due process.

2. Respondent Aguillon is not guilty of the crime charged. The authority of Aguillon to carry his firearm outside his residence was not based on the IRR or the guidelines of P.D. 1866 but, rather, was rooted in the authority given to him by Local Government Code (LGC). Provincial Prosecutor Dusaban's standpoint on this matter is correct. All the guidelines and rules cited in the instant Petition "refers to civilian agents, private security guards, company guard forces and government guard forces." These rules and guidelines should not be applied to Aguillon, as he is neither an agent nor a guard. As barangay captain, he is the head of a local government unit; as such, his powers and responsibilities are properly outlined in the LGC.

This law specifically gives him, by virtue of his position, the authority to carry the necessary firearm within his territorial jurisdiction. Petitioner does not deny that when he found Aguillon "openly carrying a rifle," the latter was within his territorial jurisdiction as the captain of the barangay. The authority of punong barangays to possess the necessary firearm within their territorial jurisdiction is necessary to enforce their duty to maintain peace and order within the barangays. Owing to the similar

functions, that is, to keep peace and order, this Court deems that, like police officers, punong barangays have a duty as a peace officer that must be discharged 24 hours a day.

As a peace officer, a barangay captain may be called by his constituents, at any time, to assist in maintaining the peace and security of his barangay. As long as Aguillon is within his barangay, he cannot be separated from his duty as a punong barangay—to maintain peace and order. WHEREFORE, we DISMISS the Petition. We AFFIRM the Resolution of the Office of the Provincial Prosecutor dated 10 September 2008, as well as the Resolution and the Order of the Office of the Ombudsman dated 17 February 2009 and 23 July 2009, respectively.

SAMAR II ELECTRIC COOPERATIVE, INC. v. ANANIAS D. SELUDO, JR.
G.R. No. 173840, April 25, 2012, THIRD DIVISION (Peralta, J.)

Private respondent, Ananias D. Seludo, Jr., a member of the Board of Directors (BOD) of the petitioner Samar II Electric Cooperative, Inc. (SAMELCO II), an electric cooperative providing electric service to all members-consumers in all municipalities within the Second Congressional District of the Province of Samar filed an Urgent Petition in the Regional Trial Court (RTC) in Calbiga, Samar for prohibition against petitioner SAMELCO II for passing the Resolution No. 5 [Series] of 2005 which disallowed him to attend succeeding meetings of the BOD effective February 2005 until the end of his term as director.

The same resolution also disqualified him for one (1) term to run as a candidate for director in the upcoming district elections. In his petition, private respondent prayed for the nullification of Resolution No. 5, [Series] of 2005, contending that it was issued without any legal and factual bases. In their answer to the petition for prohibition, individual petitioners raised the affirmative defense of lack of jurisdiction of the RTC over the subject matter of the case. Individual petitioners assert that, since the matter involved an electric cooperative, SAMELCO II, primary jurisdiction is vested on the National Electrification Administration (NEA).

ISSUE:

Whether or not the NEA was granted the power to hear and decide cases involving the validity of board resolutions and whether or not NEA has primary jurisdiction over the question of the validity of the Board Resolution issued by SAMELCO II.

RULING:

Yes. Citing the provisions of P.D. Nos. 269 and 1645, the NEA is empowered to determine the validity of resolutions passed by electric cooperatives. Section 10, Chapter II of P.D. No. 269, as amended by Section 5 of P.D. No. 1645, provides that the NEA is empowered to issue orders, rules and regulations and *motu proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives and other borrower, or supervised or controlled entities. A clear proof of such expanded powers is that, unlike P.D. No. 269, P.D. No. 1645 expressly provides for the authority of the NEA to exercise supervision and control over electric cooperatives.

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 had done in the performance of his duties and to substitute the judgment of the former for that of the latter. Section 38 (1), Chapter 7, Book 4 of Executive Order No. 292, otherwise known as the Administrative Code of 1987 provides, thus:

Supervision and control shall include the authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs.

The NEA has primary jurisdiction over the question of the validity of the Board Resolution issued by SAMELCO II. A careful reading of the provisions of P.D. No. 1645 clearly show that, pursuant to its power of supervision and control, the NEA is granted the authority to conduct investigations and other similar actions as well as to issue orders, rules and regulations with respect to all matters affecting electric cooperatives. Certainly, the matter as to the validity of the resolution issued by the Board of Directors of SAMELCO II, which practically removed respondent from his position as a member of the Board of Directors and further disqualified him to run as such in the ensuing election, is a matter which affects the said electric cooperative and, thus, comes within the ambit of the powers of the NEA as expressed in Sections 5 and 7 of P.D. No. 1645. Based on the foregoing discussions, the necessary conclusion that can be arrived at is that, while the RTC has jurisdiction over the petition for prohibition filed by respondent, the NEA, in the exercise of its power of supervision and control, has primary jurisdiction to determine the issue of the validity of the subject resolution.

RE: REQUEST FOR COPY OF 2008 STATEMENT OF ASSETS, LIABILITIES AND NET WORTH [SALN] AND PERSONAL DATA SHEET OR CURRICULUM VITAE OF THE JUSTICES OF THE SUPREME COURT AND OFFICERS AND EMPLOYEES OF THE JUDICIARY
A.M. No. 09-8-6-SC, June 13, 2012, EN BANC (Mendoza, J.)

The Research Director and researcher-writer of Philippine Center for Investigative Journalism (PCIJ) sought copies of the Statement of Assets, Liabilities and Net Worth (SALN) of the SC Justices for the year 2008 for the purpose of updating their database of information on government officials. Meanwhile, several requests for copies of SALN and other personal documents of SC, CA and Sandiganbayan Justices were also filed. The requests were made for different purposes. Although no direct opposition to the disclosure of SALN and other personal documents is being expressed, it is the uniform position of the said magistrates and the various judges' associations that the disclosure must be made in accord with the guidelines set by the Court and under such circumstances that would not undermine the independence of the Judiciary.

ISSUE:

Whether the SALNs of the Justices have to be disclosed for being matters of public concern and interest.

RULING:

YES. Section 17, Article XI, has classified the information disclosed in the SALN as a matter of public concern and interest. The right to information goes hand-in-hand with the constitutional policies of full public disclosure and honesty in the public service. The public has the right to know the assets, liabilities, net worth and financial and business interests of public officials and employees including those of their spouses and of unmarried children 18 years of age living in their households. Like all constitutional guarantees, however, the right to information, with its companion right of access to official records, is not absolute.

While providing guaranty for that right, the Constitution also provides that the people's right. Jurisprudence has provided the following limitations to that right: (1) national security matters and intelligence information; (2) trade secrets and banking transactions; (3) criminal matters; and (4) other confidential information such as confidential or classified information officially known to public officers and employees by reason of their office and not made available to the public as well as diplomatic correspondence, closed door Cabinet meetings and executive sessions of either house of Congress, and the internal deliberations of the Supreme Court.

This could only mean that while no prohibition could stand against access to official records, such as the SALN, the same is undoubtedly subject to regulation.

PEOPLE v. ATIENZA
Gr No. 171671, June 18, 2012, Peralta, J.:

Respondents Aristeo E. Atienza, then Municipal Mayor of Puerto Galera, Oriental Mindoro, Engr. Rodrigo D. Manongsong, then Municipal Engineer of Puerto Galera and Crispin M. Egarque, a police officer stationed in Puerto Galera, were charged with violation of Section 3 (e) of RA 3019, or the Anti-Graft and Corrupt Practices Act. The Information alleged that the above-named accused conspired with each other to destroy, demolish, and dismantle the riprap/fence of the new Hondura Beach Resort owned by complainant Evora located at Hondura, Puerto Galera, Oriental Mindoro, causing undue injury to complainant. Upon arraignment, respondents pleaded not guilty to the crime charged against them. The prosecution presented its witnesses who gave testimonies pointing to the alleged acts of the accused herein. Mayor Atienza and Engr. Manongsong filed a Demurrer to Evidence (Motion to Acquit), anchored on the credibility of the witnesses for the prosecution which was granted by the Sandiganbayan on the ground that not all the elements of the crime charged were established by the prosecution, particularly the element of manifest partiality on the part of respondents. The Sandiganbayan held that the evidence adduced did not show that the respondents favored other persons who were similarly situated with the private complainant. Hence, this Petition for Review.

ISSUES:

1. Did the Court commit an error in denying the people due process when it resolved issues not raised by respondents in their demurrer to evidence, without affording the prosecution an opportunity to be heard thereon.
2. Has double jeopardy set in?

RULING:

NO. Respondents are charged with violation of Section 3 (e) of RA 3019, which has the following essential elements:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. 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.

In the case at bar, the Sandiganbayan granted the Demurrer to Evidence on the ground that the prosecution failed to establish the second element of violation of Section 3 (e) of RA 3019.

The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." In Uriarte v. People, this Court explained that Section 3 (e) of RA 3019 may be committed either by dolo, as when the accused acted with evident bad faith or manifest partiality, or by culpa, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral

obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

As aptly concluded by the Sandiganbayan in the assailed resolution, the second element of the crime as charged was not sufficiently established by the prosecution. Manifest partiality was not present in this case. The evidence adduced did not show that accused-movants favored other persons who were similarly situated with the private complainant.

Moreover, contrary to petitioner's contention, the prosecution was not denied due process. The prosecution participated in all the proceedings before the court a quo and has filed numerous pleadings and oppositions to the motions filed by respondent. In fact, the prosecution has already rested its case and submitted its evidence when the demurrer was filed. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interests in due course, there is no denial of procedural due process. What is repugnant to due process is the denial of the opportunity to be heard, which is not present here.

(2) Yes. The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent. All are attendant in the present case: (1) the Information filed before the Sandiganbayan in Criminal Case No. 26678 against respondents were sufficient in form and substance to sustain a conviction; (2) the Sandiganbayan had jurisdiction over Criminal Case No. 26678; (3) respondents were arraigned and entered their respective pleas of not guilty; and (4) the Sandiganbayan dismissed Criminal Case No. 26678 on a Demurrer to Evidence on the ground that not all the elements of the offense as charge exist in the case at bar, which amounts to an acquittal from which no appeal can be had. In criminal cases, the grant of demurrer is tantamount to an acquittal and the dismissal order may not be appealed because this would place the accused in double jeopardy. Although the dismissal order is not subject to appeal, it is still reviewable but only through certiorari under Rule 65 of the Rules of Court. For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham, thus, rendering the assailed judgment void. The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice. In the present case, no such circumstances exist to warrant a departure from the general rule and reverse the findings of the Sandiganbayan.

REPUBLIC OF THE PHILIPPINES v. KERRY LAO ONG
G.R. No. 175430 June 18, 2012, (DEL CASTILLO, J.)

Respondent Ong, then 38 years old, filed a Petition for Naturalization. Ong alleged in his petition that he has been a "businessman/business manager" since 1989, earning an average annual income of P150,000.00. When he testified, however, he said that he has been a businessman since he graduated from college in 1978. Moreover, Ong did not specify or describe the nature of his business.

As proof of his income, Ong presented four tax returns for the years 1994 to 1997. Based on these returns, Ongs gross annual income was P60,000.00 for 1994; P118,000.00 for 1995; P118,000.00 for 1996; and P128,000.00 for 1997. On November 23, 2001, the trial court granted Ongs petition.

The Republic, through the Solicitor General, appealed to the CA. The Republic faulted the trial court for granting Ong's petition despite his failure to prove that he possesses a known lucrative trade, profession or lawful occupation as required under Section 2, fourth paragraph of the Revised Naturalization Law.

The Republic posited that, contrary to the trial courts finding, respondent Ong did not prove his allegation that he is a businessman/business manager earning an average income of P150,000.00 since 1989. His income tax returns belie the value of his income. Moreover, he failed to present evidence on the nature of his profession or trade, which is the source of his income. Considering that he has four minor children (all attending exclusive private schools), he has declared no other property and/or bank deposits, and he has not declared owning a family home, his alleged income cannot be considered lucrative. Under the circumstances, the Republic maintained that respondent Ong is not qualified as he does not possess a definite and existing business or trade.

The appellate court dismissed the Republic's appeal. The appellate court denied the Republic's motion for reconsideration.

ISSUE:

Whether or not respondent Ong has proved that he has some known lucrative trade, profession or lawful occupation in accordance with Section 2, fourth paragraph of the Revised Naturalization Law?

RULING:

Court of Appeals decision is reversed and set aside.

The courts must always be mindful that naturalization proceedings are imbued with the highest public interest. Naturalization laws should be rigidly enforced and strictly construed in favor of the government and against the applicant. The burden of proof rests upon the applicant to show full and complete compliance with the requirements of law.

Based on jurisprudence, the qualification of "some known lucrative trade, profession, or lawful occupation" means "not only that the person having the employment gets enough for his ordinary necessities in life. It must be shown that the employment gives one an income such that there is an appreciable margin of his income over his expenses as to be able to provide for an adequate support in the event of unemployment, sickness, or disability to work and thus avoid ones becoming the object of charity or a public charge." His income should permit "him and the members of his family to live with

reasonable comfort, in accordance with the prevailing standard of living, and consistently with the demands of human dignity, at this stage of our civilization."

It has been held that in determining the existence of a lucrative income, the courts should consider only the applicant's income; his or her spouses income should not be included in the assessment. The spouses' additional income is immaterial "for under the law the petitioner should be the one to possess some known lucrative trade, profession or lawful occupation to qualify him to become a Filipino citizen." Lastly, the Court has consistently held that the applicant's qualifications must be determined as of the time of the filing of his petition.

A review of the decisions involving petitions for naturalization shows that the Court is not precluded from reviewing the factual existence of the applicant's qualifications. In fact, jurisprudence holds that the entire records of the naturalization case are open for consideration in an appeal to this Court. Indeed, "[a] naturalization proceeding is so infused with public interest that it has been differently categorized and given special treatment. x x x [U]nlike in ordinary judicial contest, the granting of a petition for naturalization does not preclude the reopening of that case and giving the government another opportunity to present new evidence. A decision or order granting citizenship will not even constitute res judicata to any matter or reason supporting a subsequent judgment cancelling the certification of naturalization already granted, on the ground that it had been illegally or fraudulently procured. For the same reason, issues even if not raised in the lower court may be entertained on appeal. As the matters brought to the attention of this Court x x x involve facts contained in the disputed decision of the lower court and admitted by the parties in their pleadings, the present proceeding may be considered adequate for the purpose of determining the correctness or incorrectness of said decision, in the light of the law and extant jurisprudence." In the case at bar, there is even no need to present new evidence. A careful review of the extant records suffices to hold that respondent Ong has not proven his possession of a "known lucrative trade, profession or lawful occupation" to qualify for naturalization.

Republic won the case.

EDGARDO NAVIA, RUBEN DIO, and ANDREW BUISING v. VIRGINIA PARDICO
G.R. No. 184467 June 19, 2012 (DEL CASTILLO, J.)

A vehicle of Asian Land Strategies Corporation (Asian Land) arrived at the house of Lolita M. Lapore. The arrival of the vehicle awakened Lolitas son, Enrique Lapore (Bong), and Benhur Pardico (Ben), who were then both staying in her house. When Lolita went out to investigate, she saw two uniformed guards disembarking from the vehicle. One of them immediately asked Lolita where they could find her son Bong. Before Lolita could answer, the guard saw Bong and told him that he and Ben should go with them to the security office of Asian Land because a complaint was lodged against them for theft of electric wires and lamps in the subdivision. Shortly thereafter, Bong, Lolita and Ben were in the office of the security department of Asian Land also located in Grand Royale Subdivision.

Exasperated with the mysterious disappearance of her husband, Virginia filed a Petition for Writ of Amparobefore the RTC of Malolos City. A Writ of Amparo was accordingly issued and served on the petitioners. The trial court issued the challenged Decision granting the petition. Petitioners filed a Motion for Reconsideration which was denied by the trial court.

Petitioners essentially assail the sufficiency of the amparo petition. They contend that the writ of amparo is available only in cases where the factual and legal bases of the violation or threatened violation of the aggrieved partys right to life, liberty and security are clear. Petitioners assert that in the case at bench, Virginia miserably failed to establish all these. First, the petition is wanting on its face as it failed to state with some degree of specificity the alleged unlawful act or omission of the petitioners constituting a violation of or a threat to Bens right to life, liberty and security. And second, it cannot be deduced from the evidence Virginia adduced that Ben is missing; or that petitioners had a hand in his alleged disappearance. On the other hand, the entries in the logbook which bear the signatures of Ben and Lolita are eloquent proof that petitioners released Ben on March 31, 2008 at around 10:30 p.m. Petitioners thus posit that the trial court erred in issuing the writ and in holding them responsible for Bens disappearance.

ISSUE:

Whether or not the issuance of A Writ of Amparo is proper?

RULING:

RTCs decision is reversed and set aside.

A.M. No. 07-9-12-SC or The Rule on the Writ of Amparo was promulgated to arrest the rampant extralegal killings and enforced disappearances in the country. Its purpose is to provide an expeditious and effective relief "to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity."

Article 6 of the International Covenant on Civil and Political Rights recognizes every human beings inherent right to life, while Article 9 thereof ordains that everyone has the right to liberty and security. The right to life must be protected by law while the right to liberty and security cannot be impaired except on grounds provided by and in accordance with law. This overarching command against deprivation of life, liberty and security without due process of law is also embodied in our fundamental law.

The budding jurisprudence on amparo blossomed in Razon, Jr. v. Tagitis when this Court defined enforced disappearances. The Court in that case applied the generally accepted principles of international law and adopted the International Convention for the Protection of All Persons from Enforced Disappearances definition of enforced disappearances, as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

From the statutory definition of enforced disappearance, thus, we can derive the following elements that constitute it:

(a) that there be an arrest, detention, abduction or any form of deprivation of liberty;

(b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;

(c) that it be followed by the State or political organizations refusal to acknowledge or give information on the fate or whereabouts of the person subject of the amparo petition; and,

(d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.

As thus dissected, it is now clear that for the protective writ of amparo to issue, allegation and proof that the persons subject thereof are missing are not enough. It must also be shown and proved by substantial evidence that the disappearance was carried out by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge the same or give information on the fate or whereabouts of said missing persons, with the intention of removing them from the protection of the law for a prolonged period of time. Simply put, the petitioner in an amparo case has the burden of proving by substantial evidence the indispensable element of government participation.

But lest it be overlooked, in an amparo petition, proof of disappearance alone is not enough. It is likewise essential to establish that such disappearance was carried out with the direct or indirect authorization, support or acquiescence of the government. This indispensable element of State participation is not present in this case. The petition does not contain any allegation of State complicity, and none of the evidence presented tend to show that the government or any of its agents orchestrated Bens disappearance. In fact, none of its agents, officials, or employees were impleaded or implicated in Virginia's amparo petition whether as responsible or accountable persons.51 Thus, in the absence of an allegation or proof that the government or its agents had a hand in Bens disappearance or that they failed to exercise extraordinary diligence in investigating his case, the Court will definitely not hold the government or its agents either as responsible or accountable persons.

We are aware that under Section 1 of A.M. No. 07-9-12-SC a writ of amparo may lie against a private individual or entity. But even if the person sought to be held accountable or responsible in an amparo petition is a private individual or entity, still, government involvement in the disappearance remains an indispensable element. Here, petitioners are mere security guards at Grand Royale Subdivision in Brgy. Lugam, Malolos City and their principal, the Asian Land, is a private entity. They do not work for the government and nothing has been presented that would link or connect them to some

covert police, military or governmental operation. As discussed above, to fall within the ambit of A.M. No. 07-9-12-SC in relation to RA No. 9851, the disappearance must be attended by some governmental involvement. This hallmark of State participation differentiates an enforced disappearance case from an ordinary case of a missing person.

RUSSEL ULYSSES I. NIEVES v. JOCELYN LB. BLANCO
G.R. No. 190422, 19 June 2012, EN BANC (Reyes, J.)

A reassignment from one provincial office to another provincial office within the same region is not considered as a "reassignment outside geographical location."

Russel Ulysses I. Nieves is a Trade and Industry Development Specialist of the Department of Trade and Industry (DTI). Nieves was formerly assigned to the DTI's office in Sorsogon but was reassigned by to DTI's provincial office in

Albay. A year after his reassignment to DTI-Albay, Nieves requested DTI Regional V Director Jocelyn Blanco for his reassignment back to DTI-Sorsogon but this was denied.

Nieves appealed his reassignment to the Civil Service Commission (CSC) asserting that under Section 6(a) of the CSC Omnibus Revised Rules on

Reassignment, he is a station-specific employee and is allowed only to be reassigned for a maximum period of one year. CSC however pointed out that Nieves' appointment is not station-specific but this does not mean that Nieves could be reassigned to DTI-Albay indefinitely. The CSC ruled that under the Revised Rules on Reassignment, a reassignment outside the geographical location, if without the consent of the employee concerned should not exceed the maximum period of one year.

ISSUE:

Whether or not the reassignment of Nieves is station-specific and subject to the one-year period limitation

RULING:

Under Section 6 of the Revised Rules on Reassignment, an appointment is considered station-specific when the particular office or station where the position is located is specifically indicated on the face of the appointment paper. The Revised Rules on Reassignment has clearly confined the coverage of the phrase "reassignment outside geographical location" to the following: (1) reassignment from one provincial office to another; (2) reassignment from the regional office to the central office; and (3) reassignment from the central office to the regional office. The said provision used the word "may" to emphasize that a "reassignment outside geographical location" is restricted only to either reassignment from one regional office to another regional office or a reassignment from the central office to a regional office and vice-versa. Nieves' appointment was only within the same regional office, specifically Region V which is from DTI-Sorsogon to DTI-Albay and is therefore not station-specific.

The language of the Revised Rules on Reassignment is plain and unambiguous. The reassignment of an employee with a station-specific place of work indicated in their respective appointments is allowed provided that it would not exceed a maximum period of one year. On the other hand, the reassignment of an employee whose appointment is not station-specific has no definite period unless otherwise revoked or recalled by the Head of the Agency, the CSC or a competent court.

Nieves' appointment is not station-specific which makes the period of his reassignment to DTI-Albay indefinite, unless otherwise revoked or recalled by the Head of the Agency, the CSC or a competent court. Since the reassignment of Nieves was within the same regional office, the one-year period limitation does not apply.

FRANCISCO T. DUQUE III, v. FLORENTINO VELOSO
G.R. No. 196201. June 19, 2012

The records show that the respondent, then District Supervisor of Quedan and Rural Credit Guarantee Corporation (Quedancor), Cagayan de Oro City, was administratively charged with three (3) counts of dishonesty in connection with his unauthorized withdrawals of money deposited by Juanito Quino (complainant), a client of Quedancor.

The complainant (Duque) applied for a restructuring of his loan with Quedancor and deposited the amount of P50,000.00 to Quedancor's cashier for his Manila account.

In three (3) separate occasions, the respondent (Veloso) , without notice and authority from the complainant and with the assistance of Quedancor's cashier, managed to withdraw the P50,000.00 deposit.

Upon the discovery of the withdrawals, the complainant demanded the return of the money and called the attention of the manager of Quedancor in Cagayan de Oro City, who issued to the respondent a memorandum requiring him to explain the withdrawals and to return the money.

Veloso, the respondent returned the money. The respondent admitted having received the P50,000.00 from Quedancor's cashier knowing that it was intended for the, Duque's, complainant's loan repayment.

Veloso, the respondent was charged by Quedancor with dishonesty, and was subsequently found guilty of the charges and dismissed from the service. The CSC affirmed the findings and conclusions of Quedancor on appeal.

Dissatisfied with the adverse rulings of Quedancor and the CSC, the respondent, Veloso elevated his case to the CA which adjudged him guilty of dishonesty, but modified the penalty of dismissal to one (1) year suspension from office without pay.

The CSC argues that the CA disregarded the applicable law and jurisprudence which penalize the offense of dishonesty with dismissal from the service. The CSC also argues that there are no mitigating circumstances to warrant a reduction of the penalty, for the following reasons:

1. The respondent's length of service aggravated his dishonesty since the respondent took advantage of his authority over a subordinate and disregarded his oath that a public office is a public trust.
2. The admission of guilt and the restitution by the respondent were made in 2003, while the misappropriation took place in 2001.
3. The respondent was charged with, and admitted having committed, dishonesty in three separate occasions.
4. Section 52(A)(1), Rule IV of the Uniform Rules imposes dismissal from the service for dishonesty, even for the first offense.

ISSUE:

The determination of the proper administrative penalty to be imposed on the respondent.

RULING:

Dismissal from the service is the prescribed penalty imposed by Section 52(A)(1), Rule IV of the Uniform Rules for the commission of dishonesty even as a first offense.

The aforesaid rule underscores the constitutional principle that public office is a public trust and only those who can live up to such exacting standard deserve the honor of continuing in public service.

In appreciating the presence of mitigating, aggravating or alternative circumstances to a given case, two constitutional principles come into play which the Court is tasked to balance.

The first is public accountability which requires the Court to consider the improvement of public service, and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity and competence are employed in the government service.

The second relates to social justice which gives the Court the discretionary leeway to lessen the harsh effects of the wrongdoing committed by an offender for equitable and humanitarian considerations.

A significant aspect which the CA failed to consider under the circumstances is the inapplicability to the present case of the Court's ruling in Vicente A. Miel v. Jesus A. Malindog

In the clearest of terms, the CA upheld that factual findings of the CSC. Thus, it is on the basis of these findings that we must now make our own independent appreciation of the circumstances cited by the respondent and appreciated by the CA as mitigating circumstances.

After a careful review of the records and jurisprudence, we disagree with the CA's conclusion that mitigating circumstances warrant the mitigation of the prescribed penalty imposed against the respondent.

First, we have repeatedly held that length of service can either be a mitigating or an aggravating circumstance depending on the facts of each case. While in most cases, length of service is considered in favor of the respondent, it is not considered where the offense committed is found to be serious or grave; or when the length of service helped the offender commit the infraction.

The factors against mitigation are present in this case. Under the circumstances, the administrative offense of dishonesty committed by the respondent was serious on account of the supervisory position he held at Quedancor and the nature of Quedancor's business. Quedancor deals with the administration, management and disposition of public funds which the respondent was entrusted to handle. The respondent's dishonest acts carried grave consequences because Quedancor is a credit and guarantee institution, and the public's perception of its credibility is critical.

In this case, the sanction of dismissal imposed on the respondent as a dishonest employee assures the public that: first, public funds belonging to Quedancor are used for their intended purpose; second, public funds are released to their proper recipients only after strict compliance with the standard

operating procedure of Quedancor is followed; and lastly, only employees who are competent, honest and trustworthy may manage, administer and handle public funds in Quedancor.

The respondent's dismissal from the service is a measure of self-protection and self-preservation by Quedancor of its reputation before its clients and the public.

We additionally note that length of service should also be taken against the respondent; the infraction he committed and the number of times he committed the violations demonstrate the highest degree of ingratitude and ungratefulness to an institution that has been the source of his livelihood for 18 years. His actions constitute no less than disloyalty and betrayal of the trust and confidence the institution reposed in him. They constitute ingratitude for the opportunities given to him over the years for career advancement.

Second, the circumstance that this is the respondent's first administrative offense should not benefit him.

By the express terms of Section 52, Rule IV of the Uniform Rules, the commission of an administrative offense classified as a serious offense (like dishonesty) is punishable by dismissal from the service even for the first time. In other words, the clear language of Section 52, Rule IV does not consider a first-time offender as a mitigating circumstance.

Finally, we reject as mitigating circumstances the respondent's admission of his culpability and the restitution of the amount. The Court, in Philippine Long Distance Telephone Co. v. NLRC, clearly recognized the limitations in invoking social justice: The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege.

Social justice cannot be permitted to be [the] refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.

Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. Greater damage comes with the public's perception of corruption and incompetence in the government. Thus, the Constitution stresses that a public office is a public trust and public officers 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. These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.

PHILCOMSAT HOLDINGS CORPORATION, et al. v. SENATE OF THE PHILIPPINES, et al.
G.R. No. 180308, 19 June 2012, EN BANC (Perlas-Bernabe, J.)

The conferral of the legislative power of inquiry upon any committee of Congress must carry with it all powers necessary and proper for its effective discharge.

Petitioners Enrique L. Locsin (Locsin) and Manuel D. Andal (Andal) are nominees of the government to the board of directors of Philippine Communications Satellite Corporation (PHILCOMSAT) and Philippine Overseas Telecommunications Corporation (POTC). Both Locsin and Andal are also directors and corporate officers of Philcomsat Holdings Corporations (PHC). By virtue of its interest in both PHILCOMSAT and POTC, the government has also substantial interest in PHC.

The government, through the Presidential Commission on Good Government (PCGG), received cash dividends from POTC. However, POTC suffered losses because of its huge operating expenses. In view of the losses and to protect the government's interest in POTC, PHILCOMSAT and PHC, Senator Miriam Defensor Santiago introduced Proposed Senate Resolution No. 455 directing the conduct of an inquiry, in aid of legislation, on the losses incurred by POTC, PHILCOMSAT and PHC and the mismanagement committed by their respective board of directors. PSR No. 455 was referred to Committee on Government Corporations and Public Enterprises (Senate Committee), which conducted hearings. Locsin and Andal were invited to attend these hearings as resource persons. The Senate Committee found an overwhelming mismanagement by the PCGG over POTC, PHILCOMSAT and PHC, and that PCGG was negligent in performing its mandate to preserve the government's interest in the said corporations.

Committee Report No. 312 recommended the privatization and transfer of the jurisdiction over the shares of the government in POTC and PHILCOMSAT to the Privatization Management Office (PMO) under the Department of Finance

(DOF) and the replacement of government nominees as directors of POTC and

PHILCOMSAT. Locsin and Andal filed a petition before the Supreme Court questioning the hasty approval of the Senate of the Committee Report No. 312.

ISSUE:

Whether or not Senate committed grave abuse of discretion amounting to lack or excess of jurisdiction in approving Committee Resolution No. 312

RULING:

The Senate Committees' power of inquiry relative to PSR No. 455 has been passed upon and upheld in the consolidated cases of In the Matter of the Petition for Habeas Corpus of Camilo L. Sabio which cited Article VI, Section 21 of the Constitution, as follows:

"The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected."

The Court explained that such conferral of the legislative power of inquiry upon any committee of Congress, in this case, the respondents Senate Committees, must carry with it all powers necessary and proper for its effective discharge. On this score, the Senate Committee cannot be said to have acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it submitted Committee Resolution No. 312, given its constitutional mandate to conduct legislative inquiries. Nor can the Senate Committee be faulted for doing so on the very same day that the assailed resolution was submitted. The wide latitude given to Congress with respect to these legislative inquiries has long been settled, otherwise, Article VI, Section 21 would be rendered pointless.

MAGDALO PARA SA PAGBABAGO v. COMMISSION ON ELECTIONS
G.R. No. 190793, 19 June 2012, EN BANC (Sereno, J.)

Public knowledge of facts pertaining to employment of violence and unlawful means to achieve one's goals is within the determination of the COMELEC, and such fact is sufficient to deny a party registration and accreditation.

Magdalo sa Pagbabago (MAGDALO) filed its Petition for Registration with the respondent Commission on Elections (COMELEC), seeking its registration and/or accreditation as a regional political party based in the National Capital Region (NCR) for participation in the 2010 National and Local Elections. It was represented by its Chairperson, Senator Antonio F. Trillanes IV (Trillanes), and its Secretary General, Francisco Ashley L. Acedillo (Acedillo).

Taking cognizance of the Oakwood incident, the COMELEC denied the Petition, claiming that MAGDALO's purpose was to employ violence and unlawful means to achieve their goals.

ISSUE:

Whether or not the COMELEC gravely abused its discretion when it denied the Petition for Registration filed by MAGDALO on the ground that the latter seeks to achieve its goals through violent or unlawful means

RULING:

MAGDALO contends that it was grave abuse of discretion for the COMELEC to have denied the Petition for Registration not on the basis of facts or evidence on record, but on mere speculation and conjectures. This argument cannot be given any merit. Under the Rules of Court, judicial notice may be taken of matters that are of "public knowledge, or are capable of unquestionable demonstration." Further, Executive Order No. 292, otherwise known as the Revised Administrative Code, specifically empowers administrative agencies to admit and give probative value to evidence commonly acceptable by reasonably prudent men, and to take notice of judicially cognizable facts.

That the Oakwood incident was widely known and extensively covered by the media made it a proper subject of judicial notice. Thus, the COMELEC did not commit grave abuse of discretion when it treated these facts as public knowledge, and took cognizance thereof without requiring the introduction and reception of evidence thereon.

The COMELEC did not commit grave abuse of discretion in finding that

MAGDALO uses violence or unlawful means to achieve its goals. Under Article IX-C, Section 2(5) of the 1987 Constitution, parties, organizations and coalitions that "seek to achieve their goals through violence or unlawful means" shall be denied registration. This disqualification is reiterated in Section 61 of B.P. 881, which provides that "no political party which seeks to achieve its goal through violence shall be entitled to accreditation."

In the present case, the Oakwood incident was one that was attended with violence. As publicly announced by the leaders of MAGDALO during the siege, their objectives were to express their

dissatisfaction with the administration of former President Arroyo and to divulge the alleged corruption in the military and the supposed sale of arms to enemies of the state. Ultimately, they wanted the

President, her cabinet members, and the top officials of the AFP and the PNP to resign. To achieve these goals, MAGDALO opted to seize a hotel occupied by civilians, march in the premises in full battle gear with ammunitions, and plant explosives in the building. These brash methods by which MAGDALO opted to ventilate the grievances of its members and withdraw its support from the government constituted clear acts of violence. The COMELEC did not, therefore, commit grave abuse of discretion when it treated the Oakwood standoff as a manifestation of the predilection of MAGDALO for resorting to violence or threats thereof in order to achieve its objectives.

The finding that MAGDALO seeks to achieve its goals through violence or unlawful means did not operate as a prejudgment of Criminal Case No. 03-2784. The power vested by Article IX-C, Section 2(5) of the Constitution and Section 61 of BP 881 in the COMELEC to register political parties and ascertain the eligibility of groups to participate in the elections is purely administrative in character. In exercising this authority, the COMELEC only has to assess whether the party or organization seeking registration or accreditation pursues its goals by employing acts considered as violent or unlawful, and not necessarily criminal in nature.

In finding that MAGDALO resorts to violence or unlawful acts to fulfill its organizational objectives, the COMELEC did not render an assessment as to whether the members of MAGDALO committed crimes, as COMELEC was not required to make that determination in the first place. Its evaluation was limited only to examining whether MAGDALO possessed all the necessary qualifications and none of disqualifications for registration as a political party. Accreditation as a political party is not a right but only a privilege given to groups who have qualified and met the requirements provided by law.

Noteworthily, however, in view of the subsequent amnesty granted in favor of the members of MAGDALO, the events that transpired during the Oakwood incident can no longer be interpreted as acts of violence in the context of the disqualifications from party registration.

PEOPLE v. MARAORAO
G.R. No. 174369 June 20, 2012

PO3 Manuel Vigilla testified they received reliable information at Police Station No. 8 of the Western Police District (WPD) that an undetermined amount of shabu will be delivered inside the Islamic Center in Quiapo in the early morning of the following day. On November 30, 2000, at around 7:00 a.m., he and PO2 Mamelito Abella, PO1 Joseph dela Cruz, and SPO1 Norman Gamit went to the Islamic Center. While walking along Rawatun Street in Quiapo, they saw two men talking to each other. Upon noticing them, one ran away. PO2 Abella and PO1 Dela Cruz chased the man but failed to apprehend him.

Meanwhile, the man who was left behind dropped a maroon bag on the pavement. He was about to run when PO3 Vigilla held him, while SPO1 Gamit picked up the maroon bag. The man was later identified as appellant Zafra Maraorao y Macabalang. The police examined the contents of the bag and saw a transparent plastic bag containing white crystalline substance, which they suspected to be shabu. At the police station, the investigator marked the plastic sachet "ZM-1" in the presence of the police officers.

The specimen was then forwarded to the PNP Crime Laboratory for laboratory chemical analysis. When examined, the 1,280.081 grams of white crystalline substance gave a positive result to the test for methylamphetamine hydrochloride, a regulated drug.

In his defense, appellant testified that on November 30, 2000, at around 7:00 a.m., he was going to the place of his uncle at the Islamic Center to get a letter from his mother. On his way, an unidentified man carrying a bag asked him about a house number which he did not know. He stopped walking to talk to the man, who placed his bag down and asked him again. When they turned around, they saw four men in civilian attire walking briskly. He only found out that they were police officers when they chased the man he was talking to. As the man ran away, the man dropped his bag. Appellant averred that he did not run because he was not aware of what was inside the bag.

Appellant further narrated that the police arrested him and asked who the owner of the bag was. He replied that it did not belong to him but to the man who ran away. He was brought to the police station in Sta. Mesa, Manila where he was referred to a desk sergeant. The desk sergeant asked him whether the bag was recovered from him, and he replied that he had no knowledge about that bag. He was not assisted by counsel during the investigation. He was also incarcerated in a small cell for about ten days before he was brought to Manila City Jail. At the Office of the City Prosecutor, he met his lawyer for the first time.

The trial court found him guilty beyond reasonable doubt of possession of 1,280.081 grams of methylamphetamine hydrochloride without license or prescription. On appeal, the Court of Appeals affirmed his conviction. Hence, this appeal.

ISSUE:

Whether or not Maraorao must be acquitted.

RULING:

YES. In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused. While a lone witness' testimony is sufficient to convict an accused in certain instances, the testimony must be clear, consistent, and credible—qualities we cannot ascribe to this case. Jurisprudence is consistent that for testimonial evidence to be believed, it must both come from a credible witness and be credible in itself—tested by human experience, observation, common knowledge and accepted conduct that has evolved through the years.

Clearly from the foregoing, the prosecution failed to establish by proof beyond reasonable doubt that appellant was indeed in possession of shabu, and that he freely and consciously possessed the same.

The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense. In this case, the prosecution's evidence failed to overcome the presumption of innocence, and thus, appellant is entitled to an acquittal.

Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.

CLAVITE-VIDAL v. AGUAM
G.R. No. 174369 June 20, 2012

In a letter Director IV Lourdes Clavite-Vidal (petitioner) of the CSC referred to the OCA for appropriate action the records of respondent Aguam. Director Vidal stated that a person purporting to be Aguam took the Career Service Subprofessional examination held on December 1, 1996 at Room No. 5, City Central School, Cagayan de Oro City, and got a grade of 80% in the examination. But upon verification of Aguam's eligibility, the CSC found that Aguam's picture and handwriting on her January 14, 1997 Personal Data Sheet differ from those on the Picture Seat Plan during the examination.

Mr. Justice Jose P. Perez, in his capacity as then Court Administrator, required Aguam to file her comment to Director Vidal's letter. In her comment dated January 19, 2010, Aguam said that she personally took and passed the aforesaid examination. Aguam claimed that her picture on the Picture Seat Plan is an old picture taken when she was still in high school and single, while her picture on the Personal Data Sheet was taken after giving birth to four children and suffering another miscarriage. Aguam also claimed that the signatures on the two documents are hers and were not made by two different persons. Her signature on the Picture Seat Plan was signed under pressure during the examination. On the other hand, she signed the Personal Data Sheet without pressure and having the leisure of time.

The case was then referred to Judge Rasad G. Balindong for investigation. After due proceedings, Judge Balindong submitted his investigation report finding Aguam guilty of serious dishonesty and recommending Aguam's dismissal from the service. Judge Balindong said that during the May 24, 2011 hearing, he approached Aguam to observe her physically and compare her face with the pictures on the Picture Seat Plan and Personal Data Sheet. Judge Balindong found that the picture on the Personal Data Sheet is that of Aguam while the one on the Picture Seat Plan is not hers. Judge Balindong also found that Aguam's specimen signatures submitted before him were different from Aguam's purported signature on the Picture Seat Plan. Judge Balindong concluded that the signature on the Picture Seat Plan and the one on the Personal Data Sheet were written by two different persons. Judge Balindong opined that Aguam's representation that she herself took the examination when in fact somebody else took it for her constitutes dishonesty.

In its own evaluation report, OCA concurred with the opinions of Judge Balindong, and thereby recommended that Aguam be dismissed from service as court stenographer for being guilty of the administrative offense of dishonesty.

ISSUE:

Whether or not Aguam is guilty of dishonesty.

RULING:

YES. The fact of impersonation was proven with certainty. Judge Balindong observed upon approaching Aguam during a hearing that she is not the person whose picture was attached to the Picture Seat Plan. This finding debunks Aguam's claim that she attached her high school picture on the Picture Seat Plan. The records also validate Judge Balindong's finding that Aguam's specimen signatures written on a piece of paper10 are starkly different from Aguam's supposed signature on the Picture Seat Plan.11 Then there is the discernible difference in Aguam's handwriting and signature on the Personal Data Sheet12 and the impersonator's handwriting and signature on the Picture Seat Plan. Taken

together, the evidence leads to no other conclusion than that somebody else took the examination using Aguam's identity.

For Aguam to assert that she herself took and passed the examination when in fact somebody else took it for her constitutes dishonesty. Every employee of the Judiciary should be an example of integrity, uprightness and honesty. Like any public servant, she must exhibit the highest sense of honesty and integrity not only in the performance of her official duties but also in her personal and private dealings with other people, to preserve the court's good name and standing. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice. Here, Aguam failed to meet these stringent standards set for a judicial employee and does not therefore deserve to remain with the Judiciary.

In Cruz v. Civil Service Commission, Civil Service Commission v. Sta. Ana, and Concerned Citizen v. Dominga Nawen Abad, the Court dismissed the employees found guilty of similar offenses. In Cruz, Zenaida Paitim masqueraded as Gilda Cruz and took the Civil Service examination in behalf of Cruz. The Court said that both Paitim and Cruz merited the penalty of dismissal. In Sta. Ana, somebody else took the Civil Service examination for Sta. Ana. The Court dismissed Sta. Ana for dishonesty. In Abad, the evidence disproved Abad's claim that she personally took the examination. The Court held that for Abad to assert that she herself took the examination when in fact somebody else took it for her constitutes dishonesty. Thus, Abad was for her offense. The Court found no reason to deviate from these consistent rulings. Under Section 52(A)(1) of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is a grave offense punishable by dismissal for the first offense. Under Section 58(a) of the same rules, the penalty of dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service. The OCA properly excluded forfeiture of accrued leave credits, pursuant to the Court's ruling in Sta. Ana and Abad. The Court also consistently held that the proper penalty to be imposed on employees found guilty of an offense of this nature is dismissal from the service.

ROMEO M. JALOSJOS, JR. v. COMELEC and DAN ERASMO, SR.
G.R. No. 192474 June 26, 2012 (ABAD,J.)

In May 2007 Romeo M. Jalosjos, Jr., petitioner in G.R. 192474, ran for Mayor of Tampilisan, Zamboanga del Norte, and won.While serving as Tampilisan Mayor, he bought a residential house and lot inBarangayVeteransVillage, Ipil, Zamboanga Sibugay and renovated and furnished the same.In September 2008 he began occupying the house.

After eight months or on May 6, 2009 Jalosjos applied with the Election Registration Board (ERB) of Ipil, Zamboanga Sibugay, for the transfer of his voters registration record to Precinct 0051F ofBarangayVeteransVillage.Dan Erasmo, Sr., respondent in G.R. 192474, opposed the application.After due proceedings, the ERB approved Jalosjos application and denied Erasmos opposition.

Undeterred, Erasmo filed a petition to exclude Jalosjos from the list of registered voter. After hearing, the MCTC rendered judgment excluding Jalosjos from the list of registered voters in question.The MCTC found that Jalosjos did not abandon his domicile in Tampilisan since he continued even then to serve as its Mayor.Jalosjos appealed his case to the Regional Trial Court (RTC) of Pagadian City which affirmed the MCTC Decision on September 11, 2009.

Jalosjos elevated the matter to the Court of Appeals (CA) through a petition for certiorari with an application for the issuance of a writ of preliminary injunction which was granted. On November 26, 2009 the CA granted his application and enjoined the courts below from enforcing their decisions, with the result that his name was reinstated in the Barangay Veterans Village voters list pending the resolution of the petition.

On November 28, 2009 Jalosjos filed his Certificate of Candidacy (COC) for the position of Representative of the Second District of Zamboanga Sibugay for the May 10, 2010 National Elections.This prompted Erasmo to file a petition to deny due course to or cancel his COC before the COMELEC,claiming that Jalosjos made material misrepresentations in that COC when he indicated in it that he resided in Ipil, Zamboanga Sibugay.But the Second Division of the COMELEC issued a joint resolution, dismissing Erasmos petitions for insufficiency in form and substance.

While Erasmos motion for reconsideration was pending before the COMELEC En Banc, the May 10, 2010 elections took place, resulting in Jalosjos winning the elections for Representative of the Second District of Zamboanga Sibugay.He was proclaimed winner on May 13, 2010.

Meantime, the CA rendered judgment in the voters exclusion case before it,holding that the lower courts erred in excluding Jalosjos from the voters list of Barangay Veterans Village in Ipil since he was qualified under the Constitution and Republic Act 8189 to vote in that place.Erasmo filed a petition for review of the CA decision before this Court in G.R. 193566.

Back to the COMELEC, on June 3, 2010 the En Banc granted Erasmos motion for reconsideration and declared Jalosjos ineligible to seek election as Representative of the Second District of Zamboanga Sibugay.It held that Jalosjos did not satisfy the residency requirement since, by continuing to hold the position of Mayor of Tampilisan, Zamboanga Del Norte, he should be deemed not to have transferred his residence from that place toBarangayVeteransVillagein Ipil, Zamboanga Sibugay.

Both Jalosjos and Erasmo came up to this Court on certiorari.

ISSUE:

Whether or not the Supreme Court has jurisdiction at this time to pass upon the question of Jalosjos residency qualification for running for the position of Representative of the Second District of Zamboanga Sibugay considering that he has been proclaimed winner in the election and has assumed the discharge of that office.

RULING:

While the Constitution vests in the COMELEC the power to decide all questions affecting elections, such power is not without limitation. It does not extend to contests relating to the election, returns, and qualifications of members of the House of Representatives and the Senate. The Constitution vests the resolution of these contests solely upon the appropriate Electoral Tribunal of the Senate or the House of Representatives.

The Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins. The Proclamation of a congressional candidate following the election divests COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET.

Here, when the COMELEC En Banc issued its order dated June 3, 2010, Jalosjos had already been proclaimed on May 13, 2010 as winner in the election. Thus, the COMELEC acted without jurisdiction when it still passed upon the issue of his qualification and declared him ineligible for the office of Representative of the Second District of Zamboanga Sibugay.

It is of course argued, as the COMELEC law department insisted, that the proclamation of Jalosjos was an exception to the above-stated rule. Since the COMELEC declared him ineligible to run for that office, necessarily, his proclamation was void following the ruling in Codilla, Sr. v. De Venecia. For Erasmo, the COMELEC still has jurisdiction to issue its June 3, 2010 order based on Section 6 of Republic Act 6646.Section 6 provides:

Section 6.Effects of Disqualification Case. Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Here, however, the fact is that on election day of 2010 the COMELEC En Banc had as yet to resolve Erasmos appeal from the Second Divisions dismissal of the disqualification case against Jalosjos. Thus, there then existed no final judgment deleting Jalosjos name from the list of candidates for the congressional seat he sought. The last standing official action in his case before election day was the ruling of the COMELEC's Second Division that allowed his name to stay on that list. Meantime, the COMELEC En Banc did not issue any order suspending his proclamation pending its final resolution of his case. With the fact of his proclamation and assumption of office, any issue regarding his qualification for the same, like his alleged lack of the required residence, was solely for the HRET to consider and decide.

Consequently, the Court holds in G.R. 192474 that the COMELEC En Banc exceeded its jurisdiction in declaring Jalosjos ineligible for the position of representative for the Second District of Zamboanga Sibugay, which he won in the elections, since it had ceased to have jurisdiction over his case. Necessarily, Erasmos petitions (G.R. 192704 and G.R. 193566) questioning the validity of the registration of Jalosjos as a voter and the COMELEC's failure to annul his proclamation also fail.The Court cannot usurp the power vested by the Constitution solely on the HRET.

LUIS K. LOKIN, JR. and TERESITA F. PLANAS v. COMELEC, et al.
G.R. No. 193808 June 26, 2012 (SERENO,J.)

Respondent CIBAC party-list is a multi-sectoral party registered under Republic Act No. (R.A.) 7941, otherwise known as the Party- List System Act. As stated in its constitution and bylaws, the platform of CIBAC is to fight graft and corruption and to promote ethical conduct in the countrys public service. Under the leadership of the National Council, its highest policymaking and governing body, the party participated in the 2001, 2004, and 2007 elections. On 20 November 2009, two different entities, both purporting to represent CIBAC, submitted to the COMELEC a Manifestation of Intent to Participate in the Party-List System of Representation in the May 10, 2010 Elections.

The first Manifestation was signed by a certain Pia B. Derla, who claimed to be the partys acting secretary-general. At 1:30 p.m. of the same day, another Manifestation6 was submitted by herein respondents Cinchona Cruz-Gonzales and Virginia Jose as the partys vice-president and secretary-general, respectively.

On 15 January 2010, the COMELEC issued Resolution No. 87447 giving due course to CIBACs Manifestation, WITHOUT PREJUDICE the determination which of the two factions of the registered party-list/coalitions/sectoral organizations which filed two (2) manifestations of intent to participate is the official representative of said party-list/coalitions/sectoral organizations.

On 19 January 2010, respondents, led by President and Chairperson Emmanuel Joel J. Villanueva, submitted the Certificate of Nomination of CIBAC to the COMELEC Law Department. The nomination was certified by Villanueva and Virginia S. Jose. On 26 March 2010, Pia Derla submitted a second Certificate of Nomination, which included petitioners Luis Lokin and Teresita Planas as party-list nominees. Derla affixed to the certification her signature as acting secretary-general of CIBAC.

Claiming that the nomination of petitioners Lokin, Jr. and Planas was unauthorized, respondents filed with the COMELEC a Petition to Expunge From The Records And/Or For Disqualification, seeking to nullify the Certificate filed by Derla. Respondents contended that Derla had misrepresented herself as acting secretary-general, when she was not even a member of CIBAC; that the Certificate of Nomination and other documents she submitted were unauthorized by the party and therefore invalid; and that it was Villanueva who was duly authorized to file the Certificate of Nomination on its behalf.

In the Resolution dated 5 July 2010, the COMELEC First Division granted the Petition, ordered the Certificate filed by Derla to be expunged from the records, and declared respondents faction as the true nominees of CIBAC. Upon Motion for Reconsideration separately filed by the adverse parties, the COMELEC en banc affirmed the Divisions findings.

Petitioners now seek recourse with this Court in accordance with Rules 64 and 65 of the Rules of Court.

ISSUES:

1. Whether the authority of Secretary General Virginia Jose to file the party's Certificate of Nomination is an intra-corporate matter, exclusively cognizable by special commercial courts, and over which the COMELEC has no jurisdiction; and
2. Whether the COMELEC erred in granting the Petition for Disqualification and recognizing respondents as the properly authorized nominees of CIBAC party-list.

RULING:

In the 2010 case Atienza v. Commission on Elections, it was expressly settled that the COMELEC possessed the authority to resolve intra-party disputes as a necessary tributary of its constitutionally mandated power to enforce election laws and register political parties. The Court therein cited Kalaw v. Commission on Elections and Palmares v. Commission on Elections, which uniformly upheld the COMELECs jurisdiction over intra-party disputes:

The COMELECs jurisdiction over intra-party leadership disputes has already been settled by the Court. The Court ruled in Kalaw v. Commission on Elections that the COMELECs powers and functions under Section 2, Article IX-C of the Constitution, include the ascertainment of the identity of the political party and its legitimate officers responsible for its acts. The Court also declared in another case that the COMELECs power to register political parties necessarily involved the determination of the persons who must act on its behalf. Thus, the COMELEC may resolve an intra-party leadership dispute, in a proper case brought before it, as an incident of its power to register political parties.

Furthermore, matters regarding the nomination of party-list representatives, as well as their individual qualifications, are outlined in the Party-List System Law. Sections 8 and 9 thereof state:

Sec. 8.Nomination of Party-List Representatives. Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned.

Sec. 9. Qualifications of Party-List Nominees. No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election, able to read and write, a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.

By virtue of the aforesaid mandate of the Party-List Law vesting the COMELEC with jurisdiction over the nomination of party-list representatives and prescribing the qualifications of each nominee, the COMELEC promulgated its Rules on Disqualification Cases Against Nominees of Party-List Groups/ Organizations Participating in the 10 May 2010 Automated National and Local Elections. Adopting the same qualifications of party-list nominees listed above, Section 6 of these Rules also required that:

The party-list group and the nominees must submit documentary evidence in consonance with the Constitution, R.A. 7941 and other laws to duly prove that the nominees truly belong to the

marginalized and underrepresented sector/s, the sectoral party, organization, political party or coalition they seek to represent, which may include but not limited to the following:

a. Track record of the party-list group/organization showing active participation of the nominee/s in the undertakings of the party-list group/organization for the advancement of the marginalized and underrepresented sector/s, the sectoral party, organization, political party or coalition they seek to represent;
b. Proofs that the nominee/s truly adheres to the advocacies of the party-list group/organizations (prior declarations, speeches, written articles, and such other positive actions on the part of the nominee/sshowing his/her adherence to the advocacies of the party-list group/organizations);
c. Certification that the nominee/s is/are a bona fide member of the party-list group/ organization for at least ninety (90) days prior to the election; and
d. In case of a party-list group/organization seeking representation of the marginalized and underrepresented sector/s, proof that the nominee/s is not only an advocate of the party-list/organization but is/are also a bona fide member/s of said marginalized and underrepresented sector.

The Law Department shall require party-list group and nominees to submit the foregoing documentary evidence if not complied with prior to the effectivity of this resolution not later than three (3) days from the last day of filing of the list of nominees.

Contrary to petitioners stance, no grave abuse of discretion is attributable to the COMELEC First Division and the COMELEC en banc.

The tribunal correctly found that Pia Derlas alleged authority as acting secretary-general was an unsubstantiated allegation devoid of any supporting evidence. Petitioners did not submit any documentary evidence that Derla was a member of CIBAC, let alone the representative authorized by the party to submit its Certificate of Nomination.

WHEREFORE, finding no grave abuse of discretion on the part of the COMELEC in issuing the assailed Resolutions, the instant Petition is DISMISSED. This Court AFFIRMS the judgment of the COMELEC expunging from its records the Certificate of Nomination filed on 26 March 2010 by Pia B. Derla.

ARNOLD VICENCIO v. HON. HEYNALOO A. VILLAR, et al.
G.R. No. 182069, 3 July 2012, EN BANC (Sereno, J.)

The mandate of the Commission on Audit is to observe the policy that government funds and property should be fully protected and conserved; and that irregular, unnecessary, excessive or extravagant expenditures or uses of such funds and property should be prevented.

The City Council or the Sangguniang Panglungsod ng Malabon (SPM), presided by Hon. Benjamin Galauran, then acting Vice-Mayor, adopted and approved 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."

Arnold Vicencio was elected City Vice-Mayor of Malabon. By virtue of this office, he also became the Presiding Officer of the SPM and, at the same time, the head of the Sanggunian Secretariat. Vicencio, representing the City Government of Malabon City, entered into Contracts for Consultancy Services. After the signing of their respective contracts, the three consultants rendered consultancy services to the SPM. Thereafter, the three consultants were correspondingly paid for their services pursuant to the contracts therefor. However, an Audit Observation Memorandum (AOM) was issued disallowing the amount for being an improper disbursement. Aggrieved by the disallowance, Vicencio appealed it to the Adjudication and Settlement Board (ASB) of the Commission on Audit (COA) which subsequently denied it.

ISSUE:

Whether or not the Commission on Audit committed serious errors and grave abuse of discretion amounting to lack of or excess of jurisdiction when it affirmed ASB's decision relative to the disallowance of disbursements concerning the services rendered by hired consultants for the Sangguniang Panlungsod ng Malabon

RULING:

Under Section 456 of R.A. 7160, or the Local Government Code, 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.

The COA's assailed Decision was made in faithful compliance with its mandate and in judicious exercise of its general audit power as conferred on it by the Constitution. The COA was merely fulfilling its mandate in observing the policy that government funds and property should be fully protected and

conserved; and that irregular, unnecessary, excessive or extravagant expenditures or uses of such funds and property should be prevented. Thus, no grave abuse of discretion may be imputed to the COA.

JAMAR KULAYAN, et al. v. GOV. ABDUSAKUR TAN, et al.
G.R. No. 187298, 03 July 2012, EN BANC (Sereno, J.)

The calling-out powers contemplated under the Constitution is exclusive to the President.

An exercise by another official, even if he is the local chief executive, is ultra vires, and may not be justified by the invocation of Section 465 of the Local Government Code.

Three members from the International Committee of the Red Cross (ICRC) were kidnapped in the vicinity of the Provincial Capitol in Patikul, Sulu. Andres Notter, Eugenio Vagni, and Marie Jean Lacaba, were purportedly inspecting a water sanitation project for the Sulu Provincial Jail when they were seized by three armed men who were later confirmed to be members of the Abu Sayyaf

Group (ASG). A Local Crisis Committee, later renamed Sulu Crisis Committee (Committee) was then formed to investigate the kidnapping incident. The Committee convened under the leadership of respondent Abdusakur Mahail Tan, the Provincial Governor of Sulu.

Governor Tan issued Proclamation No. 1, Series of 2009, declaring a state of emergency in the province of Sulu. The Proclamation cited the kidnapping incident as a ground for the said declaration, describing it as a terrorist act pursuant to the Human Security Act (R.A. 9372). It also invoked Section 465 of the Local Government Code of 1991 (R.A. 7160), which bestows on the Provincial Governor the power to carry out emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence. In the Proclamation, Tan called upon the PNP and the Civilian Emergency Force (CEF) to set up checkpoints and chokepoints, conduct general search and seizures including arrests, and other actions necessary to ensure public safety.

Petitioners, Jamar Kulayan, et al. claimed that Proclamation No. 1-09 was issued ultra vires, and thus null and void, for violating Sections 1 and 18, Article VII of the Constitution, which grants the President sole authority to exercise emergency powers and calling-out powers as the chief executive of the Republic and commander-in-chief of the armed forces.

ISSUE:

Whether or not a governor can exercise the calling-out powers of a President

RULING:

It has already been established that there is one repository of executive powers, and that is the President of the Republic. This means that when Section 1, Article VII of the Constitution speaks of executive power, it is granted to the President and no one else. Corollarily, it is only the President, as Executive, who is authorized to exercise emergency powers as provided under Section 23, Article VI, of the Constitution, as well as what became known as the calling-out powers under Section 7, Article VII thereof.

While the President is still a civilian, Article II, Section 3 of the Constitution mandates that civilian authority is, at all times, supreme over the military, making the civilian president the nation's supreme military leader. The net effect of Article II, Section 3, when read with Article VII, Section 18, is that a civilian President is the ceremonial, legal and administrative head of the armed forces. The

Constitution does not require that the President must be possessed of military training and talents, but as Commander-in-Chief, he has the power to direct military operations and to determine military strategy. Normally, he would be expected to delegate the actual command of the armed forces to military experts; but the ultimate power is his.

Given the foregoing, Governor Tan is not endowed with the power to call upon the armed forces at his own bidding. In issuing the assailed proclamation, Governor Tan exceeded his authority when he declared a state of emergency and called upon the Armed Forces, the police, and his own Civilian Emergency Force. The calling-out powers contemplated under the Constitution is exclusive to the President. An exercise by another official, even if he is the local chief executive, is ultra vires, and may not be justified by the invocation of Section 465 of the Local Government Code.

NAPOCOR v. ILETO
G.R. No. 169957 & 171558, July 11, 2012, Second Division (Brion, J.)

On October 7, 1997, the National Power Corporation (NPC) filed a complaint, which was subsequently amended, seeking to expropriate certain parcels of land in Bulacan, in connection with its Northwestern Luzon Transmission Line project. As a consequence, the Court hereby allows the National Power Corporation to remain in possession of the aforementioned areas which it had entered on December 16, 1997 and further orders it to pay the respective owners thereof the following just compensation, with legal interest from the taking of possession (Sec. 10, Rule 67 of [the] 1997 Rules of Civil Procedure), and after deducting the sums due the Government for unpaid real estate taxes and other charges.

ISSUE: Whether or not the trial court erred in fixing the amount of just compensation purportedly for the acquisition of the property despite the fact that the NPC acquired only an aerial easement of right of way over the agricultural lands of respondents

RULING:

The determination of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government. We already established in Export Processing Zone Authority v. Dulay, 149 SCRA 305 (1987), that any valuation for just compensation laid down in the statutes may serve only as guiding principle or one of the factors in determining just compensation, but it may not substitute the courts' own judgment as to what amount should be awarded and how to arrive at such amount. We said: The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations[,] but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

FRANCISCO I. CHAVEZ v. JUDICIAL and BAR COUNCIL, SEN. FRANCIS JOSEPH G. ESCUDERO and REP. NIEL C. TUPAZ, JR.
G.R. No. 202242, July 17, 2012, EN BANC (Mendoza, J.)

In 1994, instead of having only seven members, an eighth member was added to the JBC as two representatives from Congress began sitting in the JBC – one from the House of Representatives and one from the Senate, with each having one-half (1/2) of a vote. Then, the JBC En Banc, in separate meetings held in 2000 and 2001, decided to allow the representatives from the Senate and the House of Representatives one full vote each. At present, Senator Francis Joseph G. Escudero and Congressman Niel C. Tupas, Jr. (respondents) simultaneously sit in the JBC as representatives of the legislature. It is this practice that petitioner has questioned in this petition. Respondents argued that the crux of the controversy is the phrase "a representative of Congress." It is their theory that the two houses, the Senate and the House of Representatives, are permanent and mandatory components of "Congress," such that the absence of either divests the term of its substantive meaning as expressed under the Constitution. Bicameralism, as the system of choice by the Framers, requires that both houses exercise their respective powers in the performance of its mandated duty which is to legislate. Thus, when Section 8(1), Article VIII of the Constitution speaks of "a representative from Congress," it should mean one representative each from both Houses which comprise the entire Congress. Respondents further argue that petitioner has no "real interest" in questioning the constitutionality of the JBC's current composition. The respondents also question petitioner's belated filing of the petition.

ISSUES:

1. Whether or not the conditions sine qua non for the exercise of the power of judicial review have been met in this case; and
2. Whether or not the current practice of the JBC to perform its functions with eight (8) members, two (2) of whom are members of Congress, runs counter to the letter and spirit of the 1987 Constitution.

RULING:

1. Yes. The Courts' power of judicial review is subject to several limitations, namely: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (c) the question of constitutionality must be raised at the earliest possible opportunity; and (d) the issue of constitutionality must be the very lis mota of the case. Generally, a party will be allowed to litigate only when these conditions sine qua non are present, especially when the constitutionality of an act by a co-equal branch of government is put in issue.

The Court disagrees with the respondents' contention that petitioner lost his standing to sue because he is not an official nominee for the post of Chief Justice. While it is true that a "personal stake" on the case is imperative to have locus standi, this is not to say that only official nominees for the post of Chief Justice can come to the Court and question the JBC composition for being unconstitutional. The JBC likewise screens and nominates other members of the Judiciary. Albeit heavily publicized in this regard, the JBC's duty is not at all limited to the nominations for the highest magistrate in the land. A vast number of aspirants to judicial posts all over the country may be affected by the Court's ruling. More importantly, the legality of the very process of nominations to the positions in the Judiciary is the nucleus of the controversy. The claim that the composition of the JBC is illegal and unconstitutional is

an object of concern, not just for a nominee to a judicial post, but for all citizens who have the right to seek judicial intervention for rectification of legal blunders.

2. Yes. The word "Congress" used in Article VIII, Section 8(1) of the Constitution is used in its generic sense. No particular allusion whatsoever is made on whether the Senate or the House of Representatives is being referred to, but that, in either case, only a singular representative may be allowed to sit in the JBC. The seven-member composition of the JBC serves a practical purpose, that is, to provide a solution should there be a stalemate in voting.

It is evident that the definition of "Congress" as a bicameral body refers to its primary function in government – to legislate. In the passage of laws, the Constitution is explicit in the distinction of the role of each house in the process. The same holds true in Congress' non-legislative powers. An inter-play between the two houses is necessary in the realization of these powers causing a vivid dichotomy that the Court cannot simply discount. This, however, cannot be said in the case of JBC representation because no liaison between the two houses exists in the workings of the JBC. Hence, the term "Congress" must be taken to mean the entire legislative department. The Constitution mandates that the JBC be composed of seven (7) members only.

Notwithstanding its finding of unconstitutionality in the current composition of the JBC, all its prior official actions are nonetheless valid. Under the doctrine of operative facts, actions previous to the declaration of unconstitutionality are legally recognized. They are not nullified.

AQUILINO Q. PIMENTEL, JR., et al. v. PAQUITO N. OCHOA, et al.
GR 195770, July 27, 2012, EN BANC (Perlas-Bernabe, J.)

Petitioners filed Petition for Certiorari and Prohibition:

Questioning the constitutionality of RA 10147 (2011 Gen. Appropriations Act) provision allocating P21 Billion for the Conditional Cash Transfer Program (CCTP).

Enjoining Respondents from implementing CCTP on the ground that it amounts to a "recentralization" of government functions that have already been devolved from the national government to the LGUs.

In 2007, DSWD implemented a poverty reduction strategy dubbed "Ahon Pamilyang Pilipino".

In 2008, DSWD issued A.O.16 (s. 2008) setting the implementing guidelines for the project, renamed as "Pantawid Pamilyang Pilipino Program (4Ps)" also referred to as CCTP.

CCTP "provides cash grants to extreme poor households to allow the members of the families to meet certain human development goals." Eligible households selected from priority target areas are granted health and education benefits for a total annual subsidy of P15k.

AO 16 also institutionalized a coordinated inter-agency network among DepEd, DOH, DILG, the National Anti-Poverty Commission (NAPC) and LGUs. DSWD as lead implementing agency "oversees and coordinates the implementation, monitoring, and evaluation of the program" while the LGU is responsible for the availability of health and education supply, and providing technical assistance for the Program implementation, among others.

DSWD executed MOAs with each participating LGUs to outline the obligation of both parties during the 5-year implementation period.

Congress then provided funding for the project as follows: P298K in 2008, P5 Billion in 2009, P10 Billion in 2010, and P21 Billion in 2011.

ISSUE:

Whether the CCTP budget allocation under the dswd violates Art. II, Sec. 25 & Art. X, Sec. 3 of the 1987 Constitution in relation to Sec. 17 of the Local Government Code of 1991 by providing for the recentralization of the national government in the delivery of basic services already devolved to the LGUs

RULING:

No. Petition is dismissed.

Petitioners: The manner by which CCTP is implemented is questionable (i.e., primarily through a national agency - DSWD, instead of LGU).

It is the LGUs' responsibility to deliver social welfare, agriculture, and health care services.

Giving DSWD full control over the identification of beneficiaries and the manner by which services are to be delivered or conditionalities are to be complied with would have enhanced its delivery of basic services. This results in the "recentralization" of basic government functions", which is contrary to the precepts of local autonomy and the avowed policy of decentralization.

Court: Petitioners have failed to discharge the burden of proving the invalidity of the provisions under the GAA of 2011.

The Constitution declares it a policy of the State to ensure the autonomy of local governments (Sec 3, Sec 14 Art 10 1987 Constitution):

Section 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 xxx

Section 14. The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region.

To fully secure to the LGUs the genuine and meaningful autonomy that would develop them into self-reliant communities, Section 17 LGC vested upon the LGUs the duties and functions pertaining to the delivery of basic services and facilities, as follows:

SECTION 17.Basic Services and Facilities. – (a) Local government units shall xxx discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. Local government units shall likewise xxx discharge such other functions and responsibilities as are necessary to xxx provision of the basic services and facilities enumerated herein.

(b) Such basic services and facilities include, but are not limited to, x x x.

However, par (c) of Sec 17 provides a categorical exception of cases involving nationally-funded projects, facilities, programs and services, thus:

(c) Notwithstanding the provisions of subsection (b) hereof, public works and infrastructure projects and other facilities, programs and services funded by the National Government under the annual General Appropriations Act, other special laws, pertinent executive orders, and those wholly or partially funded from foreign sources, are not covered under this Section, except in those cases where the local government unit concerned is duly designated as the implementing agency for such projects, facilities, programs and services.

This express reservation of power by the national government means that, unless an LGU is particularly designated as the implementing agency, it has no power over a program for which funding has been provided by the national government under the annual general appropriations act, even if the program involves the delivery of basic services within the jurisdiction of the LGU.

Ganzon v. Court of Appeals - while it is through a system of decentralization that the State shall promote a more responsive and accountable local government structure, the concept of local autonomy does not imply the conversion of local government units into "mini - states." With local autonomy, the Constitution did nothing more than "to break up the monopoly of the national government over the affairs of the local government" and, thus, did not intend to sever "the relation of partnership and interdependence between the central administration and local government units."

Pimentel v. Aguirre - Defined the extent of the local government's autonomy in terms of its partnership with the national government in the pursuit of common national goals. Thus:

Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress.

Autonomy is either decentralization of administration or decentralization of power.

Decentralization of administration - when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and make local governments 'more responsive and accountable' and 'ensure their fullest development as self-reliant communities.' The President exercises 'general supervision' over them, but only to ensure that local affairs are administered according to law.' He has no control over their acts in the sense that he can substitute their judgments with his own.

Decentralization of power - involves an abdication of political power in favor of LGUs declared to be autonomous. The autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. This amounts to 'self-immolation,' since the autonomous government becomes accountable not to the central authorities but to its constituency.

It is thus clear that the LGC does not imply a complete relinquishment of central government powers on the matter of providing basic facilities and services. The national government is not precluded from taking a direct hand in the formulation and implementation of national development programs especially where it is implemented locally in coordination with the LGUs concerned.

OFFICE OF ADMINISTRATIVE SERVICES- OFFICE OF THE COURT ADMINISTRATOR v. JUDGE IGNACIO B. MACARINE
A.M. No.MTJ-10-1770, 18 July 2012, SECOND DIVISION (Brion, J.)

The constitutional right to travel is not absolute since the OCA may regulate the travels of Judges and personnel to avoid disruption in the administration of justice.

Office of the Court Administrator (OCA) issued the Circular No. 49-

2003 requiring all foreign travels of judges and court personnel to be with prior permission from the Court. Moreover, a travel authority must first be secured from the OCA. Accordingly, Judges must submit the complete requirements to the OCA at least two weeks before the intended time of travel.

Judge Ignacio Macarine requested for authority to travel to Hongkong with his family. Said travel was to be charged to Judge Macarine's annual forced leave. However, Judge Macarine did not submit the complete requirements so his request for authority to travel remained unacted upon. Judge Macarine proceeded with his travel abroad without the required travel authority. Judge Macarine was informed by the OCA that his leave of absence had been disapproved and his travel considered unauthorized by the Court. Accordingly, the absences of Judge Macarine shall not be deducted from his leave credits but from his salary. The OCA found Judge Macarine guilty of violation of OCA Circular No. 49-2003 for traveling out of the country without filing the necessary application for leave and without first securing a travel authority from the Court.

ISSUE:

Whether or not Judge Macarine is guilty of violation of OCA Circular No. 49-2003

RULING:

The right to travel is guaranteed by the Constitution. However, the exercise of such right is not absolute. Section 6, Article III of the 1987 Constitution allows restrictions on one's right to travel provided that such restriction is in the interest of national security, public safety or public health as may be provided by law. This, however, should by no means be construed as limiting the Court's inherent power of administrative supervision over lower courts.

OCA Circular No. 49-2003 does not restrict but merely regulates, by providing guidelines to be complied by judges and court personnel, before they can go on leave to travel abroad. To "restrict" is to restrain or prohibit a person from doing something; to "regulate" is to govern or direct according to rule. To ensure management of court dockets and to avoid disruption in the administration of justice, OCA Circular No. 49-2003 requires a judge who wishes to travel abroad to submit, together with his application for leave of absence duly recommended for approval by his Executive Judge, a certification from the Statistics Division, Court Management Office of the OCA. The said certification shall state the condition of his docket based on his Certificate of Service for the month immediately preceding the date of his intended travel, that he has decided and resolved all cases or incidents within three (3) months from date of submission, pursuant to Section 15(1) and (2), Article VIII of the 1987 Constitution.

Thus, for traveling abroad without having been officially allowed by the Court, Justice Macarine is guilty of violation of OCA Circular No. 49-2003.

ABRAHAM RIMANDO v. NAGUILAN EMISSION TESTING CENTER, INC., etc., et al.
G.R. No. 198860, July 23, 2012, Second Division (Reyes, J.)

Naguillian Emission Testing Center Inc., filed a petition for mandamus and damages against Abraham Rimando (petitioner), the municipal mayor of Naguilian, La Union. In its complaint, the company alleged that from 2005 to 2007 its business is located on a land formerly belonging to the national government which was later certified as an alienable and disposable land of the public domain by the DENR. On January 18, 2008, it applied for a renewal of its business permit and paid the corresponding fees, but the petitioner refused to issue a business permit, until such time that the company executes a contract of lease with the municipality; the respondent is amenable to signing the contract but with some revisions, which the petitioner did not accept; no common ground was reached among the parties, hence the company filed the petition. The RTC ruled in favour of the petitioner; ratiocinating that: (a) the Municipality of Naguiian is the declared owner of the subject parcel of land by virtue of Tax Declaration No. 002-01197; (b) under Section 6A.01 of the Revenue Code of the Municipality of Naguilian, the municipality has the right to require the petitioner to sign a contract of lease because its business operation is being conducted on a real property owned by the municipality; and (c) a mayor's duty to issue business permits is discretionary in nature which may not be enforced by a mandamus writ.

On appeal, the CA proceeded to discuss the merits of the case even though the petition itself is dismissible on the ground of mootness. It held that the factual milieu of the case justifies issuance of the writ; the tax declaration in the name of the municipality was insufficient basis to require the execution of a contract of lease as a condition sine qua non for the renewal of a business permit. The CA further observed that Sangguniang Bayan Resolution No. 2007-81, upon which the municipality anchored its imposition of rental fees, was void because it failed to comply with the requirements of the Local Government Code and its Implementing Rules and Regulations. It held the mayor not liable for damages since he acted in the performance of his duties which are legally protected by the presumption of regularity in the performance of official duty; the case against the mayor also was moot and academic since his term as mayor expired. Nevertheless, the CA reversed and set aside the RTC decision.

The petitioner elevated the matter to the Supreme Court.

ISSUE:

1. Whether or not the issue had become moot and academic;
2. Whether or not the issuance of a business permit maybe compelled thru a petition for mandamus.

RULING:

We agree with the CA that the petition for mandamus has already become moot and academic owing to the expiration of the period intended to be covered by the business permit.

An issue or a case becomes moot and academic when it ceases to present a justiciable controversy so that a determination thereof would be without practical use and value[1] or in the nature of things, cannot be enforced.[2] In such cases, there is no actual substantial relief to which the applicant would be entitled to and which would be negated by the dismissal of the petition.[3] As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.[4]

The objective of the petition for mandamus to compel the petitioner to grant a business permit in favor of respondent corporation for the period 2008 to 2009 has already been superseded by the passage of time and the expiration of the petitioner's term as mayor. Verily then, the issue as to whether or not the petitioner, in his capacity as mayor, may be compelled by a writ of mandamus to release the respondent's business permit ceased to present a justiciable controversy such that any ruling thereon would serve no practical value. Should the writ be issued, the petitioner can no longer abide thereby; also, the effectivity date of the business permit no longer subsists.

While the CA is not precluded from proceeding to resolve the otherwise moot appeal of the respondent, we find that the decretal portion of its decision was erroneously couched.

The CA's conclusions on the issue of ownership over the subject land and the invalidity of Sangguniang Bayan Resolution No. 2007-81, aside from being unsubstantiated by convincing evidence, can no longer be practically utilized in favor of the petitioner. Thus, the overriding and decisive factor in the final disposition of the appeal was its mootness and the CA should have dismissed the same along with the petition for mandamus that spawned it.

More importantly, a mayor cannot be compelled by mandamus to issue a business permit since the exercise of the same is a delegated police power hence, discretionary in nature. This was the pronouncement of this Court in Roble Arrastre, Inc. v. Hon. Villaflor5 where a determination was made on the nature of the power of a mayor to grant business permits under the Local Government Code6, viz:

Central to the resolution of the case at bar is a reading of Section 444(b)(3)(iv) of the Local Government Code of 1991, which provides, thus:

SEC. 444. The Chief Executive: Powers, Duties, Functions and Compensation.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall: x x x x

3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agroindustrial development and country-wide growth and progress, and relative thereto, shall:

x x x x

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance.

As Section 444(b)(3)(iv) so states, the power of the municipal mayor to issue licenses is pursuant to Section 16 of the Local Government Code of 1991, which declares:

SEC. 16. General Welfare. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support,

among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

Section 16, known as the general welfare clause, encapsulates the delegated police power to local governments. Local government units exercise police power through their respective legislative bodies. Evidently, the Local Government Code of 1991 is unequivocal that the municipal mayor has the power to issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance. x x x

x x x x

Section 444(b)(3)(iv) of the Local Government Code of 1991, whereby the power of the respondent mayor to issue license and permits is circumscribed, is a manifestation of the delegated police power of a municipal corporation. Necessarily, the exercise thereof cannot be deemed ministerial. As to the question of whether the power is validly exercised, the matter is within the province of a writ of certiorari, but certainly, not of mandamus.[7] (Citations omitted)

Indeed, as correctly ruled by the RTC, the petition for mandamus filed by the respondent is incompetent to compel the exercise of a mayor's discretionary duty to issue business permits.

WHEREFORE, premises considered, the Decision dated March 30, 2011 of the Court of Appeals in CA-G.R. SP No. 112152 is hereby SET ASIDE. The Decision dated May 26, 2009 of the Regional Trial Court of Bauang, La Union is REINSTATED.

MARYNETTE GAMBOA *v.* P/SSUPT. MARLOU CHAN, et. al
GR No. 193636 July 24, 2012, *EN BANC* (SERENO, *J.)*

Former President Gloria Macapagal-Arroyo issued Administrative Order No. 275 (A.O. 275), creating a body which was later on referred to as the Zeñarosa Commission. It was formed to investigate the existence of private army groups (PAGs) in the country with a view to eliminating them before the 10 May 2010 elections and dismantling them permanently in the future. It was broadcasted that Marynette R. Gamboa, the Mayor of Dingras, Ilocos Norte, was one of the politicians alleged to be maintaining a PAG. Contending that her right to privacy was violated and her reputation maligned and destroyed, she filed a Petition for the issuance of a writ of habeas data against respondents in their capacities as officials of the PNP-Ilocos Norte. She alleged, among others, that the PNP Ilocos Norte conducted a series of surveillance operations against her and her aides, and classified her as someone who keeps a PAG. Purportedly without the benefit of data verification, PNP Ilocos Norte forwarded the information gathered on her to the Zeñarosa Commission,thereby causing her inclusion in the Report. The RTC dismissed the petition.

ISSUE:

Whether the petition for issuance of writ of habeas data must be granted.

RULING:

No. Gamboa was able to sufficiently establish that the data contained in the Report listing her as a PAG coddler came from the PNP. Contrary to the ruling of the trial court, however, the forwarding of information by the PNP to the Zeñarosa Commission was not an unlawful act that violated or threatened her right to privacy in life, liberty or security. The PNP was rationally expected to forward and share intelligence regarding PAGs with the body specifically created for the purpose of investigating the existence of these notorious groups. Moreover, the Zeñarosa Commission was explicitly authorized to deputize the police force in the fulfillment of the former's mandate, and thus had the power to request assistance from the latter.

The fact that the PNP released information to the Zeñarosa Commission without prior communication to Gamboa and without affording her the opportunity to refute the same cannot be interpreted as a violation or threat to her right to privacy since that act is an inherent and crucial component of intelligence-gathering and investigation. Additionally, Gamboa herself admitted that the PNP had a validation system, which was used to update information on individuals associated with PAGs and to ensure that the data mirrored the situation on the field. Thus, safeguards were put in place to make sure that the information collected maintained its integrity and accuracy.

PROSPERO A. PICHAY, JR. v. ODESLA-IAD, HON. PAQUITO N. OCHOA, JR., and HON. CESAR V. PURISIMA
G.R. No. 196425, 24 July 2012, *EN BANC* (J. Perlas-Bernabe)

President Benigno Aquino III issued EO 13 abolishing the Presidential Anti-Graft Commission (PAGC) and transferring its functions to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA), more particularly to its newly-established Investigative and Adjudicatory Division (IAD). Petitioner assailed the constitutionality of EO 13, alleging that the President is not authorized under any existing law to create the IAD-ODESLA, and that by creating a new, additional and distinct office tasked with quasi-judicial functions, the President has not only usurped the powers of congress to create a public office, appropriate funds and delegate quasi-judicial functions to administrative agencies but has also encroached upon the powers of the Ombudsman.

ISSUE:

Whether or not EO 13 is unconstitutional for usurping the power of the legislature to create a public office.

RULING:

No. The President has Continuing Authority to Reorganize the Executive Department or the offices under him as stated in Section 31 of EO 292 in order to achieve simplicity, economy and efficiency. The Office of the President is the nerve center of the Executive Branch. To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies. Clearly, the abolition of the PAGC and the transfer of its functions to a division specially created within the ODESLA is properly within the prerogative of the President under his continuing "delegated legislative authority to reorganize" his own office pursuant to EO 292.

The Reorganization did not entail the creation of a new, separate and distinct Office. The abolition of the PAGC did not require the creation of a new, additional and distinct office as the duties and functions that pertained to the defunct anti-graft body were simply transferred to the ODESLA, which is an existing office within the Office of the President Proper. The reorganization required no more than a mere alteration of the administrative structure of the ODESLA through the establishment of a third division (the IAD) through which ODESLA could take on the additional functions it has been tasked to discharge under E.O. 13. Neither did the President delegate quasi-judicial functions to administrative agency by the creation of IAD-ODESLA. The IAD-ODESLA is a fact-finding and recommendatory body not vested with quasi-judicial powers. Fact-finding is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office.

MAJOR GENERAL CARLOS F. GARCIA, AFP (RET.) *v.* THE EXECUTIVE SECRETARY, *et. al*
G.R. No. 198554 July 30, 2012, THIRD DIVISION, (*J.* PERALTA)

Garcia, tried by the Special General Court Martial NR 2, was charged with and convicted of violation of the 96th Article of War (Conduct Unbecoming an Officer and Gentleman) and violation of the 97th Article of War (Conduct Prejudicial to Good Order and Military Discipline) for failing to disclose all his assets in his Sworn Statement of Assets and Liabilities and Net worth for the year 2003 as required by RA 3019, as amended in relation to RA 6713.

Garcia, among others, argued that the confirmation issued by the OP directing his two-year detention in a penitentiary had already been fully served following his preventive confinement subject to Article 29 of the RPC (Revised Penal Code). He was released on December 16, 2010 after a preventive confinement for six years and two months. He was initially confined at his quarters at Camp General Emilio Aguinaldo before he was transferred to the Intelligence Service of the Armed Forces of the Philippines (ISAFP) Detention Center, and latter to the Camp Crame Custodial Detention Center.

Hence, on September 16, 2011, or a week after the OP confirmed the sentence of the court martial against him, Garcia was arrested and detained and continues to be detained, for 2 years, at the maximum security compound of the National Penitentiary in Muntinlupa. The OP stated that Art 29 of the RPC is not applicable in Military Courts for it is separate and distinct from ordinary courts.

Hence, this petition.

ISSUE:

1. Whether or not Article 29 of the RPC is applicable in Military Courts
2. Whether or not the application of Article 29 of the RPC in the Articles of War is in accordance with the Equal Protection Clause of the 1987 Constitution

RULING:

1. The Court ruled that applying the provisions of Article 29 of the Revised Penal Code (RPC) (Period of preventive imprisonment deducted from time of imprisonment), the time within which the petitioner was under preventive confinement should be credited to the sentence confirmed by the Office of the President, subject to the conditions set forth by the same law.

The Court held that "the General Court Martial is a court within the strictest sense of the word and acts as a criminal court." As such, certain provisions of the RPC, insofar as those that are not provided in the Articles of War and the Manual for Courts-Martial, can be supplementary. "[A]bsent any provision as to the application of a criminal concept in the implementation and execution of the General Court Martial's decision, the provisions of the Revised Penal Code, specifically Article 29 should be applied. In fact, the deduction of petitioner's (Garcia) period of confinement to his sentence has been recommended in the Staff Judge Advocate Review."

2. The application of Article 29 of the Revised Penal Code in the Articles of War is in accordance with the Equal Protection Clause of the 1987 Constitution. According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be

treated alike, both as to rights conferred and responsibilities imposed. It requires public bodies and institutions to treat similarly situated individuals in a similar manner.

The purpose of the equal protection clause is to secure every person within a state' s jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state' s duly constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.

It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) the classification rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.

"Superficial differences do not make for a valid classification." In the present case, petitioner belongs to the class of those who have been convicted by any court, thus, he is entitled to the rights accorded to them. Clearly, there is no substantial distinction between those who are convicted of offenses which are criminal in nature under military courts and the civil courts. Furthermore, following the same reasoning, petitioner is also entitled to the basic and time-honored principle that penal statutes are construed strictly against the State and liberally in favor of the accused.

It must be remembered that the provisions of the Articles of War which the petitioner violated are penal in nature.

RE: COA OPINION ON THE COMPUTATION OF THE APPRAISED VALUE OF THE PROPERTIES PURCHASED BY THE RETIRED CHIEF/ASSOCIATE JUSTICES OF THE SUPREME COURT.
A.M. No. 11-7-10-SC, July 31, 2012, *PER CURIAM*

In an opinion issued by the Legal Services Sector, Office of the General Counsel of the Commission on Audit (COA), it shows that the scheme in the judiciary allowing the sale of their personal properties to retired justices after their incumbency resulted to an underpayment amounting to P221,021.50. This underpayment was attributed to the erroneous appraisal of the value of the property involved using the Constitutional Fiscal Autonomy Group (CFAG) Joint Resolution No. 35 and its guidelines. Acting on this Opinion, Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, Office of Administrative Services, to the Office of the Chief Justice, submitted Memorandum to the SC praying that the Court advise the COA to respect the scheme existing in the Judiciary pursuant to the recognize fiscal autonomy of the Judicial Branch.

ISSUE:

Whether the post-audit examination conducted by COA violated the Judiciary's fiscal autonomy.

RULING:

YES. The COA's authority to conduct post-audit examinations on constitutional bodies granted fiscal autonomy as provided under Section 2(1), Article IX-D of the 1987 Constitution must be read not only in light of the Court's fiscal autonomy, but also in relation with the constitutional provisions on judicial independence and the existing jurisprudence and Court rulings on these matters. The Constitution mandates that the judiciary shall enjoy fiscal autonomy, and grants the Supreme Court administrative supervision over all courts and judicial personnel. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.

The Judiciary's fiscal autonomy is realized through the actions of the Chief Justice, as its head, and of the Supreme Court En Banc, in the exercise of administrative control and supervision of the courts and its personnel. Thus, under the guarantees of the Judiciary's fiscal autonomy and its independence, the Chief Justice and the Court En Banc determine and decide the who, what, where, when and how of the privileges and benefits they extend to justices, judges, court officials and court personnel within the parameters of the Court's granted power; they determine the terms, conditions and restrictions of the grant as grantor.

The use of the formula provided in CFAG Joint Resolution No. 35 is a part of the Court's exercise of its discretionary authority to determine the manner the granted retirement privileges and benefits can be availed of. Any kind of interference on how these retirement privileges and benefits are exercised and availed of, not only violates the fiscal autonomy and independence of the Judiciary, but also encroaches upon the constitutional duty and privilege of the Chief Justice and the Supreme Court En Banc to manage the Judiciary's own affairs.

TEODORA SOBEJANA-CONDON *v.* COMMISSION ON ELECTIONS, LUIS M. BAUTISTA, ROBELITO V. PICAR and WILMA P. PAGADUAN
G.R. No. 198742, August 10, 2012 *EN BANC* (*J.* REYES)

The petitioner is a natural-born Filipino citizen having been born of Filipino parents on August 8, 1944. On December 13, 1984, she became a naturalized Australian citizen owing to her marriage to a certain Kevin Thomas Condon.

On December 2, 2005, she filed an application to re-acquire Philippine citizenship before the Philippine Embassy in Canberra, Australia pursuant to Section 3 of R.A. No. 9225 otherwise known as the "Citizenship Retention and Re-Acquisition Act of 2003."[5] The application was approved and the petitioner took her oath of allegiance to the Republic of the Philippines on December 5, 2005.

On September 18, 2006, the petitioner filed an unsworn Declaration of Renunciation of Australian Citizenship before the Department of Immigration and Indigenous Affairs, Canberra, Australia, which in turn issued the Order dated September 27, 2006 certifying that she has ceased to be an Australian citizen.[6]

The petitioner ran for Mayor in her hometown of Caba, La Union in the 2007 elections. She lost in her bid. She again sought elective office during the May 10, 2010 elections this time for the position of Vice-Mayor. She obtained the highest numbers of votes and was proclaimed as the winning candidate. She took her oath of office on May 13, 2010.

Soon thereafter, private respondents Robelito V. Picar, Wilma P. Pagaduan[7] and Luis M. Bautista,[8] (private respondents) all registered voters of Caba, La Union, filed separate petitions for quo warranto questioning the petitioner's eligibility before the RTC. The petitions similarly sought the petitioner's disqualification from holding her elective post on the ground that she is a dual citizen and that she failed to execute a "personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" as imposed by Section 5(2) of R.A. No. 9225.

The petitioner denied being a dual citizen and averred that since September 27, 2006, she ceased to be an Australian citizen. She claimed that the Declaration of Renunciation of Australian Citizenship she executed in Australia sufficiently complied with Section 5(2), R.A. No. 9225 and that her act of running for public office is a clear abandonment of her Australian citizenship.

The trial decision ordered by the trial court declaring Condon disqualified and ineligible to hold office of vice mayor of Caba La union and nullified her proclamation as the winning candidate.

After that the decision was appealed to the comelec, but the appeal was dismissed y the second division and affirmed the decision of the trial court.

The petitioner contends that since she ceased to be an Australian citizen on September 27, 2006, she no longer held dual citizenship and was only a Filipino citizen when she filed her certificate of candidacy as early as the 2007 elections. Hence, the "personal and sworn renunciation of foreign citizenship" imposed by Section 5(2) of R.A. No. 9225 to dual citizens seeking elective office does not apply to her.

ISSUE:

Whether petitioner disqualified from running for elective office due to failure to renounce her Australian Citizenship in accordance with Sec. 5 (2) of R.A 9225

RULING:

R.A. No. 9225 allows the retention and re-acquisition of Filipino citizenship for natural-born citizens who have lost their Philippine citizenship[18] by taking an oath of allegiance to the Republic.

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

The oath is an abbreviated repatriation process that restores one's Filipino citizenship and all civil and political rights and obligations concomitant therewith, subject to certain conditions imposed in Section 5.

Section 5, paragraph 2 provides:

(2) Those seeking elective public office in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

On September 18, 2006, or a year before she initially sought elective public office, she filed a renunciation of Australian citizenship in Canberra, Australia. Admittedly, however, the same was not under oath contrary to the exact mandate of Section 5(2) that the renunciation of foreign citizenship must be sworn before an officer authorized to administer oath.

The supreme court said that, the renunciation of her Australian citizenship was invalid due to it was not oath before any public officer authorized to administer it rendering the act of Condon void.

UNIVERSITY OF THE PHILIPPINES, et al. v. HON. AGUSTIN S. DIZON, ET. AL.
G.R. No. 171182, August 23, 2012, First Division, (*J.* BERSAMIN)

UP failed to pay in a contract it entered with Stern Builders Corporation. The RTC ruled in favour of Stern Builders Corporation. Consequently, the RTC authorized eventually the release of the garnished funds of the UP directing DBP to release the funds. While UP brought a petition for certiorari in the CA to challenge the jurisdiction of the RTC in issuing the order averring that the UP funds, being government funds and properties, could not be seized by virtue of writs of execution or garnishment.

ISSUE:

Whether UP funds are subject to garnishment.

RULING:

NO. The UP is a government instrumentality, performing the State's constitutional mandate of promoting quality and accessible education. Presidential Decree No. 1445 defines a "trust fund" as a fund that officially comes in the possession of an agency of the government or of a public officer as trustee, agent or administrator, or that is received for the fulfillment of some obligation. A trust fund may be utilized only for the "specific purpose for which the trust was created or the funds received."

The funds of the UP are government funds that are public in character. They include the income accruing from the use of real property ceded to the UP that may be spent only for the attainment of its institutional objectives. Hence, the funds subject of this action could not be validly made the subject of the RTC's writ of execution or garnishment. The adverse judgment rendered against the UP in a suit to which it had impliedly consented was not immediately enforceable by execution against the UP, because suability of the State did not necessarily mean its liability.

A marked distinction exists between suability of the State and its liability. As the Court succinctly stated in Municipality of San Fernando, La Union v. Firme:

A distinction should first be made between suability and liability. "Suability depends on the consent of the state to be sued, liability on the applicable law and the established facts. The circumstance that a state is suable does not necessarily mean that it is liable; on the other hand, it can never be held liable if it does not first consent to be sued. Liability is not conceded by the mere fact that the state has allowed itself to be sued. When the state does waive its sovereign immunity, it is only giving the plaintiff the chance to prove, if it can, that the defendant is liable.

The CA and the RTC thereby unjustifiably ignored the legal restriction imposed on the trust funds of the Government and its agencies and instrumentalities to be used exclusively to fulfill the purposes for which the trusts were created or for which the funds were received except upon express authorization by Congress or by the head of a government agency in control of the funds, and subject to pertinent budgetary laws, rules and regulations.Indeed, an appropriation by Congress was required before the judgment that rendered the UP liable for moral and actual damages (including attorney's fees) would be satisfied considering that such monetary liabilities were not covered by the "appropriations earmarked for the said project." The Constitution strictly mandated that "(n)o money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

EMILIO A. GONZALES III v. OFFICE OF THE PRESIDENT OF THE PHILIPPINES, et. al
G.R. No. 196231, September 4, 2012, *EN BANC* (PERLAS-BERNABE, J.)

G.R. No. 196231

P/S Insp. Rolando Mendoza (Mendoza), and four others were charged criminally and administratively for Grave Misconduct. Petitioner Emilio A. Gonzales III (Gonzales) requested all relevant documents and evidence in relation to said case to the Office of the Deputy Ombudsman for appropriate administrative adjudication. Upon the recommendation of Gonzales, a decision in the administrative case finding Mendoza and his fellow police officers guilty of Grave Misconduct was approved by the Ombudsman with the penalty of dismissal from the service.

Mendoza and his fellow police officers filed a Motion for Reconsideration of the foregoing Decision. The motion remained pending for final review and action when P/S Insp. Mendoza hijacked a bus-load of foreign tourists on that fateful day of August 23, 2010 in a desperate attempt to have himself reinstated in the police service.

Incident Investigation and Review Committee (IIRC) found that Deputy Ombudsman Gonzales committed serious and inexcusable negligence and gross violation of their own rules of procedure by allowing Mendoza's motion for reconsideration to languish for more than nine months without any justification. The inaction is gross, considering there is no opposition thereto. The prolonged inaction precipitated the desperate resort to hostage-taking.

The Office of the President issued a resolution, after due investigation, finding Deputy Ombudsman Gonzales guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust, and meted out the penalty of dismissal from service.

G.R. No. 196232

Major General Carlos F. Garcia and his family were charged with Plunder and Money Laundering before the Sandiganbayan. The government, represented by petitioner Special Prosecutor Wendell Barreras-Sulit (Barreras-Sulit), sought the Sandiganbayan's approval of a Plea Bargaining Agreement entered into with the accused. The Sandiganbayan approved the Plea Bargaining Agreement.

The House of Representatives' Committee on Justice conducted public hearings on the Plea Bargaining Agreement which in effect recommended to the President the dismissal of petitioner Barreras-Sulit from the service and the filing of appropriate charges.

The Office of the President initiated an investigation against petitioner Barreras-Sulit. In her written explanation, petitioner raised the defenses of prematurity and the lack of jurisdiction of the OP with respect to the administrative disciplinary proceeding against her.

ISSUE:

Whether the Office of the President has jurisdiction to exercise administrative disciplinary power over a Deputy Ombudsman and a Special Prosecutor who belong to the constitutionally-created Office of the Ombudsman.

RULING:

YES. It is a basic canon of statutory construction that in interpreting a statute, care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. A construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of a coordinated and harmonious whole. Otherwise stated, the law must not be read in truncated parts. Every part thereof must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.

A harmonious construction of these two apparently conflicting provisions in R.A. No. 6770 leads to the inevitable conclusion that Congress had intended the Ombudsman and the President to exercise concurrent disciplinary jurisdiction over petitioners as Deputy Ombudsman and Special Prosecutor, respectively. This sharing of authority goes into the wisdom of the legislature, which prerogative falls beyond the pale of judicial inquiry.

Indubitably, the manifest intent of Congress in enacting both provisions - Section 8(2) and Section 21 - in the same Organic Act was to provide for an external authority, through the person of the President, that would exercise the power of administrative discipline over the Deputy Ombudsman and Special Prosecutor without in the least diminishing the constitutional and plenary authority of the Ombudsman over all government officials and employees. Such legislative design is simply a measure of "check and balance" intended to address the lawmakers' real and valid concern that the Ombudsman and his Deputy may try to protect one another from administrative liabilities.

JOSE MIGUEL T. ARROYO *v.* DEPARTMENT OF JUSTICE, *et. al.*
G.R. No. 199082, EN BANC, September 18, 2012, (J. PERALTA)

The Comelec issued Resolution No. 9266 approving the creation of a joint committee with the Department of Justice (DOJ), which shall conduct preliminary investigation on the alleged election offenses and anomalies committed during the 2004 and 2007 elections.

The Comelec and the DOJ issued Joint Order No. 001-2011 creating and constituting a Joint Committee and Fact-Finding Team on the 2004 and 2007 National Elections electoral fraud and manipulation cases composed of officials from the DOJ and the Comelec. In its initial report, the Fact-Finding Team concluded that manipulation of the results in the May 14, 2007 senatorial elections in the provinces of North and South Cotabato and Maguindanao were indeed perpetrated. The Fact-Finding Team recommended that herein petitioners Gloria Macapagal-Arroyo (GMA), et al. to be subjected to preliminary investigation for electoral sabotage.

After the preliminary investigation, the COMELEC en banc adopted a resolution ordering that information/s for the crime of electoral sabotage be filed against GMA, et al. while that the charges against Jose Miguel Arroyo, among others, should be dismissed for insufficiency of evidence.

Consequently, GMA, et al. assail the validity of the creation of COMELEC-DOJ Joint Panel and of Joint Order No. 001-2011 before the Supreme Court.

ISSUES:

1. Whether the creation of COMELEC-DOJ Joint Panel is valid?
2. Whether Joint Order No. 001-2011 violates the equal protection clause?

RULING:

Petitions are DISMISSED.

1. The creation of COMELEC-DOJ Joint Panel is valid. Section 2, Article IX-C of the 1987 Constitution enumerates the powers and functions of the Comelec. The grant to the Comelec of the power to investigate and prosecute election offenses as an adjunct to the enforcement and administration of all election laws is intended to enable the Comelec to effectively insure to the people the free, orderly, and honest conduct of elections. The constitutional grant of prosecutorial power in the Comelec was reflected in Section 265 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code.

Under the above provision of law, the power to conduct preliminary investigation is vested exclusively with the Comelec. The latter, however, was given by the same provision of law the authority to avail itself of the assistance of other prosecuting arms of the government. Thus, under the Omnibus Election Code, while the exclusive jurisdiction to conduct preliminary investigation had been lodged with the Comelec, the prosecutors had been conducting preliminary investigations pursuant to the continuing delegated authority given by the Comelec.

Thus, Comelec Resolution No. 9266, approving the creation of the Joint Committee and Fact-Finding Team, should be viewed not as an abdication of the constitutional bodys independence but as a

means to fulfill its duty of ensuring the prompt investigation and prosecution of election offenses as an adjunct of its mandate of ensuring a free, orderly, honest, peaceful and credible elections.

2. Joint Order No. 001-2011 does not violate the equal protection clause. Petitioners claim that the creation of the Joint Committee and Fact-Finding Team is in violation of the equal protection clause of the Constitution because its sole purpose is the investigation and prosecution of certain persons and incidents. They insist that the Joint Panel was created to target only the Arroyo Administration as well as public officials linked to the Arroyo Administration.

While GMA and Mike Arroyo were among those subjected to preliminary investigation, not all respondents therein were linked to GMA as there were public officers who were investigated upon in connection with their acts in the performance of their official duties. Private individuals were also subjected to the investigation by the Joint Committee.

The equal protection guarantee exists to prevent undue favor or privilege. It is intended to eliminate discrimination and oppression based on inequality. Recognizing the existence of real differences among men, it does not demand absolute equality. It merely requires that all persons under like circumstances and conditions shall be treated alike both as to privileges conferred and liabilities enforced.

HEIRS OF GAMBOA *v.* FINANCE SECRETARY MARGARITO TEVES, et al.
G.R. No. 176579, 09 October 2012, *EN BANC* (CARPIO, J.)

Movants Philippine Stock Exchange's (PSE) President, Manuel V. Pangilinan, Napoleon L. Nazareno, and the Securities and Exchange Commission (SEC) contend that the term "capital" in Section 11, Article XII of the Constitution has long been settled and defined to refer to the total outstanding shares of stock, whether voting or non-voting. In fact, movants claim that the SEC, which is the administrative agency tasked to enforce the 60-40 ownership requirement in favor of Filipino citizens in the Constitution and various statutes, has consistently adopted this particular definition in its numerous opinions. Movants point out that with the 28 June 2011 Decision, the Court in effect introduced a "new" definition or "midstream redefinition" of the term "capital" in Section 11, Article XII of the Constitution.

ISSUE:

Whether the term "capital" includes both voting and non-voting shares.

RULING:

NO. The Constitution expressly declares as State policy the development of an economy "effectively controlled" by Filipinos. Consistent with such State policy, the Constitution explicitly reserves the ownership and operation of public utilities to Philippine nationals, who are defined in the Foreign Investments Act of 1991 as Filipino citizens, or corporations or associations at least 60 percent of whose capital with voting rights belongs to Filipinos. The FIA's implementing rules explain that "[f]or stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential." In effect, the FIA clarifies, reiterates and confirms the interpretation that the term "capital" in Section 11, Article XII of the 1987 Constitution refers to shares with voting rights, as well as with full beneficial ownership. This is precisely because the right to vote in the election of directors, coupled with full beneficial ownership of stocks, translates to effective control of a corporation.

INITIATIVES FOR DIALOGUE AND EMPOWERMENT THROUGH ALTERNATIVE LEGAL SERVICES, INC. (IDEALS, INC.), et al. v. POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), et al.
G.R. No. 192088, October 9, 2012, *EN BANC, (*VILLARAMA, J.)

PSALM, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA) manages the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets. Thereafter, PSALM commenced the privatization of the 246-megawatt (MW) AHEPP located in San Lorenzo, Norzagaray, Bulacan, a portion of which is co-owned by NPC. After the post-bid evaluation, PSALM's Board of Directors approved and confirmed the issuance of a Notice of Award to the highest bidder, K-Water. Petition with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction was filed by the Initiatives for Dialogue and Empowerment Through Alternative Legal Services, Inc. (IDEALS) et al. alleging that K-Water which is a foreign corporation, thus PSALM clearly violated the constitutional provisions on the appropriation and utilization of water as a natural resource, as implemented by the Water Code of the Philippines limiting water rights to Filipino citizens and corporations which are at least 60% Filipino-owned. PSALM countered the nationality issue raised, citing previous opinions rendered by the Department of Justice (DOJ) consistently holding that the utilization of water by a hydroelectric power plant does not constitute appropriation of water from its natural source considering that the source of water (dam) that enters the intake gate of the power plant is an artificial structure.

ISSUE:

Whether the utilization of water by the power plant to be owned and operated by a foreign-owned corporation will violate the provisions of the Constitution and Water Code.

RULING:

No. Art. 15 of The Water Code of the Philippines states that only citizens of the Philippines, of legal age, as well as juridical persons, who are duly qualified by law to exploit and develop water resources, may apply for water permits. It is clear that the law limits the grant of water rights only to Filipino citizens and juridical entities duly qualified by law to exploit and develop water resources, including private corporations with sixty percent of their capital owned by Filipinos.

The nationality requirement imposed by the Water Code refers to the privilege "to appropriate and use water" and has interpreted this phrase to mean the extraction of water directly from its natural source (Secretary of Justice Opinion No. 14, s. 1995). "Natural" is defined as that which is produced without aid of stop, valves, slides, or other supplementary means. The water that is used by the power plant could not enter the intake gate without the dam, which is a man-made structure. Such being the case, the source of the water that enters the power plant is of artificial character rather than natural. Once water is removed from its natural source, it ceases to be a part of the natural resources of the country and may be the subject of ordinary commerce and may even be acquired by foreigners.

NPC's water rights remain an integral aspect of its jurisdiction and control over the dam and reservoir. That the EPIRA itself did not ordain any transfer of water rights leads us to infer that Congress intended NPC to continue exercising full supervision over the dam, reservoir and, more importantly, to remain in complete control of the extraction or diversion of water from the Angat River. In this way, the State's full supervision and control over the country's water resources is also

DOMINADOR JALOSJOS *v.* COMELEC
G.R. No. 193237, October 9, 2012, EN BANC (Abad, J.)

Rommel Jalosjos was born in Quezon City on October 26, 1973. He migrated to Australia in 1981 when he was eight years old and there acquired Australian citizenship. On November 22, 2008, at age 35, he decided to return to the Philippines and lived with his brother in Ipil, Zamboanga Sibugay. Four days upon his return, he took an oath of allegiance to the Republic of the Philippines, hence, he was issued a Certificate of Reacquisition of Philippine Citizenship by the Bureau of Immigration. On September 1, 2009 he renounced his Australian citizenship, executing a sworn renunciation of the same in compliance with Republic Act (R.A.) 9225. From the time of his return, Jalosjos acquired a residential property in the same village where he lived. He applied for registration as a voter in the Municipality of Ipil but respondent Erasmo, the Barangay Captain, opposed the said act. Election Registration Board approved it and included Jalosjos' name in the COMELEC voters list. Erasmo filed before the MTC a petition for the exclusion of Jalosjos' name from the official voters list. MTC denied Erasmo's petition. He appealed to RTC but RTC ruled same as MTC's. On November 28, 2009 Jalosjos filed his Certificate of Candidacy (COC) for Governor of Zamboanga Sibugay Province for the May 10, 2010 elections. Erasmo filed a petition to deny due course or to cancel Jalosjos' COC on the ground that Jalosjos made material misrepresentation in the same since he failed to comply with (1) the requirements of R.A. 9225 and (2) the one-year residency requirement of the Local Government Code. COMELEC ruled against Jalosjos, because it failed to comply with the 1-year residency ruequirement. Jalosjos won the elections.

ISSUE:

Whether Jalosjos failed to comply with the 1-year residency requirement

RULING:

Yes. It is clear from the facts that Quezon City was Jalosjos' domicile of origin, the place of his birth. His domicile was changed from Quezon City to Australia when he migrated there at the age of eight, acquired Australian citizenship, and lived in that country for 26 years. Australia became his domicile by operation of law and by choice. But, when he came to the Philippines in November 2008 to live with his brother in Zamboanga Sibugay, it is evident that Jalosjos did so with intent to change his domicile for good. He left Australia, gave up his Australian citizenship, and renounced his allegiance to that country. In addition, he reacquired his old citizenship by taking an oath of allegiance to the Republic of the Philippines, resulting in his being issued a Certificate of Reacquisition of Philippine Citizenship by the Bureau of Immigration. By his acts, Jalosjos forfeited his legal right to live in Australia, clearly proving that he gave up his domicile there. And he has since lived nowhere else except in Ipil, Zamboanga Sibugay.

CYRIL CALPITO QUI *v.* PEOPLE OF THE PHILIPPINES
G.R. NO. 196161, September 26, 2012, Third Division, (Velasco, J.)

Petitioner was charged with two counts of violation of Section 10(a), Article VI of Republic Act No. (RA) 7610 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act. Petitioner filed before the appellate court an Urgent Petition/Application for Bail Pending Appeal which respondent People of the Philippines, through the Office of the Solicitor General (OSG), opposed. The OSG urged for the denial of the bail application on the ground of petitioner's propensity to evade the law and that she is a flight-risk, as she in fact failed to attend several hearings before the RTC resulting in the issuance of three warrants for her arrest. CA issued the first assailed Resolution denying petitioner's application for bail pending appeal.

ISSUE:

Whether petitioner should be granted bail.

RULING:

NO. Under the present rule, the grant of bail is a matter of discretion upon conviction by the RTC of an offense not punishable by death, reclusion perpetua or life imprisonment, as here. The The Court held: Indeed, pursuant to the "tough on bail pending appeal" policy, the presence of bail-negating conditions mandates the denial or revocation of bail pending appeal such that those circumstances are deemed to be as grave as conviction by the trial court for an offense punishable by death, reclusion perpetua or life imprisonment where bail is prohibited. In the exercise of that discretion, the proper courts are to be guided by the fundamental principle that the allowance of bail pending appeal should be exercised not with laxity but with grave caution and only for strong reasons, considering that the accused has been in fact convicted by the trial court.

Petitioner's plea for bail pending appeal is bereft of merit. Indeed, the undisputed fact that petitioner did not attend the hearings before the RTC, which compelled the trial court to issue warrants for her arrest, is undeniably indicative of petitioner's propensity to trifle with court processes. This fact alone should weigh heavily against a grant of bail pending appeal. Petitioner's argument that she has the constitutional right to bail and that the evidence of guilt against her is not strong is spurious. Certainly, after one is convicted by the trial court, the presumption of innocence, and with it, the constitutional right to bail, ends.

GO and Minor EMERSON CHESTER KIM B. GO *v.* COLEGIO DE SAN JUAN DE LETRAN, et al.
G.R. No. 169391, October 10, 2012, Second Division (Brion, J.)

There were reports that fraternities in Letran were recruiting members among Letran's high school students and that a list of the alleged involved students was given to Mr. George Isleta. A medical examination was conducted and it was found that 6 students were injured in their thighs thus Rosarda asked for the explanations of such students in where four of them admitted they were neophytes of the Tau Gamma Fraternity and included the names of who joined in the hazing rights including Kim who was a fourth year student back then. Mr. Rosarda informed Kim's mother about his membership in a fraternity but she expressed her disbelief in such. He then asked Kim to explain his side and he denied he was a member of the said frat. However, the school found out that he was inded part of fraternity based on the neophytes statements so they were recommended to be dismissed from Letran. The Gos contented to such and went to the RTC to file for damages which the RTC affirmed but was reversed by the CA.

ISSUE:

Whether Kim or his parents were accorded due process.

RULING:

On Kim's Parents

YES. Since disciplinary proceedings may be summary, the insistence that a "formal inquiry" on the accusation against Kim should have been conducted lacks legal basis. It has no factual basis as well. While the petitioners state that Mr. and Mrs. Go were "never given an opportunity to assist Kim,"the records show that the respondents gave them two notices, dated December 19, 2001 and January 8, 2002, for conferences on January 8, 2002 and January 15, 2002. The records also show that, without any explanation, both parents failed to attend the January 8, 2002 conference while Mr. Go did not bother to go to the January 15, 2002 conference. Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot thereafter complain of deprivation of due process."

Through the notices, the respondents duly informed the petitioners in writing that Kim had a disciplinary charge for fraternity membership. At the earlier November 23, 2001 Parents-Teachers Conference, Mr. Rosarda also informed Mrs. Go that the charge stemmed from the fraternity neophytes' positive identification of Kim as a member; thus the petitioners fully knew of the nature of the evidence that stood against Kim.

On Kim's Written Notice

YES. Jurisprudence has clarified that administrative due process cannot be fully equated with due process in the strict judicial sense. The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation. Thus, the Court is hard pressed to believe that Kim's denial of his fraternity membership before formal notice was given worked against his interest in the disciplinary case. What matters for due process purpose is notice of what is to be explained, not the form in which the notice is given.

The raison d'etre of the written notice rule is to inform the student of the disciplinary charge against him and to enable him to suitably prepare a defense. The records show that as early as November 23, 2001, it was already made plain to the petitioners that the subject matter of the case against Kim was his alleged fraternity membership. Thus, by the time Mr. Rosarda spoke to Kim and asked for his written explanation in December 2001, Kim has had enough time to prepare his response to this plain charge. The Court also notes that the information in the notice the respondents subsequently sent is no different from the information that they had earlier conveyed, albeit orally, to the petitioners: the simple unadorned statement that Kim stood accused of fraternity membership. Given these circumstances, the Court is not convinced that Kim's right to explain his side as exercised in his written denial had been violated or diminished. The essence of due process, it bears repeating, is simply the opportunity to be heard.

GOVERNOR ENRIQUE T. GARCIA, JR., *et al. v.* LEO RUBEN C. MANRIQUE
G.R. No. 186592, 10 October 2012, FIRST DIVISION (REYES, *J.)*

The instant case stemmed from an article in Luzon Tribune, a newspaper of general circulation wherein respondent Leo Ruben C. Manrique (Manrique) is the publisher/editor, which allegedly contained disparaging statements against the Supreme Court. The petitioners, namely: Governor Enrique T. Garcia, Jr. (Gov. Garcia), Aurelio C. Angeles, Jr. (Angeles), Emerlinda S. Talento (Talento) and Rodolfo H. De Mesa (De Mesa) alleged that the subject article undermines the people's faith in the Supreme Court due to blunt allusion that they employed bribery in order to obtain relief from the Court, particularly in obtaining a temporary restraining order (TRO) in G.R. No. 185132. The article was entitled, "TRO ng Korte Suprema binayaran ng ₱ 20-M?" In his Comment, Manrique alleged that there was nothing malicious or defamatory in his article since he only stated the facts or circumstances which attended the issuance of the TRO. He likewise denied that he made any degrading remarks against the Supreme Court and claimed that the article simply posed academic questions. If the article ever had a critical undertone, it was directed against the actions of the petitioners, who are public officers, and never against the Supreme Court. At any rate, he asseverated that whatever was stated in his article is protected by the constitutional.

ISSUE:

Is Manrique's article protected by the constitutional guaranties of free speech and press?

RULING:

NO. Constitutional protection is not a shield against scurrilous publications, which are heaved against the courts with no apparent reason but to trigger doubt on their integrity based on some imagined possibilities. Contrary to nourishing democracy and strengthening judicial independence, which are the expected products of the guaranties of free speech and press, the irresponsible exercise of these rights wounds democracy and leads to division.

In *Alarcon*, we emphasized:

It is true that the Constitution guarantees the freedom of speech and of the press. But license or abuse of that freedom should not be confused with freedom in its true sense. Well-ordered liberty demands no less unrelaxing vigilance against abuse of the sacred guaranties of the Constitution than the fullest protection of their legitimate exercise. As important as is the maintenance of a judiciary unhampered in its administration of justice and secure in its continuous enjoyment of public confidence. Freedom of speech is not absolute, and must occasionally be balanced with the requirements of equally important public interests, such as the maintenance of the integrity of the courts and orderly functioning of the administration of justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, of viable independent institutions for delivery of justice which are accepted by the general community. Certainly, the making of contemptuous statements directed against the Court is not an exercise of free speech; rather, it is an abuse of such right. Unwarranted attacks on the dignity of the courts cannot be disguised as free speech, for the exercise of said right cannot be used to impair the independence and efficiency of courts or public respect therefore and confidence therein. Therefore; Manrique's article, lacking in social value and aimed solely at besmirching the reputation of the Court, is undeserving of the protection of the guaranties of free speech and press.

The critical role of the Supreme Court as the court of last resort renders it imperative that it maintains the ideals of neutrality, integrity and independence:) the characteristics in which the people's trust and confidence are built, alive and unscathed. Thus, justices and judges alike are constantly reminded to live up to the stringent standards of the profession or else suffer the consequences. In return, the people are expected to respect and abide by the rulings of this Court and must not be instrumental to its disrepute.

DELA CRUZ v. COMMISSION ON ELECTIONS
G.R. No. 192221, November 13, 2012

In this petition for certiorari, Casimira S. Dela Cruz assails COMELEC Resolution No. 8844 considering as stray the votes cast in favor of certain candidates who were either disqualified or whose COCs had been cancelled/denied due course but whose names still appeared in the official ballots or certified lists of candidates for the May 10, 2010 elections.

During the canvassing of the votes by the Municipal Board of Canvassers (MBOC) of Bugasong on May 13, 2010, Casimira insisted that the votes cast in favor of Aurelio be counted in her favor. However, the MBOC refused, citing Resolution No. 8844. The Statement of Votes by Precinct for Vice-Mayor of Antique-Bugasong showed the following results of the voting:

	TOTAL	RANK
DELA CRUZ, AURELIO N.	532	3
DELA CRUZ, CASIMIRA S.	6389	2
PACETE, JOHN LLOYD M.	6428	1

Consequently, John Lloyd M. Pacete was proclaimed Vice-Mayor of Bugasong by the MBOC of Bugasong.

Considering that Pacete won by a margin of only thirty-nine (39) votes, Casimira contends that she would have clearly won the elections for Vice-Mayor of Bugasong had the MBOC properly tallied or added the votes cast for Aurelio to her votes.

ISSUE:

With the adoption of automated election system in our country, one of the emerging concerns is the application of the law on nuisance candidates under a new voting system wherein voters indicate their choice of candidates by shading the oval corresponding to the name of their chosen candidate printed on the ballots, instead of writing the candidate's name on the appropriate space provided in the ballots as in previous manual elections. If the name of a nuisance candidate whose certificate of candidacy had been cancelled by the Commission on Elections (COMELEC) was still included or printed in the official ballots on election day, should the votes cast for such nuisance candidate be considered stray or counted in favor of the bona fide candidate?

RULING:

The petition is meritorious.

It bears to stress that Sections 211 (24) and 72 applies to all disqualification cases and not to petitions to cancel or deny due course to a certificate of candidacy such as Sections 69 (nuisance candidates) and 78 (material representation shown to be false). Notably, such facts indicating that a certificate of candidacy has been filed "to put the election process in mockery or disrepute, or to cause confusion among the voters by the similarity of the names of the registered candidates, or other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for

the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate" are not among those grounds enumerated in Section 68 (giving money or material consideration to influence or corrupt voters or public officials performing electoral functions, election campaign overspending and soliciting, receiving or making prohibited contributions) of the OEC or Section 40 of Republic Act No. 7160 (Local Government Code of 1991).

In *Fermin vs. COMELEC*, this Court distinguished a petition for disqualification under Section 68 and a petition to cancel or deny due course to a certificate of candidacy (COC) under Section 78. Said proceedings are governed by different rules and have distinct outcomes.

At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. They are different remedies, based on different grounds, and resulting in different eventualities. x xx

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC. Thus, in *Miranda vs. Abaya*, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate. (Additional emphasis supplied)

Strictly speaking, a cancelled certificate cannot give rise to a valid candidacy, and much less to valid votes. Said votes cannot be counted in favor of the candidate whose COC was cancelled as he/she is not treated as a candidate at all, as if he/she never filed a COC. But should these votes cast for the candidate whose COC was cancelled or denied due course be considered stray?

The foregoing rule regarding the votes cast for a nuisance candidate declared as such under a final judgment was applied by this Court in *Bautista vs. COMELEC* where the name of the nuisance candidate Edwin Bautista (having the same surname with the bona fide candidate) still appeared on the ballots on election day because while the COMELEC rendered its decision to cancel Edwin Bautista's COC on April 30, 1998, it denied his motion for reconsideration only on May 13, 1998 or three days after the election. We said that the votes for candidates for mayor separately tallied on orders of the COMELEC Chairman was for the purpose of later counting the votes and hence are not really stray votes. These separate tallies actually made the will of the electorate determinable despite the apparent confusion caused by a potential nuisance candidate.

But since the COMELEC decision declaring Edwin Bautista a nuisance candidate was not yet final on electionday, this Court also considered those factual circumstances showing that the votes mistakenly deemed as "stray votes" refer to only the legitimate candidate (petitioner Efren Bautista) and could not have been intended for Edwin Bautista. We further noted that the voters had constructive as well as actual knowledge of the action of the COMELEC delisting Edwin Bautista as a candidate for mayor.

A stray vote is invalidated because there is no way of determining the real intention of the voter. This is, however, not the situation in the case at bar. Significantly, it has also been established that by

virtue of newspaper releases and other forms of notification, the voters were informed of the COMELEC's decision to declare Edwin Bautista a nuisance candidate.

In the more recent case of Martinez III v. House of Representatives Electoral Tribunal, this Court likewise applied the rule in COMELEC Resolution No. 4116 not to consider the votes cast for a nuisance candidate stray but to count them in favor of the bona fide candidate notwithstanding that the decision to declare him as such was issued only after the elections.

As illustrated in Bautista, the pendency of proceedings against a nuisance candidate on election day inevitably exposes the bona fide candidate to the confusion over the similarity of names that affects the voter's will and frustrates the same. It may be that the factual scenario in Bautista is not exactly the same as in this case, mainly because the Comelec resolution declaring Edwin Bautista a nuisance candidate was issued before and not after the elections, with the electorate having been informed thereof through newspaper releases and other forms of notification on the day of election. Undeniably, however, the adverse effect on the voter's will was similarly present in this case, if not worse, considering the substantial number of ballots with only "MARTINEZ" or"C. MARTINEZ" written on the line for Representative - over five thousand - which have been declared as stray votes, the invalidated ballots being more than sufficient to overcome private respondent's lead of only 453 votes after the recount.

Here, Aurelio was declared a nuisance candidate long before the May 10, 2010 elections. On the basis of Resolution No. 4116, the votes cast for him should not have been considered stray but counted in favor of petitioner. COMELEC's changing of the rule on votes cast for nuisance candidates resulted in the invalidation of significant number of votes and the loss of petitioner to private respondent by a slim margin. We observed in Martinez:

Bautista upheld the basic rule that the primordial objective of election laws is to give effect to, rather than frustrate, the will of the voter. The inclusion of nuisance candidates turns the electoral exercise into an uneven playing field where the bona fide candidate is faced with the prospect of having a significant number of votes cast for him invalidated as stray votes by the mere presence of another candidate with a similar surname. Any delay on the part of the COMELEC increases the probability of votes lost in this manner. While political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, still, election woes brought by nuisance candidates persist.

The Court will not speculate on whether the new automated voting system to be implemented in the May 2010 elections will lessen the possibility of confusion over the names of candidates. What needs to be stressed at this point is the apparent failure of the HRET to give weight to relevant circumstances that make the will of the electorate determinable, following the precedent in Bautista. x xx

COMELEC justified the issuance of Resolution No. 8844 to amend the former rule in Resolution No. 4116 by enumerating those changes brought about by the new automated election system to the form of official ballots, manner of voting and counting of votes. It said that the substantial distinctions between manual and automated elections validly altered the rules on considering the votes cast for the disqualified or nuisance candidates. As to the rulings in Bautista and Martinez III, COMELEC opines that these find no application in the case at bar because the rules on appreciation of ballotsapply only to elections where the names of candidates are handwritten in the ballots.

The Court is not persuaded.

In Martinez III, we took judicial notice of the reality that, especially in local elections, political rivals or operators benefited from the usually belated decisions by COMELEC on petitions to cancel or deny due course to COCs of potential nuisance candidates. In such instances, political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, but still, election woes brought by nuisance candidates persist.

As far as COMELEC is concerned, the confusion caused by similarity of surnames of candidates for the same position and putting the electoral process in mockery or disrepute, had already been rectified by the new voting system where the voter simply shades the oval corresponding to the name of their chosen candidate. However, as shown in this case, COMELEC issued Resolution No. 8844 on May 1, 2010, nine days before the elections, with sufficient time to delete the names of disqualified candidates not just from the Certified List of Candidates but also from the Official Ballot. Indeed, what use will it serve if COMELEC orders the names of disqualified candidates to be deleted from list of official candidates if the official ballots still carry their names?

We hold that the rule in Resolution No. 4116 considering the votes cast for a nuisance candidate declared as such in a final judgment, particularly where such nuisance candidate has the same surname as that of the legitimate candidate, notstray but counted in favor of the latter, remains a good law.

Moreover, private respondent admits that the voters were properly informed of the cancellation of COC of Aurelio because COMELEC published the same before election day. As we pronounced in Bautista, the voters' constructive knowledge of such cancelled candidacy made their will more determinable, as it is then more logical to conclude that the votes cast for Aurelio could have been intended only for the legitimate candidate. The possibility of confusion in names of candidates if the names of nuisance candidates remained on the ballots on election day, cannot be discounted or eliminated, even under the automated voting system especially considering that voters who mistakenly shaded the oval beside the name of the nuisance candidate instead of the bona fide candidate they intended to vote for could no longer ask for replacement ballots to correct the same.

Finally, upholding the former rule in Resolution No. 4116 is more consistent with the rule well-ensconced in our jurisprudence that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. Indeed, as our electoral experience had demonstrated, such infirmities and delays in the delisting of nuisance candidates from both the Certified List of Candidates and Official Ballots only made possible the very evil sought to be prevented by the exclusion of nuisance candidates during elections.

QUIŇO, et al. v. COMELEC
G.R. No. 197466, (Villarama, Jr., *J.)*

Joel Quiño and Ritchie Wagas both ran for mayor in Compostella, Cebu during the May 2010 elections. The case at bar presents a petition for *certiorari,* filed by Wagas, seeking to annul the resolutions dated January 12, 2011 and June 13, 2011, and to sustain the proclamation by the Municipal Board of Canvassers (MBOC), wherein the petitioners were declared as duly-elected officials of Compostella.

In the canvassing, it was recorded that Quiño received 11,719 votes, and Wagas received 9,336 votes. Quiño and other winners were proclaimed by the MBOC on May 11, 2010. Wagas filed a series of petitions in the Regional Trial Court (RTC) in Mandaue and COMELEC. He claimed that the proclamation should be annulled because it was discovered that audit/print logs of the consolidating machine of MBOC did not reflect at least 14 clustered precincts, and yet it still generated the Certificate of Canvass and Statement of Votes. Case in point, in Cluster Precinct No. 19, Wagas received 700 votes but the Statement of Votes reflected only 10 votes.

ISSUE:

Whether or not the discrepancy in the number of votes should lead to the annulment of the proclamation of winners

RULING:

The Court decided to dismiss the case because it was already moot. There is no justiciable controversy in cases that are considered moot and academic. The petitioner is also not entitled to any relief due to the dismissal of the case.

ISABELITA P. GRAVIDES *v.* COMMISSION ON ELECTIONS and PEDRO C. BORJAL
G.R. No. 199433, November 13, 2012, *EN BANC*(VILLARAMA, JR, *J.*)

Pedro C. Borjal (Borjal) and Isabelita P. Gravides (Gravides) both ran for the position of Punong Barangay of Barangay U.P. Campus in Diliman, Quezon City during the October 25, 2010 Barangay and Sangguniang Kabataan (SK) Elections. Results of the elections showed that Gravides garnered a total of 2,322 votes as against Borjal's 2,320 votes. On October 26, 2010, the Barangay Board of Canvassers (BBOC) officially proclaimed Gravides as the winning candidate for the said post.Borjal filed an Election Protest alleging the following irregularities and violation of election laws.Gravides filed her Answer pointing out among others that the protest failed to provide a detailed specification of the acts or omissions complained of, which would show the alleged fraud or irregularities in the protested precincts. Such general and sweeping allegations violate the provisions of A.M. No. 07-4-15-SC or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials, including non-compliance with the requirement of cash deposit. Neither Borjal nor his watchers filed a challenge or raised any issue with the BET or BBOC on the integrity of the ballots during the voting and counting of votes in accordance with Sections 202 and 203 of Batas Pambansa Blg. 881, as evidenced by the Minutes of Voting and Counting of Votes.The MeTC issued a Notice of Pre-Trial Conference.The counsel served with this Notice is duty bound to notify the party represented by him of the schedule of Preliminary Conference. Failure of the plaintiff or the defendant to appear in the preliminary conference shall respectively be cause for dismissal of his/her case or a summary judgment based solely on the complaint in accordance with Rule 70, Sec. 8, par. 2 & 3 of the Rules of Civil Procedure. During the preliminary conference, Gravides moved for the dismissal of the election protest for non-compliance with Section 4, Rule 9 of A.M. No. 07-4-15-SC as to the contents of the preliminary conference brief. After considering the movant's arguments and the counter-arguments of the opposing counsel, the MeTC resolved to grant the motion. Borjal appealed the order of dismissal to the COMELEC arguing that the MeTC erred (1) in applying the Rules of Civil Procedure on the preliminary conference in the election protest and in misinforming him of the contents of a preliminary conference brief in its Notice of Pre-Trial Conference; (2) assuming said notice is not defective, it was issued prematurely, contrary to the mandate of Section 1, Rule 9 of A.M. No. 07-4-15-SC; and (4) in dismissing the election protest by holding that his Preliminary Conference Brief failed to comply with the required contents under Section 4, Rule 9 of A.M. No. 07-4-15-SC. In its Resolution dated August 25, 2011, the COMELEC's First Division granted the appeal, annulled the December 7, 2010 Order of the MeTC and remanded the case for further proceedings. Gravides filed a motion for reconsideration which was denied by the Commission En Banc.

ISSUE:

Is failure of Borjal to comply with Sec. 4 Rule 9 of A.M. No. 07-4-15-SC warrants the dismissal of the case?

RULING:

NO. The pertinent provisions of Rule 9 of A.M. No. 07-4-15-SC state:

> SEC. 4. Preliminary conference brief.—The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt at least one day before the date of the preliminary conference, their respective briefs which shall contain the following:
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> 1. A summary of admitted facts and proposed stipulation of facts;

2. The issues to be tried or resolved;
3. The pre-marked documents or exhibits to be presented, stating their purpose;
4. A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners;
5. The number and names of the witnesses, their addresses, and the substance of their respective testimonies. The testimonies of the witnesses shall beby affidavits in question and answer form as their direct testimonies, subject to oral cross examination;
6. A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case;
7. The proposed number of revision committees and names of their revisors and alternate revisors; and
8. In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.
9. SEC. 5. Failure to file brief.—Failure to file the brief or to comply with its required contents shall have the same effect as failure to appear at the preliminary conference.

SEC. 6. Effect of failure to appear.—The failure of the protestantor counsel to appear at the preliminary conference shall be cause for dismissal, motu proprio, of the protest or counter-protest. The failure of the protestee or counsel to appear at the preliminary conference shall have the same effect as provided in Section 4(c), Rule 4 of these Rules, that is, the court may allow the protestant to present evidence ex parte and render judgment based on the evidence presented. (Emphasis supplied)

Contrary to petitioner's submissions, we find no grave abuse of discretion in the proper consideration by COMELEC of the attendant circumstances warranting a more reasonable and liberal application of the rules. Foremost of these is the fact that Borjal was misled by the Notice of Preliminary Conference issued by the MeTC which erroneously applied the provision on pre-trial brief under the Rules of Civil Procedure. The mistake committed by Borjal's counsel in complying with the court's directive should not prejudice his cause, as no intent to unduly prolong the resolution of the election protest can be gleaned from his failure to include such manifestation of withdrawal of certain protested precincts and of the procedure to be followed in case the election protest seeks the examination, verification, or re-tabulation of election returns.

Another important consideration for the COMELEC was that, unlike in Cabrera where petitioner lost by 420 votes to the winning candidate, only two (2) votes separated the winning candidate Gravides from Borjal who placed second in the 2010 elections for Punong Barangay in Barangay U.P. Campus. There were also only 25 precincts subject of the protest out of the total 36 precincts, in the barangay, as against the 142 precincts protested in Cabrera. As COMELEC duly noted, the finding of just more than 2 misread or miscounted ballots during the revision or recount would be sufficient to overcome the lead of Gravides. The paramount interest of determining the true will of the electorate thus justified a relaxation of procedural rules.Indeed, an election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative.

IN THE MATTER OF THE PETITION FOR THE ISSUANCE OF A WRIT OF AMPARO IN FAVOR OF LILIBETH O. LADAGA v. MAJ. GEN. REYNALDO MAPAGU
G.R. No. 189689-91, November 13, 2012

Petitioners share the common circumstance of having their names included in what is alleged to be a JCICC "AGILA" 3rd Quarter 2007 Order of Battle Validation Result of the Philippine Army's 10th Infantry Division (10thID). They perceive that by the inclusion of their names in the said Order of Battle (OB List), they become easy targets of unexplained disappearances or extralegal killings–a real threat to their life, liberty and security.

ATTY. LILIBETH O. LADAGA (Atty. Ladaga),first came to know of the existence of the OB List from an undisclosed source on May 21, 2009. In the OB List, it was reflected that the ULTIMATE GOAL is to TRY TO OUSTPGMAON 30 NOV 2007.

On the other hand, Atty. Angela Librado-Trinidad (Atty. Librado-Trinidad), delivered a privileged speech before the members of the Sangguniang Panlungsod to demand the removal of her name from said OB List. The Commission on Human Rights, for its part, announced the conduct of its own investigation into the matter.

According to Atty. Librado-Trinidad, in the course of the performance of her duties and functions, she has not committed any act against national security that would justify the inclusion of her name in the said OB List. She said that sometime in May 2008, two suspicious-looking men tailed her vehicle. Also, on June 23, 2008 three men tried to barge into their house

Meanwhile, Atty. Carlos Isagani T. Zarate was informed that he was also included on the OB List. In his petition, he alleged that the inclusion of his name in the said OB List was due to his advocacies as a public interest or human rights lawyer.

The Petitioners assert that the OB List is really a military hit-list as allegedly shown by the fact that there have already been three victims of extrajudicial killing whose violent deaths can be linked directly to the OB List.

On June 16, 2009 filed before the RTC a Petition for the Issuance of a Writ of Amparo. The RTC subsequently issued separate Writs of Amparo, directing the respondents to file a verified written return.

In the return of the respondents, they denied authorship of the OB List, and alleged that petitioners failed to show that they were responsible for the alleged threats.

After submission of the parties' respective Position Papers, the RTC issued Orders finding no substantial evidence to show that the perceived threat to petitioners' life, liberty and security was attributable to the unlawful act or omission of the respondents. The privilege of the Writ was therefore denied.

ISSUES:

Whether the totality of evidence satisfies the degree of proof required under the Writ of Amparo.

RULING:

No, the evidence does not satisfy degree of proof for the issuance of the Writ of Amparo. The Writ of Amparo was promulgated by the Court pursuant to its rule-making powers in response to the alarming rise in the number of cases of enforced disappearances and extrajudicial killings. It is an extraordinary remedy intended to address violations of, or threats to, the rights to life, liberty or security and that, being a remedy of extraordinary character, is not one to issue on amorphous or uncertain grounds but only upon reasonable certainty. Justifying allegations must support the issuance of the writ, on the following matters:

1. The personal circumstances of the petitioner;
2. The name and personal circumstances of the respondent responsible for the threat, act or omission;
3. The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;
4. The investigation conducted specifying the names, personal circumstances and addresses of the investigating authority or individuals;
5. Actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission;
6. The relief prayed for.

Under the Rule on the Writ of Amparo, the parties shall establish their claims by substantial evidence, and if the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate

Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Petitioners sought to prove that the inclusion of their names in the OB List presented a real threat to their security by attributing the violent deaths of the other known activists to the inclusion of their names or the names of their militant organizations in the subject OB List. However, the existence of the OB List could not be directly associated with the menacing behaviour of suspicious men or the violent deaths of certain personalities.

The Petitioners cannot assert that the inclusion of their names in the OB List is as real a threat as that which brought ultimate harm to the other victims without corroborative evidence from which it can be presumed that the suspicious deaths of these three people were in fact, on account of their militant affiliations.

The Petitioners therefore were not able to prove by substantial evidence that there was an actual threat to their rights to life, liberty and security. The mere inclusion of their names in the OB List is not sufficient enough evidence for the issuance of the Writ of Amparo.

CAGAYAN ELECTRIC POWER AND LIGHT CO., INC. *v.* CITY OF CAGAYAN DE ORO
G.R. No. 191761, November 14, 2012, SECOND DIVISION (CARPIO, *J.*)

On January 10, 2005, the Sangguniang Panlungsod of Cagayan de Oro (City Council) passed Ordinance No. 9503-2005 imposing a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at ten percent (10%) of the annual rental income derived from such lease or rental. The City Council, in a letter dated 15 March 2005, informed appellant Cagayan Electric Power and Light Company, Inc. (CEPALCO), through its President and Chief Operation Manager, Ms. Consuelo G. Tion, of the passage of the subject ordinance. On September 30, 2005, appellant CEPALCO, purportedly on pure question of law, filed a petition for declaratory relief assailing the validity of Ordinance No. 9503-2005 before the Regional Trial Court of Cagayan de Oro City, Branch 18, on the ground that the tax imposed by the disputed ordinance is in reality a tax on income which appellee City of Cagayan de Oro may not impose, the same being expressly prohibited by Section 133(a) of Republic Act No. 7160 (R.A. 7160) otherwise known as the Local Government Code (LGC) of 1991. CEPALCO argues that, assuming the City Council can enact the assailed ordinance, it is nevertheless exempt from the imposition by virtue of Republic Act No. 9284 (R.A. 9284) providing for its franchise. In its Answer, appellee raised the following affirmative defenses: (a) the enactment and implementation of the subject ordinance was a valid and lawful exercise of its powers pursuant to the 1987 Constitution, the Local Government Code, other applicable provisions of law, and pertinent jurisprudence; (b) non-exemption of CEPALCO because of the express withdrawal of the exemption provided by Section 193 of the LGC; (c) the subject ordinance is legally presumed valid and constitutional. The trial court rendered its Decision in favor of the City of Cagayan de Oro. On appeal, the appellate court affirmed the trial court's decision.

ISSUE:

Is CEPALCO exempted from payment of tax imposed under the ordinance?

RULING:

NO. Section 5, Article X of the 1987 Constitution provides that "each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government." The Local Government Code supplements the Constitution with Sections 151 and 186.

Although CEPALCO does not question the authority of the Sangguniang Panlungsod of Cagayan de Oro to impose a tax or to enact a revenue measure, CEPALCO insists that Ordinance No. 9503-2005 is an imposition of an income tax which is prohibited by Section 133(a) of the Local Government Code. Unfortunately for CEPALCO, we agree with the ruling of the trial and appellate courts that Ordinance No. 9503-2005 is a tax on business. CEPALCO's act of leasing for a consideration the use of its posts, poles or towers to other pole users falls under the Local Government Code's definition of business. Business is defined by Section 131(d) of the Local Government Code as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." In relation to Section 131(d), Section 143(h) of the Local Government Code provides that the city may impose taxes, fees, and charges on any business which is not specified in Section 143(a) to (g) and which the sanggunian concerned may deem proper to tax.

In contrast to the express statutory provisions on the City of Cagayan de Oro's power to tax, CEPALCO's claim of tax exemption of the income from its poles relies on a strained interpretation. Section 1 of R.A. No. 9284 added Section 9 to R.A. No. 3247, CEPALCO's franchise:

> SEC. 9.Tax Provisions.– The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees or charges and other impositions applicable to private electric utilities under the National Internal Revenue Code (NIRC) of 1997, as amended, the Local Government Code and other applicable laws: Provided, That nothing herein shall be construed as repealing any specific tax exemptions, incentives, or privileges granted under any relevant law: Provided, further, That all rights, privileges, benefits and exemptions accorded to existing and future private electric utilities by their respective franchises shall likewise be extended to the grantee.
>
> The grantee shall file the return with the city or province where its facility is located and pay the taxes due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the NIRC and the return shall be subject to audit by the Bureau of Internal Revenue.

The Local Government Code withdrew tax exemption privileges previously given to natural or juridical persons, and granted local government units the power to impose franchise tax, thus:

> SEC. 137. Franchise Tax. – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.
>
> x x x x
>
> SEC. 193. Withdrawal of Tax Exemption Privileges. – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.
>
> SEC. 534.Repealing Clause.– x x x.
>
> (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.

It is hornbook doctrine that tax exemptions are strictly construed against the claimant. For this reason, tax exemptions must be based on clear legal provisions.

CEPALCO's claim of exemption under the "in lieu of all taxes" clause must fail in light of Section 193 of the Local Government Code as well as Section 9 of its own franchise.

PEOPLE OF THE PHILIPPINES *v.* GODOFREDO MARIANO y FELICIANO and ALLAN DORINGO y GUNAN
G.R. No. 191193, 14 November 2012, SECOND DIVISION (PEREZ, *J.*)

Acting on an informant's tip, a buy-bust team was formed composed of SPO1 Reginal Goñez (SPO1 Goñez), the team leader, with PO1 David Olleres, Jr. (PO1 Olleres) as the poseur-buyer, and police back-ups, PO3 Virgilio Razo (PO3 Razo), and a certain PO1 Pabrigas, and an unidentified member of the Philippine Drug Enforcement Agency (PDEA).[7] SPO1 Goñez produced the marked money consisting of one (1) One Thousand Peso bill and six (6) One Hundred Peso bills. PO1 Olleres placed his initials on the marked bills. On 17 October 2004, the team conducted a buy-bust operation in the house of a certain Gerry Angustia located at Pier Uno, Zone 2, Bulan, Sorsogon. PO1 Olleres, PO3 Razo and the asset proceeded to the target house and they witnessed an ongoing pot session. They looked for "Galog" and they were introduced to Godofredo. They asked Godofredo if they can "score." Godofredo immediately left the house and went to a street at the back of the house. He returned carrying two (2) sachets of shabu, which he handed to PO1 Ollares. In exchange, PO1 Olleres paid him the One Thousand Peso marked bill. Allan also offered PO3 Razo two (2) more sachets of shabu. The latter asked for the Six Hundred Peso marked bills from PO1 Olleres and handed them to Allan as payment for the shabu. After these exchanges, they requested appellants for an actual test of shabu. Godofredo provided them with a tooter and aluminum foil. While they were testing said shabu, they declared an arrest. PO1 Olleres and PO3 Razo identified the appellants in open court.

An Affidavit of Arrest was prepared and signed by PO1 Olleres and PO3 Razo. PO1 Olleres also prepared a receipt of the property seized containing his and appellants' signatures. The buy-bust team marked the plastic sachets containing shabu at the crime scene and PO1 Olleres brought the seized items to the Philippine National Police (PNP) Crime Laboratory. They also took photographs of the items confiscated and of appellants. In Chemistry Report No. D-174-04 dated 18 October 2004, Police Inspector Josephine Macura Clemen, a forensic chemist, found that the specimen submitted to her was Methamphetamine Hydrochloride, otherwise known as shabu.

A different version of the incident was presented by the defense. Allan claimed that on 17 October 2004 at around 10:45 a.m., he was near the fence of Jessie Angustia's house waiting for a pumpboat coming from Masbate. He heard someone from inside the house saying "tadihan ta ini" or "let's taste it." Allan thought that there was food being cooked so he went inside the house. He then saw shabu scattered on the table while a certain Ludy Gubat (Ludy) was holding an aluminum foil. He also saw Godofredo and PO1 Ollares. Allan tried to leave but Ludy poked a knife on the left side of his stomach and held him in the collar. Ludy apparently threatened to stab Allan if the latter did not go with him. Allan was brought by police officers to the 509th Mobile Group where he was forced to sign a document without reading its contents. He was eventually transferred to the PNP Station of Bulan, Sorsogon. Godofredo admitted that he was a drug user and that he went to the house of Jessie Angustia to "score" shabu. Thereat, he saw Ludy and PO1 Olleres sniffing shabu. When Allan arrived, Ludy cursed him and held him on his shoulders. Ludy pulled out a knife and poked it at Allan. Thereafter, PO1 Olleres arrested Godofredo. He was boarded in a tricycle and brought to Camp Crame. The RTC rendered judgment finding appellants guilty. On appeal, the Court of Appeals denied the appeal and affirming appellants' conviction.

ISSUE:

Is the warrantless arrest legal?

RULING:

YES. Appellants' insistence on the illegality of their warrantless arrest equally lacks merit. Section 5, Rule 113 of the Rules of Court allows a warrantless arrest under any of the following circumstances:

> Sec 5. Arrest without warrant, when lawful – A peace officer or a private person may, without a warrant, arrest a person:
>
> > (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
> >
> > (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
> >
> > (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In the instant case, the warrantless arrest was effected under the first mode or aptly termed as in flagrante delicto. PO1 Olleres and PO3 Razo personally witnessed and were in fact participants to the buy-bust operation. After laboratory examination, the white crystalline substances placed inside the four (4) separate plastic sachets were found positive for methamphetamine hydrochloride or shabu, a dangerous drug. Under these circumstances, it is beyond doubt that appellants were arrested in flagrante delicto while committing a crime, in full view of the arresting team.

Anent the absence of counsel during the execution of an inventory receipt, we agree with the conclusion of the appellate court that notwithstanding the inadmissibility of the inventory receipt, the prosecution has sufficiently proven the guilt of appellants, thus:

Admittedly, it is settled that the signature of the accused in the "Receipt of Property Seized" is inadmissible in evidence if it was obtained without the assistance of counsel. The signature of the accused on such a receipt is a declaration against his interest and a tacit admission of the crime charged. However, while it is true that appellants signed receipt of the property seized unassisted by counsel, this only renders inadmissible the receipt itself.

In fact, in the case at bar, the evidentiary value of the Receipt of Property Seized is irrelevant in light of the ample evidence proving appellants' guilt beyond reasonable doubt. The prosecution was able to prove that a valid buy-bust operation was conducted to entrap appellants. The testimony of the poseur-buyer clearly established that the sale of shabu by appellant was consummated. The corpus delicti, which is the shabu, was presented in court and confirmed by the other members of the buy-bust team. They acknowledged that they were the same drugs placed in four (4) plastic sachets seized from appellants.

EVALYN I. FETALINO, et al. v. COMMISSION ON ELECTIONS
G.R. No. 191890: December 4, 2012

President Fidel V. Ramos extended an interim appointment to petitioners Evalyn Fetalino (Fetalino) and Amado Calderon (Calderon) as Comelec Commissioners, each for a term of seven (7) years. Congress, however, adjourned before the Commission on Appointments (CA) could act on their appointments. The constitutional ban on presidential appointments later took effect and Fetalino and Calderon were no longer re-appointed. Thus, Fetalino and Calderon merely served as Comelec Commissioners for more than four months.

Subsequently, Fetalino and Calderon applied for their retirement benefits and monthly pension with the Comelec, pursuant to R.A. No. 1568. The Comelec initially approved the claims pursuant to its resolution. However, in its subsequent resolution, the Comelec, on the basis of its Law Departments study, completely disapproved the Fetalino and Calderons claim, stating that one whose ad interim appointment expires cannot be said to have completed his term of office so as to fall under the provisions of Section 1 of RA 1568 that would entitle him to a lump sum benefit of five years salary. Petitioner-intervenor Manuel A. Barcelona, Jr. (Barcelona) later joined the petitioners in questioning the assailed subsequent resolution.

ISSUES:

1. Whether or not an ad interim appointment qualifies as retirement under the law and entitles them to the full five-year lump sum gratuity;
2. Whether or not the resolution that initially granted the five-year lump sum gratuity is already final and executory;
3. Whether or not Fetalino and Calderon acquired a vested right over the full retirement benefits provided by RA No. 1568.

RULING:

The petition lacks merit.

1. Fetalino, Calderon and Barcelona are not entitled to the lump sum gratuity under Section 1 of R.A. No. 1568, as amended.

The Court emphasized that the right to retirement benefits accrues only when two conditions are met: first, when the conditions imposed by the applicable law in this case, R.A. No. 1568 are fulfilled; and second, when an actual retirement takes place. The Court has repeatedly emphasized that retirement entails compliance with certain age and service requirements specified by law and jurisprudence, and takes effect by operation of law.

2. Section 1 of R.A. No. 1568 allows the grant of retirement benefits to the Chairman or any Member of the Comelec who has retired from the service after having completed his term of office. Fetalino, Calderon and Barcelona obviously did not retire under R.A. No. 1568, as amended, since they never completed the full seven-year term of office. While the Court characterized an ad interim appointment in Matibag v. Benipayo as a permanent appointment that takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office, the Court have

also positively ruled in that case that an ad interim appointment that has lapsed by inaction of the Commission on Appointments does not constitute a term of office.

3. No vested rights over retirement benefits. Retirement benefits granted to Fetalino, Calderon and Barcelona under Section 1 of R.A. No. 1568 are purely gratuitous in nature; thus, they have no vested right over these benefits. Retirement benefits as provided under R.A. No. 1568 must be distinguished from a pension which is a form of deferred compensation for services performed; in a pension, employee participation is mandatory, thus, employees acquire contractual or vested rights over the pension as part of their compensation.

HPS SOFTWARE AND COMMUNICATION CORPORATION v. PLDT
G.R. Nos. 170217 & 170694; 10 December 2012; Leonardo-de Castro, J.

The case is a consolidation of 2 petitions for review on certiorari each seeking to annul a ruling of the CA setting aside an RTC ruling which directed the immediate return of seized items to HPS and another CA ruling which affirmed an RTC order to release the seized equipment. The controversy originated from 2 search warrants for violation of RPC308 for Theft of Telephone Services and for Violation of PD401 for unauthorized installation of telephone communication equipment following the complaint of PLDT accusing HPS of conducting ISR or unauthorized sale of international long distance calls. The warrants were issued by the TC to seize instruments of the crime after being satisfied with the affidavits and sworn testimony of the complainant's witnesses that they saw telephone equipment inside the respondents' compound being used for the purpose of conducting ISR. After the implementation of the warrants, the motions to quash the warrants and return the things seized were filed which were granted by the RTC.

ISSUES:

1. Whether PLDT possessed the legal personality to file the petition in light of respondents' claim that, in criminal appeals, it is the SolGen which has the exclusive and sole power to file appeals in behalf of the people
2. Whether PLDT's petition for certiorari should have been dismissed outright by the CA since no MR was filed before the RTC order
3. Whether PLDT was engaged in forum shopping when it filed a petition for certiorari despite the fact that it had previously filed an appeal from the RTC order
4. Whether the search warrants were improperly quashed

RULING:

1. The PLDT did because the petition filed did not involve an ordinary criminal action, nor a civil action, but a special criminal process.

2. Despite the non-fulfilment of the requirement of MR filing, the peculiar circumstances surrounding the case offered exceptions to the rule, that is, PLDT's deprivation of due process when the RTC expeditiously released the items seized by virtue of the subject search warrants without waiting for PLDT to file its memorandum and despite the fact that no motion for execution was filed by respondents which was required.

3. The PLDT did not because the 2 motions posed different causes of action, i.e., the appeal that PLDT elevated to the CA was an examination of the validity of the trial court's action of quashing the search warrants that it initially issued while, on the other hand, the petition for certiorari was an inquiry on whether the TC judge committed grave abuse of discretion when he ordered the release of the seized items subject of the search warrants despite the fact that the RTC order had not yet become final and executory.

4. Yes, the evidence presented were sufficient to show probable cause to issue subject warrants; and (2) subject warrants weren't general warrants because the items to be seized were sufficiently identified physically and their relation to the offenses charged were also specifically identified.

EXECUTIVE SECRETARY, et al. v. FORERUNNER MULTI RESOURCES, INC.
G.R. No. 199324. 7 January 2013. SECOND DIVISION (Carpio, J.)

Executive Order No. 156 (EO 156) issued by President Gloria Macapagal-Arroyo on December 12, 2002, imposes a partial ban on the importation of used motor vehicles. The ban is part of several measures to accelerate the sound development of the motor vehicle industry in the country.

Respondent Forerunner Multi Resources, Inc, a corporation engaged in the importation of used motor vehicles sued the government in the Regional Trial Court of Aparri, Cagayan to declare invalid EO 156. Respondent mainly attacked EO 156 for (1) having been issued by President Arroyo ultra vires; and (2) trenching the Due Process and Equal Protection Clauses of the Constitution, among others. Respondent sought a preliminary injunctive writ to enjoin the enforcement of EO 156.

The trial court granted the relief, initially by issuing a temporary restraining order followed by a writ of preliminary injunction granted in its Order. On petitioners' motion, however, the trial court reconsidered its Order and lifted the injunctive writ. As such, respondent elevated the case to the Court of Appeals in a certiorari petition.

The CA granted certiorari, set aside the trail court's Order and reinstates its earlier Order. Aggrieved, petitioners are now before this Court charging the CA with having committed an error of law in reinstating the preliminary injunctive writ for respondent.

ISSUE:

Whether or not EO 156 is valid and constitutional.

RULING:

Yes. Respondent's attack on EO 156, comes on the heels of Southwing Case where the Court passed upon and found EO 156 legally sound, albeit overextended in application. There, the Court found EO 156 a valid police power measure addressing an urgent national concern which is to protect the domestic industry, for "the deterioration of the local motor manufacturing firms due to the influx of imported used motor vehicles is an urgent national concern that needs to be swiftly addressed by the President." Accordingly, in the exercise of delegated police power, the executive can therefore validly proscribe the importation of these vehicles. Thus, until recersed or modified by the Court, Southwing makes conclusive the presumption of EO 156' validity.

MAYOR ABELARDO ABUNDO, SR., v. COMISSION ON ELECTIONS and ERNESTO R. VEGA
G.R. No. 20171, 8 January 2013, EN BANC (Velasco, Jr., J.)

For 4 successive regular elections, Abundo vied for the position of municipal mayor of Viga, Catanduanes. In the 2004 electoral derby, the Viga municipal board of canvassers initially proclaimed as winner one Torres, who, in due time, performed the functions of the office of mayor. Abundo protested and was eventually declared the winner of the 2004 mayoralty electoral contest. Then came the 2010 elections where Abundo and Torres again opposed each other and Torres lost no time in seeking the former's disqualification to run, predicated on the 3-consecutive term limit rule. COMELEC First Division ruled in favor of Abundo. Vega commenced a quo warranto action before the RTC to unseat Abundo on essentially the same grounds Torres raised. RTC declared Abundo ineligible to serve as municipal mayor because he has already served 3 consecutive terms. COMELEC's 2nd division and en banc affirmed.

ISSUE:

Whether or not Abundo is deemed to have served three (3) consecutive terms.

RULING:

No. As stressed in Socrates v. COMELEC(G.R. No. 154512, 2002), the principle behind the three-term limit rule covers only consecutive terms and that what the Constitution prohibits is a consecutive fourth term. An elective local official cannot, following his third consecutive term, seek immediate reelection for a fourth term, albeit he is allowed to seek a fresh term for the same position after the election where he could have sought his fourth term but prevented to do so by reason of the prohibition. There has, in fine, to be a break or interruption in the successive terms of the official after his or her third term. An interruption usually occurs when the official does not seek a fourth term, immediately following the third.

As is clearly provided in Sec. 8, Art. X of the Constitution as well as in Sec. 43(b) of the LGC, voluntary renunciation of the office by the incumbent elective local official for any length of time shall not, in determining service for three consecutive terms, be considered an interruption in the continuity of service for the full term for which the elective official concerned was elected. This qualification was made as a deterrent against an elective local official intending to skirt the three-term limit rule by merely resigning before his or her third term ends. This is a voluntary interruption as distinguished from involuntary interruption which may be brought about by certain events or causes.

The almost two-year period during which Abundo's opponent actually served as Mayor is and ought to be considered an involuntary interruption of Abundo's continuity of service. An involuntary interrupted term, cannot, in the context of the disqualification rule, be considered as one term for purposes of counting the three-term threshold. It cannot be overemphasized that pending the favorable resolution of his election protest, Abundo was relegated to being an ordinary constituent since his opponent, as presumptive victor in the 2004 elections, was occupying the mayoralty seat. In other words, during which his opponent actually assumed the mayoralty office, Abundo was a private citizen warming his heels while awaiting the outcome of his protest. Hence, even if declared later as having the right to serve the elective position such declaration would not erase the fact that prior to the finality of the election protest, Abundo did not serve in the mayor's office and, in fact, had no legal right to said position.

SPOUSES AUGUSTO G. DACUDAO AND OFELIA R. DACUDAO v. SECRETARY OF JUSTICE RAUL M. GONZALES
G.R. No. 188056, 8 January 2013, EN BANC (Bersamin, J.)

Spouses Dacudao were among the investors whom Celso G. Delos Angeles, Jr. and his associates in the Legacy Group of Companies (Legacy Group) allegedly defrauded through the Legacy Group's "buy back agreement" that earned them check payments that were dishonored. After their written demands for the return of their investments went unheeded, they initiated a number of charges for syndicated estafa against Delos Angeles, Jr., et al. in the Office of the City Prosecutor of Davao City on February 6, 2009.

On March 18, 2009, the Secretary of Justice issued Department Order No. 182 (DO No. 182), directing all Regional State Prosecutors, Provincial Prosecutors, and City Prosecutors to forward all cases already filed against Delos Angeles, Jr., et al. to the Secretariat of the DOJ Special Panel in Manila for appropriate action except that of cases filed in Cagayan de Oro City which is covered by another DOJ Memorandum dated March 2, 2009 (March 2 Memorandum). Pursuant to DO No. 182, the complaints of the spouses were forwarded by the Office of the City Prosecutor of Davao City to the Secretariat of the Special Panel of the DOJ.

Aggrieved by such turn of events, the spouses have directly come to the Supreme Court via petition for certiorari, prohibition and mandamus and raise as issue, among other, that the March 2 Memorandum violated their right to equal protection under the Constitution since it exempts from the coverage of DO No. 182 all cases for syndicated estafa already filed and pending in the Office of the City Prosecutor of Cagayan de Oro City. The Office of the Solicitor General (OSG), representing respondent Secretary of Justice, maintains the validity of DO No. 182 and the March 2 Memorandum. Hence, it posits that the petition should be dismissed for lack of merit.

ISSUE:

Whether or not the questioned Department Order and Memorandum violate the spouses' right to equal protection of the laws.

RULING:

No. The equal protection clause of the Constitution does not require the universal application of the laws to all persons or things without distinction; what it requires is simply equality among equals as determined according to a valid classification. Hence, the Court has affirmed that if a law neither burdens a fundamental right nor targets a suspect class, the classification stands as long as it bears a rational relationship to some legitimate government end. That is the situation in the instant case. In issuing the assailed DOJ Memorandum dated March 2, 2009, the Secretary of Justice took into account the relative distance between Cagayan de Oro, where may complainants against the Legacy Group resided, and Manila, where the preliminary investigations would be conducted by the special panel. He also took into account that the cases had already been filed in the City Prosecutor's Office of Cagayan de Oro at the time he issued DO No. 182. Given the considerable number of complainants residing in Cagayan de Oro City, the Secretary of Justice was fully justified in excluding the cases commenced in Cagayan de Oro from the ambit of DO No. 182. The classification taken into consideration by the Secretary of Justice was really valid. Resultantly, the spouses could not inquire into the wisdom behind the exemption upon the ground that the non-application of the exemption to them would cause them some inconvenience.

KARAMUDIN K. IBRAHIM v. COMMISSION ON ELECTIONS AND ROLAN G. BUAGAS
G.R. No. 192289, 8 January 2013, EN BANC (Reyes, J.)

Kamarudin Ibrahim (Ibrahim) filed his certificate of candidacy to run as municipal Vice-Mayor. Thereafter, respondent Rolan G. Buagas (Buagas), then Acting Election Officer in the said municipality, forwarded to the COMELECs Law Department (Law Department) the names of candidates who were not registered voters therein. The list included Ibrahim's name.

Consequently, COMELEC en banc issued a Resolution dated December 22, 2009 disqualifying Ibrahim for not being a registered voter of the municipality where he seeks to be elected without prejudice to his filing of an opposition. It prompted Ibrahim to file Petition/Opposition but was denied by the COMELEC en banc through a Resolution dated May 6, 2010. In this resolution, the COMELEC declared that the Resolution dated December 22, 2009 was anchored on the certification, which was issued by Buagas and Acting Provincial Election Supervisor of Maguindanao, Estelita B. Orbase, stating that Ibrahim was not a registered voter of the municipality where he seeks to be elected.

On the day of the election, during which time the Resolution dated May 6, 2010 had not yet attained finality, Ibrahim obtained the highest number cast for the Vice-Mayoralty race. However, the Municipal Board of Canvassers (MBOC), which was then chaired by Buagas, suspended Ibrahims proclamation. Thus, this petition.

ISSUE:

Whether or not the COMELEC en banc acted with grave abuse of discretion in issuing the assailed resolutions.

RULING:

Yes. The petition is meritorious. The COMELEC en banc is devoid of authority to disqualify Ibrahim as a candidate for the position of Vice-Mayor.

In the case at bar, the COMELEC en banc, through the herein assailed resolutions, ordered Ibrahim's disqualification even when no complaint or petition was filed against him yet. Let it be stressed that if filed before the conduct of the elections, a petition to deny due course or cancel a certificate of candidacy under Section 78 of the OEC is the appropriate petition which should have been instituted against Ibrahim considering that his allegedly being an unregistered voter of his municipality disqualified him from running as Vice-Mayor. His supposed misrepresentation as an eligible candidate was an act falling within the purview of Section 78 of the OEC. Moreover, even if we were to assume that a proper petition had been filed, the COMELEC en banc still acted with grave abuse of discretion when it took cognizance of a matter, which by both constitutional prescription and jurisprudential declaration, instead aptly pertains to one of its divisions.

GOVERNOR SADIKUL A. SAHALI AND VICE-GOVERNOR RUBY M. SAHALI v. COMMISSION ON ELECTIONS (FIRST DIVISION), et al.
G.R. No. 201796, 15 January 2013, EN BANC (Reyes, J.)

During the 2010 elections, Sadikul A. Sahali (Sadikul) and private respondent Rashidin H. Matba (Matba) were two of the four candidates who ran for the position of governor in the Province of Tawi-Tawi while Ruby and private respondent Jilkasi J. Usman (Usman) ran for the position of Vice-Governor. The Provincial Board of Canvassers (PBOC) proclaimed Sadikul and Ruby as the duly elected governor and vice-governor, respectively.

Matba and Usman filed an Election Protest Ad Cautelam with the COMELEC. Matba contested the results in 39 out of 282 clustered precincts that functioned in the province of TawiTawi. Sadikul and Ruby filed their answer with counter protest.

The COMELEC First Division directed its Election Records and Statistics Department (ERSD) to conduct a technical examination of the said election paraphernalia by comparing the signature and thumbmarks appearing on the EDCVL as against those appearing on the VRRs and the Book of Voters. Sadikul and Ruby jointly filed with the COMELEC First Division a Strong Manifestation of Grave Concern and Motion for Reconsideration.

The COMELEC First Division issued the herein assailed Order which denied the said motion for reconsideration filed by Sadikul and Ruby.

Sadikul and Ruby filed the instant petition asserting that the COMELEC First Division committed grave abuse of discretion amounting to lack or excess of jurisdiction.

ISSUE:

1) Whether or not Sadikul and Rubys resort to the remedy of certiorari to assail an interlocutory order issued by the COMELEC first division is proper.
2) Whether or not Sadikul and Ruby were denied due process when the COMELEC granted the motion for technical examination filed by Matba and Usman without giving them the opportunity to oppose the said motion.

RULING:

1) No. The power of the Supreme Court to review election cases falling within the original exclusive jurisdiction of the COMELEC only extends to final decisions or resolutions of the COMELEC en banc, not to interlocutory orders issued by a Division thereof.

In Ambil, Jr. v. COMELEC, Supreme Court elucidated on the import of Section 7, Art IX of the Constitution in this wise: We have interpreted this provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers. This decision must be a final decision or resolution of the Comelec en banc, not of a division, certainly not an interlocutory order of a division. The Supreme Court has no power to review via certiorari, an interlocutory order or even a final resolution of a Division of the Commission on Elections.

Here, the Orders issued by the First Division of the COMELEC were merely interlocutory orders since they only disposed of an incident in the main case i.e. the propriety of the technical examination of the said election paraphernalia. Thus, the proper recourse for Sadikul and Ruby is to

await the decision of the COMELEC First Division in the election protests filed by Matba and Usman, and should they be aggrieved thereby, to appeal the same to the COMELEC en banc by filing a motion for reconsideration.

2) No. The Court cannot see how due process was denied to the petitioners in the issuance of the COMELEC First Divisions Order.

It bears stressing that the COMELEC, in election disputes, is not duty-bound to notify and direct a party therein to file an opposition to a motion filed by the other party. It is incumbent upon the party concerned, if he/she deems it necessary, to file an opposition to a motion within five days from receipt of a copy of the same without awaiting for the COMELEC's directive to do so.

Sadikul and Ruby were able to present their opposition to the said motion for technical examination in their manifestation and motion for reconsideration which they filed with the COMELEC First Division. Indeed, their objections to the technical examination of the said election paraphernalia were exhaustively discussed by the COMELEC First Divisions Resolution. Having filed a motion for reconsideration of the COMELEC First Divisions Order, their claim of denial of due process is clearly unfounded.

The petitioners should be reminded that due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard.

RENATO M. FEDERICO v. COMMISSION ON ELECTIONS, et al.
G.R. No. 199612, 22 January 2013, EN BANC (Mendoza, J.)

Edna Sanchez and private respondent Maligaya were candidates for the position of municipal mayor of Sto. Tomas, Batangas, in the May 10, 2010 Automated National and Local Elections. Maligaya was the Liberal Party's official mayoralty candidate.

On April 27, 2010, Armando Sanchez, husband of Edna and the gubernatorial candidate for the province of Batangas, died. On April 29, 2010, Edna withdrew her Certificate of Candidacy (COC) for the position of mayor. She then filed a new COC and the corresponding Certificate of Nomination and Acceptance (CONA) for the position of governor as substitute candidate for her deceased husband. Subsequently, petitioner Renato M. Federico (Federico) filed his COC and CONA as official candidate of the Nationalista Party and as substitute candidate for mayor, in lieu of Edna. Private Respondent sought to declare petitioner ineligible because his COC was allegedly filed after the deadline had lapsed pursuant to Comelec Resolution No. 8678. However, the COMELEC en banc resolved to give due course to the candidacy of Edna and Petitioner.

By the time of the elections, because the ballots had already been printed, the name of Edna was still on the ballots for the position of Mayor of Sto. Tomas against Private Respondent. In fact, Edna garnered the most votes for that election, beating Private Respodent for the position of mayor. Eventually the board ofcanvassers credited the votes of Edna to Petitioner (who was the replacement of Edna). Private Respondent filed this petition to annul the proclamation of Petitioner Federico. The COMELEC en banc eventually annulled the proclamation of Petitioner and proclaimed Private Respondent Maligaya as mayor (Maligaya na sya). The COMELEC declared that Petitioner's substitution of Edna was void because if was filed after the period for filing of COCs had lapsed.

Federico filed a petition for certiorari with the Supreme Court. He claimed that Comelec Resolution No. 8678, which fixed a period for the filing of COCs and CONAs cannot prevail over the Omnibus Election code, specifically Sec. 77 which provides that a party's replacement candidate of one who withdraws, dies or is disqualified may be filed no later than mid-day of the elections.

ISSUE:

Whether or not the Comelec gravely abused its discretion when it annulled Federico's proclamation as the winning candidate on the ground that his substitution as mayoralty candidate was void.

RULING:

No, the COMELEC did not gravely abuse its discretion. The Comelec is empowered by law to prescribe such rules so as to make efficacious and successful the conduct of the first national automated election. RA 9369 which governs the conduct of automated elections specifically allows COMELEC to set deadlines for the filing of certificates of candidacy etc. Under Sec. 15, "the Comelec, which has the constitutional mandate to enforce and administer all laws and regulations relative to the conduct of an election."

In resolving that the deadline for all substitutions must be made on or before Dec. 15, 2009 pursuant to Comelec Resolution No. 8678, COMELEC did not abuse its discretion.
Thus, the substitution of Petitioner was made out of time and was thus void.

HENRY R. GIRON v. COMISSION ON ELECTIONS
G.R. No. 188179, 22 January 2013, EN BANC (Sereno, CJ.)

Henry Giron (Giron) and petitioners-in-intervention assail the constitutionality of Section 12 (Substitution of Candidates) and Section 14 (Repealing Clause) of Republic Act No. (R.A.)9006, otherwise known as the Fair Election Act.

Giron asserts that the insertion of Sections 12 and 14 in the Fair Election Act violates Section 26(1), Art. VI of the 1987 Constitution, which specifically requires: "Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof." He avers that these provisions are unrelated to the main subject of the Fair Election Act: the lifting of the political ad ban. Section 12 refers to the treatment of the votes cast for substituted candidates after the official ballots have been printed, while Section 14 pertains to the repeal of Section 67 (Candidates holding elective office) of Batas PambansaBlg. 881, otherwise known as the Omnibus Election Code. Section 67 of this law concerns the ipso facto resignation of elective officials immediately after they file their respective certificates of candidacy for an office other than that which they are currently holding in a permanent capacity.

ISSUE:

Whether the inclusion of Sections 12 and 14 in the Fair Election Act violates Section 26(1), Article VI of the 1987 Constitution, or the "one subject-one title" rule.

RULING:

No. The petition must fail. It is a well-settled rule that courts are to adopt a liberal interpretation in favor of the constitutionality of a legislation, as Congress is deemed to have enacted a valid, sensible, and just law. Because of this strong presumption, the one who asserts the invalidity of a law has to prove that there is a clear, unmistakable, and unequivocal breach of the Constitution; otherwise, the petition must fail.

The Court finds that the present case fails to present a compelling reason that would surpass the strong presumption of validity and constitutionality in favor of the Fair Election Act.

Constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation. The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object. Mere details need not be set forth. The title need not be an abstract or index of the Act.

Moreover, the avowed purpose of the constitutional directive that the subject of a bill should be embraced in its title is to apprise the legislators of the purposes, the nature and scope of its provisions, and prevent the enactment into law of matters which have not received the notice, action and study of the legislators and the public.

LIWAYWAY VINZONS-CHATO v. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND ELMER E. PANOTES
G.R. No. 199149, 22 January 2013, EN BANC (Perlas-Bernabe, J.)

Liwayway Vinzons-Chato (Chato) renewed her bid in the May 10, 2010 elections as representative of the Second Legislative District of Camarines Norte, composed of the seven (7) Municipalities of Daet, Vinzons, Basud, Mercedes, Talisay, San Vicente, and San Lorenzo, with a total of 205 clustered precincts. She lost to Elmer E. Panotes (Panotes) who was proclaimed the winner on May 12, 2010 having garnered a total of 51,707 votes as against Chato's 47,822 votes, or a plurality of 3,885 votes.

Chato filed an electoral protest before the House of Representatives Electoral Tribunal (HRET) assailing the results in four (4) municipalities, namely: Daet, Vinzons, Basud and Mercedes. Panotes moved for the suspension of the proceedings and prayed that a preliminary hearing be set in order to determine the integrity of the ballots and the ballot boxes used in the elections. In its resolution, the HRET directed the copying of the picture image files of ballots relative to the protest. Chato then filed an Urgent Motion to Prohibit the Use by Protestee of the Decrypted and Copied Ballot Images reiterating the lack of legal basis for the decryption and copying of ballot images inasmuch as no preliminary hearing had been conducted showing that the integrity of the ballots and ballot boxes was not preserved. The HRET denied Chato's motion. HRET declared that, although the actual ballots used in the May 10, 2010 elections are the best evidence of the will of the voters, the picture images of the ballots are regarded as the equivalent of the original ballots. Chato filed a motion for reconsideration but the HRET denied the same.

Chato then moved for the revision of the ballots in all of the protested clustered precincts arguing that the results of the revision of twenty-five percent (25%) of the precincts indicate a reasonable recovery of votes in her favor. She filed a second motion reiterating her prayer for the continuance of the revision. The HRET denied the motion.

However, on March 22, 2012, the HRET issued the assailed Resolution No. 12-079 directing the continuation of the revision of ballots in the remaining seventy-five percent (75%) protested clustered precincts, or a total of 120 precincts. Panotes moved for reconsideration but the HRET denied the same.

Hence, Panotes filed a petition for certiorari and prohibition before the Supreme Court.

ISSUE:

Whether or not HRET gravely abused its discretion amounting to lack or excess of jurisdiction in issuing Resolution No. 12-079.

RULING:

No. The HRET did not gravely abuse its discretion when it issued Resolution No. 12-079. It is hornbook principle that the jurisdiction of the Supreme Court to review decisions and orders of electoral tribunals is exercised only upon showing of grave abuse of discretion committed by the tribunal; otherwise, the Court shall not interfere with the electoral tribunal's exercise of its discretion or jurisdiction. Grave abuse of discretion has been defined as the capricious and whimsical exercise of judgment, or the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty.

To substitute our own judgment to the findings of the HRET will doubtless constitute an intrusion into its domain and a curtailment of its power to act of its own accord on its evaluation of the evidentiary weight of testimonies presented before it.

In the main, Panotes ascribes grave abuse of discretion on the part of the HRET in ordering the continuation of the revision of ballots in the remaining 75% of the protested clustered precincts.

The Constitution mandates that the HRET "shall be the sole judge of all contests relating to the election, returns and qualifications" of its members. By employing the word "sole", the Constitution is emphatic that the jurisdiction of the HRET in the adjudication of election contests involving its members is intended to be its own – full, complete and unimpaired.

There can be no challenge, therefore, to such exclusive control absent any clear showing, as in this case, of arbitrary and improvident use by the Tribunal of its power that constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such grave abuse of discretion that there has to be a remedy therefor.

HEIRS OF LUIS A. LUNA, et al. v. RUBEN S. AFABLE, et al.
G.R. No. 188299, 23 January 2013, SECOND DIVISION (Perez, J.)

The heirs of Luis A. Luna and Remegio A. Luna, and Luz Luna-Santos ("Heirs") are co-owners of a parcel of land located in Brgy. Guinobatan, Calapan City, Oriental Mindoro which was subjected to compulsory acquisition under the Comprehensive Agrarian Reform Program (CARP). Respondents Ruben Afable, Tomas Afable, Florante Evangelista, Leovy Evangelista, Jaime Ilagan, et al. (Afable, et al.) were identified by the DAR as qualified farmer-beneficiaries. Hence, Certificates of Land Ownership Award (CLOAs) were issued to them. The heirs sought the cancellation of the said CLOAs before the DAR Adjudication Board (DARAB) Calapan City. Their petition was anchored mainly on the reclassification of the land in question into a light intensity industrial zone pursuant to Municipal Ordinance No. 21, series of 1981, enacted by the Sangguniang Bayan of Calapan, thereby excluding the same from the coverage of the agrarian law. DARAB Calapan City ordered the cancellation of the CLOAs.

Aggrieved, Afable et al. appealed to the DARAB Central Office and the latter ruled in their favour. The heirs appealed the decision to the Office of the President which ruled that the parcel of land is excluded from the coverage of CARP. Then, Afable et al. appealed the Office of the President's decision to the Court of Appeals. The CA granted the appeal. Hence, the heirs appealed to the Supreme Court.

ISSUE:

Whether Municipal Ordinance No. 21 validly classified the parcel of land from agricultural to non-agricultural, and therefore, exempt from CARP.

RULING:

Yes. The land is outside the coverage of the agrarian reform program. Local governments have the power to reclassify agricultural into non-agricultural lands. Sec. 345 of RA No. 2264 (The Local Autonomy Act of 1959) specifically empowers municipal and/or city councils to adopt zoning and subdivision ordinances or regulations in consultation with the National Planning Commission. By virtue of a zoning ordinance, the local legislature may arrange, prescribe, define, and apportion the land within its political jurisdiction into specific uses based not only on the present, but also on the future projection of needs.

The regulation by local legislatures of land use in their respective territorial jurisdiction through zoning and reclassification is an exercise of police power. The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality.

BRENDA L. NAZARETH v. REYNALDO A. VILLAR, et al.
G.R. No. 188635, 29 January 2013, EN BANC (Bersamin, J.)

On December 22, 1997, Congress enacted R.A. No. 8439 to address the policy of the State to provide a program for human resources development in science and technology in order to achieve and maintain the necessary reservoir of talent and manpower that would sustain the drive for total science and technology mastery.3 Section 7 of R.A. No. 8439 grants the following additional allowances and benefits (Magna Carta benefits) to the covered officials and employees of the DOST. Funds shall be appropriated from GAA of the year.

DOST RD IX Brenda Nazareth released the Magna Carta for covered officials and employees covering CY 1998 despite absence of specific appropriation in GAA. Subsequently COA issued several notice of disallowance disapproving payment of Magna Carta benefits. Provision for use of savings of GAA was vetoed by the President. DOST Sec Dr. Filemon Uriarte Jr requested from the Office of the President for authority to utilize DOST's savings to pay the Magna Carta benefits which Executive Secretary Ronaldo Zamora approved.

Nazareth thereafter lodged an appeal with COA urging the lifting of disallowances of the magna Carta Benefits for CY 1998 to 2001.Her appeal was anchored by Memorandum from Exec Sec Zamora.

ISSUE:

Whether or not the act of Executive Secretary Zamora is valid.

RULING:

Under Art.VI Sec.25(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

In the funding of current activities, projects, and programs, the general rule should still be that the budgetary amount contained in the appropriations bill is the extent Congress will determine as sufficient for the budgetary allocation for the proponent agency. The only exception is found in Section 25 (5),14 Article VI of the Constitution, by which the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions are authorized to transfer appropriations to augment any item in the GAA for their respective offices from the savings in other items of their respective appropriations. The plain language of the constitutional restriction leaves no room for the petitioner's posture, which we should now dispose of as untenable.

It bears emphasizing that the exception in favor of the high officials named in Section 25(5), Article VI of the Constitution limiting the authority to transfer savings only to augment another item in the GAA is strictly but reasonably construed as exclusive.

ANTONIO D. DAYAO, et al. v. COMMISSION ON ELECTIONS AND LPG MARKETERS ASSOCIATION, INC.
G.R. No. 193643, 29 January 2013, EN BANC (Reyes, J.)

LPGMA is a non-stock, non-profit association of consumers and small industry players in the LPG and energy sector. It sought to register as a party-list organization for the May 10, 2010 elections and was approved by the COMELEC.

Petitioners filed a complaint and petition before the COMELEC for the cancellation of LPGMA's registration as a party-list organization, arguing that LPGMA does not represent a marginalized sector of the society because its incorporators, officers and members are not marginalized or underrepresented citizens.

In response, LPGMA countered that Section 5(2), Article VI of the 1987 Constitution does not require that party-list representatives must be members of the marginalized and/or underrepresented sector of the society. It also averred that the ground cited by the petitioners is not one of those mentioned in Section 6 of R.A. No. 7941 and that petitioners are just trying to resurrect their lost chance to oppose the petition for registration.

The COMELEC dismissed the complaint for two reasons. First, the ground for cancellation cited by the petitioners is not among the exclusive enumeration in Section 6 of R.A. No. 7941. Second, the complaint is actually a belated opposition to LPGMA's petition for registration which has long been approved with finality. Petitioners' motions for reconsideration were denied.

ISSUES:

1) Whether or not a belated opposition to a petition for registration bars the action of complainants.

2) Whether or not the Constitution and the Party-List System Act (RA 7941) require that incorporators, officers and members of a party-list must be marginalized or underrepresented citizens.

RULING:

1) No. An opposition to a petition for registration is not a condition precedent to the filing of a complaint for cancellation.

Section 6, R.A. No. 7941 lays down the grounds and procedure for the cancellation of party-list accreditation, viz:

"Sec. 6. Refusal and/or Cancellation of Registration.

The COMELEC may, motupropio or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association, organized for religious purposes;
(2) It advocates violence or unlawful means to seek its goal;
(3) It is a foreign party or organization;

(4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;

(5) It violates or fails to comply with laws, rules or regulations relating to elections;

(6) It declares untruthful statements in its petition;

(7) It has ceased to exist for at least one (1) year; or

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered."

For the COMELEC to validly exercise its statutory power to cancel the registration of a party-list group, the law imposes only two (2) conditions: (1) due notice and hearing is afforded to the party-list group concerned; and (2) any of the enumerated grounds for disqualification in Section 6 exists.

2) Yes. In Ang Bagong Bayani-OFW Labor Party v. COMELEC,36 the Court explained that the "laws, rules or regulations relating to elections" referred to in paragraph 5 include Section 2 of R.A. No. 7941,37 which declares the underlying policy for the law that marginalized and underrepresented Filipino citizens become members of the House of Representatives. A party or an organization, therefore, that does not comply with this policy must be disqualified.

The party-list system of representation was crafted for the marginalized and underrepresented and their alleviation is the ultimate policy of the law. In fact, there is no need to categorically mention that "those who are not marginalized and underrepresented are disqualified."

All told, the COMELEC committed grave abuse of discretion in dismissing the complaint for cancellation of LPGMA's party-list accreditation. In the ordinary course of procedure, the herein complaint should be remanded to the COMELEC. However, on August 2, 2012, the COMELEC issued Resolution No. 9513 which subjected to summary evidentiary hearings all existing and registered party-list groups, including LPGMA, to assess their continuing compliance with the requirements of R.A. No. 7941 and the guidelines set in Ang Bagong Bayani. The Resolution stated, among others, that the registration of all non-compliant groups shall be cancelled. LPGMA submitted to a factual and evidentiary hearing before the COMELEC and was deemed to have complied with all requirements for registration.

NATIONAL POWER CORPORATION v. SPOUSES RODOLFO ZABALA AND LILIA BAYLON
G.R. No. 173520, 30 January 2013, SECOND DIVISION (Del Castillo, J.)

On October 27, 1994, plaintiff-appellant National Power Corporation (NAPOCOR) filed a complaint for Eminent Domain against defendants-appellees Sps. R. Zabala & L. Baylon, before the RTC, Balanga City, Bataan alleging that Spouses Zabala and Baylon own parcels of land located in Balanga City, Bataan and that it urgently needed an easement of right of way over the affected areas for its 230 KV Limay-Hermosa Transmission Lines. The Commissioners submitted their Report/ Recommendation fixing the just compensation at P150.00 per square meter. NAPOCOR prayed that the report be recommitted to the commissioners for the modification of the report and the substantiation of the same with reliable and competent documentary evidence based on the value of the property at the time of its taking. The Commissioners submitted their Final Report fixing the just compensation at P500.00 per square meter.

On June 28, 2004, the RTC rendered its Partial Decision and ordered NAPOCOR to pay Php150.00 per square meter for the 6,820 square meters determined as of the date of the taking of the property.

NAPOCOR appealed to the CA arguing that the Commissioners reports are not supported by documentary evidence. NAPOCOR argued that the RTC did not apply Section 3A of R.A. No. 6395 which limits its liability to easement fee of not more than 10% of the market value of the property traversed by its transmission lines. CA affirmed the RTCs Partial Decision.

ISSUE:

Whether or not the RTC erred in fixing the amount of Php150.00 per square meter as the fair market value of the property subject of the easement right of way of NAPOCOR.

RULING:

No. Sec. 3A of RA No. 6395 cannot restrict the constitutional power of the courts to determine just compensation. The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot be usurped by any other branch or official of the government. Statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof.

The Supreme Court has held in a long line of cases that since the high- tension electric current passing through the transmission lines will perpetually deprive the property owners of the normal use of their land, it is only just and proper to require NAPOCOR to recompense them for the full market value of their property.

SPOUSES JESUS L. CABAHUG AND CORONACION M. CABAHUG v. NATIONAL POWER CORPORATION
G.R. No. 186069, 30 January 2013, SECOND DIVISION (Perez, J.)

The Spouses Cabahug are the owners of two parcels of land situated in Barangay Capokpok, Tabango, Leyte, registered in their names under TCT Nos. T-9813 and T-1599 of the Leyte provincial registry. They were among the defendants in Special Civil Action No. 0019-PN, a suit for expropriation earlier filed by NPC before the RTC, in connection with its Leyte-Cebu Interconnection Project. The suit was later dismissed when NPC opted to settle with the landowners by paying an easement fee equivalent to 10% of value of their property in accordance with Section 3-A of Republic Act (RA) No. 6395.

On 9 November 1996, Jesus Cabahug executed two documents denominated as Right of Way Grant in favor of NPC. For and in consideration of the easement fees, Cabahug granted NPC a continuous easement of right of way for the latter's transmissions lines and their appurtenances over 24,939 and 4,750 square meters of the parcels of land covered by TCT Nos. T-9813 and T-1599, respectively. By said grant, Jesus Cabahug agreed not to construct any building or structure whatsoever, nor plant in any area within the Right of Way that will adversely affect or obstruct the transmission line of NPC, except agricultural crops, the growth of which will not exceed three meters high.

Under paragraph 4 of the grant, however, Jesus Cabahug reserved the option to seek additional compensation for easement fee, based on the Supreme Court's 18 January 1991 Decision in G.R. No. 60077, entitled National Power Corporation v. Spouses Misericordia Gutierrez and Ricardo Malit, et al. (Gutierrez).

On 21 September 1998, the Spouses Cabahug filed the complaint for the payment of just compensation, damages and attorney's fees against NPC before the RTC. In its answer, NPC averred that it already paid the full easement fee mandated under Section 3-A of RA 6395 and that the reservation in the grant referred to additional compensation for easement fee, not the full just compensation sought by the Spouses Cabahug.

The RTC rendered a Decision dated 14 March 2000, brushing aside NPC's reliance on Section 3-A of RA 6395. Aggrieved by the foregoing decision, the NPC perfected the appeal before the CA which, on 16 May 2007, rendered the herein assailed decision, reversing and setting aside the RTC's appealed decision. On motion for reconsideration, the same was denied by the CA. Hence, this petition for review on certiorari.

ISSUE:

Whether or not the petitioners are entitled to full just compensation.

RULING:

Yes. The rule is settled that a contract constitutes the law between the parties who are bound by its stipulations which, when couched in clear and plain language, should be applied according to their literal tenor. Courts cannot supply material stipulations, read into the contract words it does not contain or, for that matter, read into it any other intention that would contradict its plain import. Neither can they rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them

for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.

The power of eminent domain may be exercised although title is not transferred to the expropriator in an easement of right of way. Just compensation which should be neither more nor less than the money equivalent of the property is, moreover, due where the nature and effect of the easement is to impose limitations against the use of the land for an indefinite period and deprive the landowner its ordinary use. It has been ruled that the owner should be compensated for the monetary equivalent of the land if, as here, the easement is intended to perpetually or indefinitely deprive the owner of his proprietary rights through the imposition of conditions that affect the ordinary use, free enjoyment and disposal of the property or through restrictions and limitations that are inconsistent with the exercise of the attributes of ownership, or when the introduction of structures or objects which, by their nature, create or increase the probability of injury, death upon or destruction of life and property found on the land is necessary. Measured not by the taker's gain but the owner's loss, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator.

The determination of just compensation in eminent domain proceedings is a judicial function and no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation, but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. Hence, Section 3A of R.A. No. 6395, as amended, is not binding upon this Court.

PHILIP SIGFRID A. FORTUN v. PRIMA JESUSA B. QUINSAYAS, et al.
G.R. No. 194578, 13 February 2013, SECOND DIVISION (Carpio, J.)

Atty. Fortun, the lawyer of Ampatuan in the Maguindanao Massacre case, filed a petition for contempt against respondents Atty. Quinsayas and others. Atty. Fortun alleged that Atty. Quinsayas, et al. actively disseminated the details of the disbarment complaint against him in violation of Rule 139-B of the Rules of Court on the confidential nature of disbarment proceedings. The filing of the disbarment complaint had been published and was the subject of a televised broadcast by respondent media groups and personalities. He further alleged that the public circulation of the disbarment complaint against him exposed this Court and its investigators to outside influence and public interference. On the other hand, the respondents argued that the news article is covered by the protection of the freedom of expression, speech, and of the press under the Constitution.

ISSUE:

Whether or not the publication of the disbarment complaint is covered by the protection of the freedom of speech.

RULING:

Yes. As a general rule, disbarment proceedings are confidential in nature until their final resolution and the final decision of the Court. In this case, however, since petitioner is a public figure or has become a public figure because he is representing a matter of public concern, and because the event itself that led to the filing of the disbarment case against petitioner is a matter of public concern, the media has the right to report the filing of the disbarment case as legitimate news. It would have been different if the disbarment case against petitioner was about a private matter as the media would then be bound to respect the confidentiality provision of disbarment proceedings. Since the disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press.

RAMON MARTINEZ v. PEOPLE OF THE PHILIPPINES
G.R. No. 198694, 13 February 2013, SECOND DIVISION (Perlas-Bernabe, J.)

PO2 Roberto Soque, et al. while conducting a routine foot patrol along Balingkit Street, Malate, Manila, heard a man shouting "Putanginamo! Limangdaannabaito?". For purportedly violating Section 844 of the Revised Ordinance of the City of Manila which punishes breaches peace, the man, later identified as Ramon, was apprehended and asked to empty his pockets.

In the course thereof, the police officers were able to recover from him a small transparent plastic sachet containing white crystalline substance suspected to be shabu. Consequently, Ramon was charged with possession of dangerous drugs under Section 11(3), Article II of RA 9165.

ISSUE:

Whether the warrantless arrest was valid.

RULING:

No. Article III, section 2 of the Constitution Commonly known as the exclusionary rule's, proscription is not, however, an absolute and rigid one. As found in jurisprudence, one of the traditional exceptions, among others, is searches incidental to a lawful arrest which is of particular significance to this case and thus, necessitates further disquisition.

Based on the records in the case at bar, PO2 Soque arrested Ramon for allegedly violating Section 844 (breaches of peace) of the Manila City Ordinance. Evidently, the gravamen of these offenses is the disruption of communal tranquility. Thus, to justify a warrantless arrest based on the same, it must be established that the apprehension was effected after a reasonable assessment by the police officer that a public disturbance is being committed. However, PO2 Soques testimony surrounding circumstances leading to Ramons warrantless warrant clearly negates the presence of probable cause when the police officers conducted their warrantless arrest of Ramon.

To elucidate, it cannot be said that the act of shouting in a thickly populated place, with many people conversing with each other on the street, would constitute any of the acts punishable under Section 844 of the said ordinance. The words he allegedly shouted "Putangina mo! Limang daan na ba ito?" are not slanderous, threatening or abusive, and thus, could not have tended to disturb the peace or excite a riot considering that at the time of the incident, Balingkit Street was still teeming with people and alive with activity. Further, no one present at the place of arrest ever complained that Ramons shouting disturbed the public.

Consequently, since it cannot be said that Ramon was validly arrested, the warrantless search that resulted from it was also illegal. Thus, the subject shabu purportedly seized from Ramon is inadmissible evidence.

DENNIS A.B. FUNA v. ALBERTO C. AGRA AND LEANDRO R. MENDOZA
G.R. No. 191644, 19 February 2013, EN BANC (Bersamin, J.)

Agra was then the Government Corporate Counsel when President Arroyo designated him as the Acting Solicitor General in place of former Solicitor General Devanadera, who has been appointed as the Secretary of Justice. Again, Agra was designated as the Acting Secretary in place of Secretary Devanadera when the latter resigned. Agra then relinquished his position as Corporate Counsel and continued to perform the duties of an Acting Solicitor General.

Funa, a concerned citizen, questioned his appointment. Agra argued that his concurrent designations were merely in a temporary capacity. Even assuming that he was holding multiple offices at the same time, his designation as an Acting Solicitor General is merely akin to a hold-over, so that he never received salaries and emoluments for being the Acting Solicitor General when he was appointed as the Acting Secretary of Justice.

ISSUES:

(1) Whether or not Agra's designation as Acting Secretary of Justice is valid.
(2) Whether or not Agra may concurrently hold the positions by virtue of the "hold-over principle".
(3) Whether or not the offices of the Solicitor General and Secretary of Justice is in an ex officio capacity in relation to the other.

RULING:

(1) No. The designation of Agra as Acting Secretary of Justice concurrently with his position of Acting Solicitor General violates the constitutional prohibition under Article VII, Section 13 of the 1987 Constitution.

It is immaterial that Agra's designation was in an acting or temporary capacity. Section 13 plainly indicates the intent of the Framers of the Constitution is to impose a stricter prohibition on the President and the Cabinet Members in so far as holding other offices or employments in the Government or in GOCCs is concerned. The prohibition against dual or multiple offices being held by one official must be construed as to apply to all appointments or designations, whether permanent or temporary, because the objective of Section 13 is to prevent the concentration powers in the Executive Department officials, specifically the President, the Vice-President, the Cabinet Members and their deputies and assistants.

(2) No. Agra's designation as the Acting Secretary of Justice was not in an ex officio capacity, by which he would have been validly authorized to concurrently hold the two positions due to the holding of one office being the consequence of holding the other.

Being included in the stricter prohibition embodied in Section 13, Agra cannot liberally apply in his favor the broad exceptions provided in Article IX-B, Sec 7 (2) of the Constitution to justify his designation as Acting Secretary of Justice concurrently with his designation as Acting Solicitor General, or vice versa. It is not sufficient for Agra to show that his holding of the other office was "allowed by law or the primary functions of his position." To claim the exemption of his concurrent designations from the coverage of the stricter prohibition under Section 13, he needed to establish that his concurrent designation was expressly allowed by the Constitution.

(3) No. The powers and functions of the Solicitor General are neither required by the primary functions nor included in the powers of the DOJ, and vice versa. The OSG, while attached to the DOJ, is not a constituent of the latter, as in fact, the Administrative Code of 1987 declares that the OSG is independent and autonomous. With the enactment of RA. 9417, the Solicitor General is now vested with a cabinet rank, and has the same qualifications for appointment, rank, prerogatives, allowances, benefits and privileges as those of Presiding Judges of the Court of Appeals.

ISABELO A. BRAZA v. SANDIGANBAYAN (FIRST DIVISION)
G.R. No. 195032, 20 February 2013, THIRD DIVISION (Mendoza, J.)

The Philippines was assigned the hosting rights for the 12th ASEAN Leaders Summit scheduled in December 2006. In preparation for this international diplomatic event with the province of Cebu as the designated venue, the DPWH identified projects relative to the improvement and rehabilitation of roads and installation of traffic safety devices and lighting facilities. The then Acting Secretary of the DPWH, Hermogenes E. Ebdane, approved the resort to alternative modes of procurement for the implementation of these projects due to the proximity of the ASEAN Summit.

One of the ASEAN Summit-related projects to be undertaken was the installation of street lighting systems along the perimeters of the Cebu International Convention Center in Mandaue City and the ceremonial routes of the Summit to upgrade the appearance of the convention areas and to improve night-time visibility for security purposes. Four (4) out of eleven (11) street lighting projects were awarded to FABMIK Construction and Equipment Supply Company, Inc. (FABMIK).

Three other projects were bidded out only on November 28, 2006 or less than two (2) weeks before the scheduled start of the Summit. Thereafter, the DPWH and FABMIK executed a Memorandum of Agreement(MOA) whereby FABMIK obliged itself to implement the projects at its own expense and the DPWH to guarantee the payment of the work accomplished. FABMIK was able to complete the projects within the deadline of ten (10) days utilizing its own resources and credit facilities. The schedule of the international event, however, was moved by the national organizers to January 9-15, 2007 due to typhoon Seniang which struck Cebu for several days.

After the summit, a letter-complaint was filed before the Public Assistance and Corruption Prevention Office(PACPO), Ombudsman Visayas, alleging that the ASEAN Summit street lighting projects were overpriced. A panel composing of three investigators conducted a fact-finding investigation to determine the veracity of the accusation. Braza, being the president of FABMIK, was impleaded as one of the respondents. On March 16, 2007, the Ombudsman directed the DBM and the DPWH to cease and desist from releasing or disbursing funds for the projects in question.

Eventually, the OMB-Visayas filed several informations before the Sandiganbayan for violation of Sec. 3(g) of R.A. 3019 against the officials of DPWH Region VII, the officials of the cities of Mandaue and Lapu-lapu and private contractors, FABMIK President Braza and GAMPIK Board Chairman Gerardo S. Surla (Surla). It was alleged therein that Braza acted in conspiracy with the public officials and employees in the commission of the crime charged.

On August 14, 2008, the motions for reinvestigation filed by Arturo Radaza (Radaza), the Mayor of Lapu-lapuCity, and the DPWH officials were denied by the Sandiganbayan for lack of merit. Consequently, they moved for the reconsideration of said resolution. On August 27, 2008, Braza filed a motion for reinvestigation anchored on the following grounds: (1) the import documents relied upon by the OMB-Visayas were spurious and falsified; (2) constituted new evidence, if considered, would overturn the finding of probable cause; and (3) the finding of overpricing was bereft of factual and legal basis as the same was not substantiated by any independent canvass of prevailing market prices of the subject lampposts. He prayed for the suspension of the proceedings of the case pending such reinvestigation. The Sandiganbayan treated Braza's motion as his motion for reconsideration of its August 14, 2008 Resolution.

During the proceedings held on November 3, 2008, the Sandiganbayan reconsidered its August 14, 2008 resolution and directed a reinvestigation of the case. According to the anti-graft court, the allegations to the effect that no independent canvass was conducted and that the charge of overpricing was based on falsified documents were serious reasons enough to merit a reinvestigation of the case.

On October 12, 2009, the Sandiganbayan issued the first assailed resolution admitting the Amended Information, denying Braza's plea for dismissal of the criminal case. The Sandiganbayan ruled that Brazawould not be placed in double jeopardy should he be arraigned anew under the second information because his previous arraignment was conditional. It continued that even if he was regularly arraigned, double jeopardy would still not set in because the second information charged an offense different from, and which did not include or was necessarily included in, the original offense charged. Lastly, it found that the delay in the reinvestigation proceedings could not be characterized as vexatious, capricious or oppressive and that it could not be attributed to the prosecution.

On November 6, 2009, Braza moved for reconsideration with alternative motion to quash the information reiterating his arguments that his right against double jeopardy was violated and, thus, warranting the dismissal of the criminal case with prejudice. In the alternative, Braza moved for the quashal of the second information vigorously asserting that the same was fatally defective for failure to allege any actual, specified and quantifiable injury sustained by the government as required by law for indictment under Sec. 3(e) of R.A. 3019, and that the charge of overpricing was unfounded.

On October 22, 2010, the Sandiganbayan issued the second assailed resolution stating, among others, the denial of Braza's Motion to Quash the information. The anti-graft court ruled that the Amended Information was sufficient in substance as to inform the accused of the nature and causes of accusations against them. Further, it held that the specifics sought to be alleged in the Amended Information were evidentiary in nature which could be properly presented during the trial on the merits. Braza was effectively discharged from the first Information upon the filing of the second Information but said discharge was without prejudice to, and would not preclude, his prosecution for violation of Sec. 3(e) of R.A. No. 3019. The Sandiganbayan, however, deemed it proper that a new preliminary investigation be conducted under the new charge.

ISSUE:

Whether or not double jeopardy has already set in basis of Braza "not guilty" plea in the first Information and, thus, he can no longer be prosecuted under the second Information.

RULING:

No. The petition is devoid of merit. It is Braza stance that his constitutional right under the double jeopardy clause bars further proceedings in Case No. SB-08-CRM-0275. He asserts that his arraignment under the first information was simple and unconditional and, thus, an arraignment under the second information would put him in double jeopardy.

His argument cannot stand scrutiny. While it is true that the practice of the Sandiganbayan of conducting "provisional" or "conditional" arraignment of the accused is not specifically sanctioned by the Revised Internal Rules of the Procedure of theSandiganbayan or by the regular Rules of Procedure, this Court had tangentially recognized such practice inPeople v. Espinosa, provided that the alleged conditions attached to the arraignment should be "unmistakable, express, informed and enlightened." The Court further required that the conditions must be expressly stated in the order disposing of arraignment; otherwise, it should be deemed simple and unconditional.

A careful perusal of the record in the case at bench would reveal that the arraignment of Braza under the first information was conditional in nature as it was a mere accommodation in his favor to enable him to travel abroad without the Sandiganbayan losing its ability to conduct trial in absentia in case he would abscond. TheSandiganbayan's June 6, 2008 Order clearly and unequivocally states that the conditions for Braza'sarraignment as well as his travel abroad, that is, that if the Information would be amended, he shall waive his constitutional right to be protected against double jeopardy and shall allow himself to be arraigned on the amended information without losing his right to question the same. It appeared that these conditions were duly explained to Braza and his lawyer by the anti-graft court. He was afforded time to confer and consult his lawyer. Thereafter, he voluntarily submitted himself to such conditional arraignment and entered a plea of "not guilty" to the offense of violation of Sec. 3(g) of R.A. No. 3019.

Verily, the relinquishment of his right to invoke double jeopardy had been convincingly laid out. Such waiver was clear, categorical and intelligent. It may not be amiss to state that on the day of said arraignment, one of the incidents pending for the consideration of the Sandiganbayan was an omnibus motion for determination of probable cause and for quashal of information or for reinvestigation filed by accused Radaza. Accordingly, there was a real possibility that the first information would be amended if said motion was granted. Although the omnibus motion was initially denied, it was subsequently granted upon motion for reconsideration, and a reinvestigation was ordered to be conducted in the criminal case.

Having given his conformity and accepted the conditional arraignment and its legal consequences, Braza is now estopped from assailing its conditional nature just to conveniently avoid being arraigned and prosecuted of the new charge under the second information. Besides, in consonance with the ruling in Cabo v.Sandiganbayan, this Court cannot now allow Braza to renege and turn his back on the above conditions on the mere pretext that he affirmed his conditional arraignment through a pleading denominated as Manifestation filed before the Sandiganbayan on November 13, 2008. After all, there is no showing that the anti-graft court had acted on, much less noted, his written manifestation.

Assuming, in gratia argumenti, that there was a valid and unconditional plea, Braza cannot plausibly rely on the principle of double jeopardy to avoid arraignment under the second information because the offense charged therein is different and not included in the offense charged under the first information. The right against double jeopardy is enshrined in Section 21 of Article III of the Constitution, which reads:

"No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

This constitutionally mandated right is procedurally buttressed by Section 17 of Rule 117 of the Revised Rules of Criminal Procedure. To substantiate a claim for double jeopardy, the accused has the burden of demonstrating the following requisites:

"(1) a first jeopardy must have attached prior to the second;
(2) the first jeopardy must have been validly terminated; and
(3) the second jeopardy must be for the same offense as in the first."

As to the first requisite, the first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment, (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express

consent. The test for the third element is whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether the second offense includes or is necessarily included in the offense charged in the first information.

There is simply no double jeopardy when the subsequent information charges another and different offense, although arising from the same act or set of acts. Prosecution for the same act is not prohibited. What is forbidden is the prosecution for the same offense.

DEPARTMENT OF HEALTH v. PHIL PHARMAWEALTH, INC.
G.R. No. 182358, 20 February 2013, SECOND DIVISION (Del Castillo, J.)

Secretary of Health Alberto G. Romualdez, Jr. issued an Administrative Order providing for additional guidelines for accreditation of drug suppliers aimed at ensuring that only qualified bidders can transact business with petitioner Department of Health (DOH). Respondent Phil. Pharmawealth, Inc. (Pharmawealth) submitted to DOH a request for the inclusion of additional items in its list of accredited drug products, including the antibiotic —Penicillin G Benzathine.

Petitioner DOH issued an Invitation for Bids for the procurement of 1.2 million units vials of Penicillin G Benzathine. Despite the lack of response from DOH regarding Pharmawealth's request for inclusion of additional items in its list of accredited products, the latter submitted its bid for the Penicillin G Benzathine contract and gave the lowest bid thereof. . In view, however, of the non-accreditation of respondent‘s Penicillin G Benzathine product, the contract was awarded to Cathay/YSS Laboratories‘ (YSS).

Respondent Pharmawealth filed a complaint for injunction, mandamus and damages with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order with the Regional Trial praying, inter alia, that the trial court —nullify the award of the Penicillin G Benzathine contract to YSS Laboratories, Inc. and direct petitioners DOH et al. to declare Pharmawealth as the lowest complying responsible bidder for the Benzathine contract, and that they accordingly award the same to plaintiff company‖ and —adjudge defendants Romualdez, Galon and Lopez liable, jointly and severally to plaintiff. Petitioners DOH et al. subsequently filed a motion to dismiss praying for the dismissal of the complaint based on the doctrine of state immunity. The trial court, however, denied the motion to dismiss. The Court of Appeals (CA) denied DOH‘s petition for review which affirmed the order issued Regional Trial Court of Pasig City denying petitioners‘ motion to dismiss the case.

ISSUE:

Whether or not the charge against the public officers acting in their official capacity will prosper.

RULING:

Yes. The suability of a government official depends on whether the official concerned was acting within his official or jurisdictional capacity, and whether the acts done in the performance of official functions will result in a charge or financial liability against the government. In its complaint, DOH sufficiently imputes grave abuse of discretion against petitioners in their official capacity. Since judicial review of acts alleged to have been tainted with grave abuse of discretion is guaranteed by the Constitution, it necessarily follows that it is the official concerned who should be impleaded as defendant or respondent in an appropriate suit.

As regards petitioner DOH, the defense of immunity from suit will not avail despite its being an unincorporated agency of the government, for the only causes of action directed against it are preliminary injunction and mandamus. Under Section 1, Rule 58 of the Rules of Court, preliminary injunction may be directed against a party or a court, agency or a person. Moreover, the defense of state immunity from suit does not apply in causes of action which do not seek to impose a charge or financial liability against the State.

Hence, the rule does not apply where the public official is charged in his official capacity for acts that are unauthorized or unlawful and injurious to the rights of others. Neither does it apply where the

public official is clearly being sued not in his official capacity but in his personal capacity, although the acts complained of may have been committed while he occupied a public position.

In the present case, suing individual petitioners in their personal capacities for damages in connection with their alleged act of —illegally abusing their official positions to make sure that plaintiff Pharmawealth would not be awarded the Benzathine contract [which act was] done in bad faith and with full knowledge of the limits and breadth of their powers given by law‖ is permissible, in consonance with the foregoing principles. For an officer who exceeds the power conferred on him by law cannot hide behind the plea of sovereign immunity and must bear the liability personally.

SVETLANA P. JALOSJOS v. COMMISSION ON ELECTIONS et al.
G.R. No. 193314, 26 February 2013, EN BANC (Sereno, CJ.)

On 20 November 2009, petitioner filed her Certificate of Candidacy (CoC) for mayor of Baliangao, Misamis Occidental for the 10 May 2010 elections. She indicated therein her place of birth and residence as Barangay Tugas, Municipality of Baliangao, Misamis Occidental (Brgy. Tugas).

Asserting otherwise, private respondents filed against petitioner a Petition to Deny Due Course to or Cancel the Certificate of Candidacy, in which they argued t hat she had falsely represented her place of birth and residence, because she was in fact born in San Juan, Metro Manila, and had not totally abandoned her previous domicile, Dapitan City.

On the other hand, petitioner averred that she had established her residence in the said barangay since December 2008 when she purchased two parcels of land there, and that she had been staying in the house of a certain Mrs. Lourdes Yap (Yap) while the former was overseeing the construction of her house. Furthermore, petitioner asserted that the error in her place of birth was committed by her secretary. Nevertheless, in a CoC, an error in the declaration of the place of birth is not a material misrepresentation that would lead to disqualification, because it is not one of the qualifications provided by law.

The Petition to Deny Due Course to or Cancel the Certificate of Candidacy remained pending as of the day of the elections, in which petitioner garnered the highest number of votes. On 10 May 2010, the Municipal Board of Canvassers of Baliangao, Misamis Occidental, proclaimed her as the duly elected municipal mayor.

On 04 June 2010, the COMELEC Second Division ruled that respondent was DISQUALIFIED for the position of mayor.

The COMELEC En Banc promulgated a Resolution on 19 August 2010 denying the Motion for Reconsideration of petitioner for lack of merit and affirming the Resolution of the Second Division denying due course to or cancelling her CoC.

ISSUE:

Whether or not COMELEC committed grave abuse of discretion in holding that petitioner had failed to prove compliance with the one-year residency requirement for local elective officials.

RULING:

No. Svetlana failed to comply with the one-year residency requirement for local elective officials. Petitioner uncontroverted domicile of origin is Dapitan City. The question is whether she was able to establish, through clear and positive proof, that she had acquired a domicile of choice in Baliangao, Misamis Occidental, prior to the May 2010 elections.

When it comes to the qualifications for running for public office, residence is synonymous with domicile. Accordingly, Nuval v. Gurayheld as follows:

"The term residences so used, is synonymous with domicile which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention."

There are three requisites for a person to acquire a new domicile by choice. First, residence or bodily presence in the new locality. Second, an intention to remain there. Third, an intention to abandon the old domicile.

These circumstances must be established by clear and positive proof, as held in Romualdez-Marcos v. COMELECand subsequently in Dumpit- Michelena v. Boado:

"In the absence of clear and positive proof based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing concurrence of all three requirements can the presumption of continuity or residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time."

Moreover, even if these requisites are established by clear and positive proof, the date of acquisition of the domicile of choice, or the critical date, must also be established to be within at least one year prior to the elections using the same standard of evidence.

In the instant case, we find that petitioner failed to establish by clear and positive proof that she had resided in Baliangao, Misamis Occidental, one year prior to the 10 May 2010 elections.

There were inconsistencies in the Affidavits of Acas-Yap, Yap III, Villanueva, Duhay lungsod, Estrellada, Jumawan, Medija, Bagundol, Colaljo, Tenorio, Analasan, Bation, Maghilum and Javier.

First, they stated that they personally knew petitioner to be an actual and physical resident of Brgy. Tugassince 2008. However, they declared in the same Affidavits that she stayed in Brgy. Punta Miray while her house was being constructed in Brgy. Tugas.

Second, construction workers Yap III, Villanueva, Duhay lungsod and Estrellada asserted that in December 2009, construction was still ongoing. By their assertion, they were implying that six months before the 10 May 2010 elections, petitioner had not yet moved into her house at Brgy. Tugas.

Third, the same construction workers admitted that petitioner only visited Baliangao occasionally when they stated that "at times when she (petitioner) was in Baliangao, she used to stay at the house of Lourdes Yap while her residential house was being constructed."

These discrepancies bolster the statement of the Brgy. Tugas officials that petitioner was not and never had been a resident of their barangay. At most, the Affidavits of all the witnesses only show that petitioner was building and developing a beach resort and a house in Brgy. Tugas, and that she only stayed in Brgy. Punta Miray whenever she wanted to oversee the construction of the resort and the house.

Assuming that the claim of property ownership of petitioner is true, Fernandez v. COMELEC has established that the ownership of a house or some other property does not establish domicile. This principle is especially true in this case as petitioner has failed to establish her bodily presence in the locality and her intent to stay there at least a year before the elections.

Finally, the approval of the application for registration of petitioner as a voter only shows, at most, that she had met the minimum residency requirement as a voter. This minimum requirement is different from that for acquiring a new domicile of choice for the purpose of running for public office.

CIVIL SERVICE COMMISSION v. PILILLA WATER DISTRICT
G.R. No. 190147, 5 March 2013, EN BANC (Villarama, Jr., J.)

Paulino J. Rafanan was first appointed General Manager (GM) on a coterminous status by the Board of Directors (BOD) of the Pililla Water District (PWD). On June 16, 2004, the BOD approved a Resolution for the extension of service of Rafanan- who is reaching his age 65 on that month of 2004. The CSC denied the request of PWD for the extension of service of Rafanan and considered the latter "separated from the service at the close of office hours on June 25, 2004, his 65th birthday. However, On April 8, 2005, the PWD reappointed Rafanan as GM on coterminous status. Said reappointment was signed by Chairman Paz and attested by the CSC Field Office-Rizal. Pililla Mayor Leandro V. Masikip, Sr. questioned Rafanan's coterminous appointment as defective and void ab initio considering that he was appointed to a career position despite having reached the compulsory retirement age. Said letter-complaint was treated as an appeal from the appointment made by the BOD Chairman of respondent. Three years later, the CSC invalidated the coterminous appointment issued to Rafanan as GM on the ground that it was made in violation of Section 2 of R.A. No. 9286-which in effect placed the position of GM of a water district in the category of career service. It posits that this can be inferred from the removal of the sentence "Said officer shall serve at the pleasure of the Board," and replaced it with the sentence "Said officer shall not be removed from office, except for cause and after due process." The CA reversed the CSC and ruled that the position of GM in water districts remains primarily confidential in nature and hence, BOD may validly appoint Rafanan to the said position even beyond the compulsory retirement age.

ISSUE:

Whether or not under Section 23 of P.D. No. 198 as amended by R.A. No. 9286, the position of GM of a water district remains as primarily confidential.

RULING:

Yes. In the case of the General Manager of a water district, Section 24 in relation to Section 23 of P.D. No. 198, as amended, reveals the close proximity of the positions of the General Manager and BOD. "SEC. 24. Duties.–The duties of the General Manager and other officers shall be determined and specified from time to time by the Board. The General Manager, who shall not be a director, shall have full supervision and control of the maintenance and operation of water district facilities, with power and authority to appoint all personnel of the district: Provided, That the appointment of personnel in the supervisory level shall be subject to approval by the Board." (As amended by Sec.10, PD 768) It is established that no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law. However, this admits of exceptions for it is likewise settled that the right to security of tenure is not available to those employees whose appointments are contractual and coterminous in nature. Since the position of General Manager of a water district remains a primarily confidential position whose term still expires upon loss of trust and confidence by the BOD provided that prior notice and due hearing are observed, it cannot therefore be said that the phrase "shall not be removed except for cause and after due process" converted such position into a permanent appointment. Significantly, loss of confidence may be predicated on other causes for removal provided in the civil service rules and other existing laws. In fine, since the position of General Manager of a water district remains a primarily confidential position, Rafanan was validly reappointed to said position by respondent's BOD on April 8, 2005 under coterminous status despite having reached the compulsory retirement age.

TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES v. CIVIL SERVICE COMMISSION
G.R. No. 182249, 5 March 2013, EN BANC (Brion, J.)

De Guzman was appointed on a permanent status as Financial Management Specialist IV of petitioner TIDCORP, a government owned and controlled corporation (GOCC) created pursuant to Presidential Decree No. 1080. His appointment was included in TIDCORP's Report on Personnel Actions, which was submitted to the CSC-DBM Field Office. De Guzman's appointment was disallowed because such position was accordingly not included in the DBM's Index of Occupational Service. TIDCORP appealed the invalidation of De Guzman's appointment to the CSC-NCR Director on the ground that under RA 8494 which amended TIDCORP's charter, empowers its Board of Directors to create its own organizational structure and staffing pattern, and to approve its own compensation and position classification system and qualification standards.

The CSC-NCR denied TIDCORP's appeal because De Guzman's appointment failed to comply with Section 1, Rule III of CSC Memorandum Circular No. 40, s. 1998, which requires that the position of an appointment submitted to the CSC must conform with the approved Position Allocation List and must be found in the Index of Occupational Service. In response to said ruling, TIDCORP appealed said decision to the CSC-Central Office. However, CSC-CO affirmed the CSC-NCR's decision. TIDCORP moved to reconsider the CSC-CO's decision, but this motion was denied prompting TIDCORP to file a Rule 65 petition for certiorari with the CA. The CA denied TIDCORP's petition and upheld the ruling of the CSC-CO. The CA also denied petitioner's motion for reconsideration. Hence, the present petition for review on certiorari.

ISSUE:

Whether or not De Guzman's appointment as Financial Management Specialist IV in TIDCORP is valid.

RULING:

Yes. While the CSC has authority over personnel actions in GOCCs, the rules it formulates pursuant to this mandate should not contradict or amend the civil service laws it implements. The 1987 Constitution created the CSC as the central personnel agency of the government mandated to establish a career service and promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It is constitutionally created administrative agency that possesses executive, quasi-judicial and quasi-legislative or rule-making powers.

The CSC's rule-making power as a constitutional grant is an aspect of its independence as a constitutional commission. It places the grant of this power outside the reach of Congress, which cannot withdraw the power at any time. But while the grant of the CSC's rule-making power is untouchable by Congress, the laws that the CSC interprets and enforces fall within the prerogative of Congress. As an administrative agency, the CSC's quasi-legislative power is subject to the same limitations applicable to other administrative bodies. The rules that the CSC formulates must not override, but must be in harmony with, the law it seeks to apply and implement. Pursuant to Section 7 of its charter expressly exempts TIDCORP from existing laws on position classification among others. Since Section 1(c), Rule III of CSC Memorandum Circular Nos. 40, s. 1998, is the only requirement that De Guzman failed to follow, his appointment actually complied with all the requisites for a valid appointment. The CSC, therefore, should have given due course to De Guzman's appointment.

MAYOR EMMANUEL L. MALIKSI v. COMMISSION ON ELECTIONS AND HOMER T. SAQUILAYAN
G.R. No. 203302, 12 March 2013, EN BANC (Carpio, J.)

During the 2010 Elections, the Municipal Board of Canvassers proclaimed Saquilayan the winner for the position of Mayor of Imus, Cavite. Maliksi, the candidate who garnered the second highest number of votes, brought an election protest in the Regional Trial Court (RTC) in Imus, Cavite alleging that there were irregularities in the counting of votes in 209 clustered precincts. Subsequently, the RTC held a revision of the votes, and, based on the results of the revision, declared Maliksi as the duly elected Mayor of Imus commanding Saquilayan to cease and desist from performing the functions of said office. Saquilayan appealed to the COMELEC. In the meanwhile, the RTC granted Maliksi's motion for execution pending appeal, and Maliksi was then installed as Mayor.

In resolving the appeal, the COMELEC First Division, without giving notice to the parties, decided to recount the ballots through the use of the printouts of the ballot images from the CF cards. Thus, it issued an order dated March 28, 2012 requiring Saquilayan to deposit the amount necessary to defray the expenses for the decryption and printing of the ballot images.

Later, it issued another order dated April 17, 2012 for Saquilayan to augment his cash deposit.

On August 15, 2012, the First Division issued a resolution nullifying the RTC's decision and declaring Saquilayan as the duly elected Mayor.

Maliksi filed a motion for reconsideration, alleging that he had been denied his right to due process because he had not been notified of the decryption proceedings. He argued that the resort to the printouts of the ballot images, which were secondary evidence, had been unwarranted because there was no proof that the integrity of the paper ballots had not been preserved.

On September 14, 2012, the COMELEC En Banc resolved to deny Maliksi's motion for reconsideration. Maliksi then came to the Court via petition for certiorari, reiterating his objections to the decryption, printing, and examination of the ballot images without prior notice to him, and to the use of the printouts of the ballot images in the recount proceedings conducted by the First Division. In the decision promulgated on March 12, 2013, the Court, by a vote of 8-7, dismissed Maliksi's petition for certiorari. The Court concluded that Maliksi had not been denied due process because: (a) he had received notices of the decryption, printing, and examination of the ballot images by the First Division — referring to the orders of the First Division directing Saquilayan to post and augment the cash deposits for the decryption and printing of the ballot images; and (b) he had been able to raise his objections to the decryption in his motion for reconsideration. The Court then pronounced that the First Division did not abuse its discretion in deciding to use the ballot images instead of the paper ballots, explaining that the printouts of the ballot images were not secondary images, but considered original documents with the same evidentiary value as the official ballots under the Rule on Electronic Evidence; and that the First Division's finding that the ballots and the ballot boxes had been tampered had been fully established by the large number of cases of double-shading discovered during the revision. Hence, Maliksi filed the petition before the Supreme Court.

ISSUE:

Whether or not Maliksi was deprived of due process when the COMELEC First Division ordered on appeal the decryption, printing, and examination of the ballot images in the CF cards.

RULING:

No. The records showed that Maliksi was aware of the decryption, printing, and examination of the ballot images by the COMELEC First Division. The COMELEC First Division issued an Order dated 28 March 2012 directing Saquilayan to deposit the required amount for expenses for the supplies, honoraria, and fee for the decryption of the CF cards, and acopy of the Order was personally delivered to Maliksi's counsel. Maliksi's counsel was likewise given a copy of Saquilayan's Manifestation of Compliance with the 28 March 2012 Order. In an Order dated 17 April 2012, the COMELEC First Division directed Saquilayan to deposit an additional amount for expenses for the printing of additional ballot images from four clustered precincts, and a copy of the Order was again personally delivered to Maliksi's counsel. The decryption took weeks to finish.

Clearly, Maliksi was not denied due process. He received notices of the decryption, printing, and examination of the ballot images by the COMELEC First Division. In addition, Maliksi raised his objections to the decryption in his motion for reconsideration before the COMELEC En Banc. The Court has ruled:

x xx. The essence of due process, we have consistently held, is simply the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential. The requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. x xx.

There is no denial of due process where there is opportunity to be heard, either through oral arguments or pleadings. It is settled that "opportunity to be heard" does not only mean oral arguments in court but also written arguments through pleadings. Thus, the fact that a party was heard on his motion for reconsideration negates any violation of the right to due process. The Court has ruled that denial of due process cannot be invoked where a party was given the chance to be heard on his motion for reconsideration.

MA. LOURDES C. FERNANDO v. ST. SCHOLASTICA'S COLLEGE AND ST. SCHOLASTICA's ACADEMY-MARIKINA, INC.
G.R. No. 161107, 12 March 2013, EN BANC (Mendoza, J.)

Respondent SSC's property is enclosed by a tall concrete perimeter fence. Marikina City enacted an ordinance which provides that walls and fences shall not be built within a five-meter allowance between the front monument line and the building line of an establishment.

The City Government of Marikina sent a letter to the respondents ordering them to demolish, replace, and move back the fence. As a response, the respondents filed a petition for prohibition with an application for a writ of preliminary injunction and temporary restraining order before the Regional Trial Court of Marikina. The RTC granted the petition and the CA affirmed. Hence, this certiorari.

ISSUE:

Whether or not the Marikina Ordinance No. 192, imposing a five-meter setback, is a valid exercise of police power.

RULING:

No. "Police power is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people." Two tests have been used by the Court – the rational relationship test and the strict scrutiny test:

Under the rational relationship test, an ordinance must pass the following requisites: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise; and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

The real intent of the setback requirement was to make the parking space free for use by the public and not for the exclusive use of respondents. This would be tantamount to a taking of private property for public use without just compensation. Anent the objectives of prevention of concealment of unlawful acts and "un-neighborliness" due to the walls and fences, the parking area is not reasonably necessary for the accomplishment of these goals. The Court, thus, finds Section 5 of the Ordinance to be unreasonable and oppressive. Hence, the exercise of police power is not valid.

PEOPLE OF THE PHILIPPINES v. NAZARENO VILLAREAL
G.R. No. 201663, 18 March 2013, SECOND DIVISION (Perlas-Bernabe, J.)

On December 25, 2006 at around 11:30 in the morning, as PO3 Renato de Leon (PO3 de Leon) was driving his motorcycle on his way home along 5th Avenue, he saw appellant from a distance of about 8 to 10 meters, holding and scrutinizing in his hand a plastic sachet of shabu. Thus, PO3 de Leon, alighted from his motorcycle and approached the appellant whom he recognized as someone he had previously arrested for illegal drug possession. Upon seeing PO3 de Leon, appellant tried to escape but was quickly apprehended with the help of a tricycle driver. Despite appellant's attempts to resist arrest, PO3 de Leon was able to board appellant onto his motorcycle and confiscate the plastic sachet of shabu in his possession.

ISSUE:

Whether or not the warrantless arrest was valid.

RULING:

No. The Court finds it inconceivable how PO3 de Leon, even with his presumably perfect vision, would be able to identify with reasonable accuracy, from a distance of about 8 to 10 meters and while simultaneously driving a motorcycle, a negligible and minuscule amount of powdery substance (0.03 gram) inside the plastic sachet allegedly held by appellant. That he had previously effected numerous arrests, all involving shabu, is insufficient to create a conclusion that what he purportedly saw in appellant's hands was indeed shabu.

Absent any other circumstance upon which to anchor a lawful arrest, no other overt act could be properly attributed to appellant as to rouse suspicion in the mind of PO3 de Leon that he (appellant) had just committed, was committing, or was about to commit a crime, for the acts per se of walking along the street and examining something in one's hands cannot in any way be considered criminal acts. In fact, even if appellant had been exhibiting unusual or strange acts or at the very least appeared suspicious, the same would not have been sufficient in order for PO3 de Leon to effect a lawful warrantless arrest under paragraph (a) of Section 5, Rule 113.

Without the overt act that would pin liability against appellant, it is therefore clear that PO3 de Leon was merely impelled to apprehend appellant on account of the latter's previous charge for the same offense. However, a previous arrest or existing criminal record, even for the same offense, will not suffice to satisfy the exacting requirements provided under Section 5, Rule 113 in order to justify a lawful warrantless arrest. "Personal knowledge" of the arresting officer that a crime had in fact just been committed is required. To interpret "personal knowledge" as referring to a person's reputation or past criminal citations would create a dangerous precedent and unnecessarily stretch the authority and power of police officers to effect warrantless arrests based solely on knowledge of a person's previous criminal infractions, rendering nugatory the rigorous requisites laid out under Section 5.

Furthermore, appellant's act of darting away when PO3 de Leon approached him should not be construed against him. Flight per se is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. It is not a reliable indicator of guilt without other circumstances, for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party. Thus, appellant's attempt to run away from PO3 de Leon is susceptible of various explanations; it could easily have meant guilt just as it could likewise signify innocence.

MAMERTO T. SEVILLA, JR. v. COMMISISON ON ELECTIONS AND RENATO R. SO
G.R. No. 203833, 19 March 2013, EN BANC (Brion, J.)

Sevilla and So were candidates for the position of Punong Barangay of Barangay Sucat, Muntinlupa City during the October 25, 2010 Barangay and Sangguniang Kabataan Elections. The Board of Election Tellers proclaimed Sevilla as the winner. So filed an election protest with the MeTC on the ground that Sevilla committed electoral fraud, anomalies, and irregularities in all the protested precincts. He also prayed for a manual revision of the ballots.

Following the recount of the ballots in the pilot protested precincts, the MeTC issued an Order dismissing the election protest. So filed a motion for reconsideration from the dismissal order instead of a notic of appeal; he also failed to pay the appeal fee within the reglementary period. The MeTC denied the motion for reconsideration on the ground that it was a prohibited pleading pursuant to Section 1, Rule 6 of A.M. No. 07-04-15-SC.

In response, So filed a petition for certiorari with the COMELEC, alleging grave abuse of discretion on the part of the MeTC Judge. So faults the MeTC for its non-observance of the rule that in the appreciation of ballots, there should be a clear and distinct presentation of the specific details of how and why a certain group of ballots should be considered as having been written by one or two persons.

The COMELEC Second Division granted So's petition. The COMELEC Second Division held that certiorari can be granted despite the availability of appeals when the questioned order amounts to an oppressive exercise of judicial authority, as in the case before it. It also ruled that the assailed Order was fraught with infirmities and irregularities in the appreciation of the ballots, and was couched in general terms: "these are not written by one person observing the different strokes, slant, spacing, size and indentation of handwriting and the variance in writing."

The COMELEC en banc, by a vote of 3-3, affirmed the COMELEC Second Division's ruling. It ruled that where the dismissal was capricious, certiorari lies as the petition challenges not the correctness but the validity of the order of dismissal. The Comelec en banc emphasized that procedural technicalities should be disregarded for the immediate and final resolution of election cases inasmuch as ballots should be read and appreciated with utmost liberality so that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. It found that the MeTC Judge committed grave abuse of discretion amounting to lack of jurisdiction when she did not comply with the mandatory requirements of Section 2(d), Rule 14 of A.M. No. 07-4-15-SC on the form of the decision in election protests involving pairs or groups of ballots written by two persons. Hence, this petition.

ISSUE:

Whether or not the COMELEC en banc's affirmation of the COMELEC Second Division's Decision is proper.

RULING:

No. The COMELEC en banc Resolution lacks legal effect as it is not a majority decision required by the Constitution and by the COMELEC Rules of Procedure. Section 7, Article IX-A of the Constitution requires that "each Commission shall decide by a majority vote of all its members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution." Pursuant to this Constitutional mandate, the COMELEC provided in Section 5(a), Rule 3 of the

COMELEC Rules of Procedure the votes required for the pronouncement of a decision, resolution, order or ruling when the COMELEC sits en ban: "the concurrence of a majority of the members of the Commission." The Court previously ruled that a majority vote requires a vote of four members of the COMELEC en banc.

In the present case, while the October 6, 2012 Resolution of the COMELEC en banc appears to have affirmed the COMELEC Second Division's Resolution and, in effect, denied Sevilla's motion for reconsideration, the equally divided voting between three Commissioners concurring and three Commissioners dissenting is not the majority vote that the Constitution and the COMELEC Rules of Procedure require for a valid pronouncement of the assailed October 6, 2012 Resolution of the COMELEC en banc. Thus, for all intents and purposes, the assailed October 6, 2012 Resolution of the COMELEC en banc had no legal effect whatsoever except to convey that the COMELEC failed to reach a decision and that further action is required.

To break the legal stalemate in case the opinion is equally divided among the members of the COMELEC en banc, Section 6, Rule 18 of the COMELEC Rules of Procedure mandates a rehearing where parties are given the opportunity anew to strengthen their respective positions or arguments and convince the members of the COMELEC en banc of the merit of their case.

In the present case, it appears from the records that the COMELEC en banc did not issue an Order for a rehearing of the case in view of the filing in the interim of the present petition for certiorari by Sevilla. In previous cases decided by the Supreme Court, the Court remanded the cases to the COMELEC en banc for the conduct of the required rehearing pursuant to the COMELEC Rules of Procedure. Based on these considerations, the Court thus find that a remand of the case is necessary for the COMELEC en banc to comply with the rehearing requirement of Section 6, Rule 18 of the COMELEC Rules of Procedure.

MARIA LOURDES B. LOCSIN v. HOUSE OF REPRESENTATIVE ELECTORAL TRIBUNAL AND MONIQUE YAZMIN MARIA Q. LAGDAMEO
G.R. No. 204123, 19 March 2013, EN BANC (Leonen, J.)

Petitioner Locsin and private respondent Lagdameo, along with three other candidates, vied for the position to represent the First Legislative District of Makati in the 2010 national elections. Respondent Lagdameo was proclaimed winner by the City Board of Canvassers. Petitioner came in second.

Petitioner Locsin instituted an election protest before the HRET impugning the election results in all 233 clustered precincts in Makati's First District. Petitioner alleged that the results were tainted by election fraud, anomalies, and irregularities. Lagdameo filed her Answer with Counter-Protest questioning the results in 123 clustered precincts.

After the parties filed their respective memoranda, the HRET promulgated its Decision dismissing petitioner's election protest. The HRET discussed in detail the results of the recount and its appreciation of the contested ballots. On the allegations of fraud and election irregularities, respondent tribunal found no compelling evidence that may cast doubt on the credibility of the results generated by the Precinct Count Optical Scan (PCOS) electronic system. The HRET also denied with finality petitioner's motion for reconsideration.

Locsin filed the present petition on the ground that public respondent HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction.

ISSUE:

Whether or not the HRET committed grave abuse of discretion in dismissing petitioner's election protest.

RULING:

No. Article VI, Section 17 of the Constitution provides that the HRET shall be the "sole judge of all contests relating to the election, returns, and qualifications of their respective members." Thus, this Court's jurisdiction to review HRET's decisions and orders is exercised only upon showing that the HRET acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Otherwise, the Court shall not interfere with the HRET's exercise of its discretion or jurisdiction. "Grave abuse of discretion" has been defined as the capricious and whimsical exercise of judgment, the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty.

Time and again, the Court held that mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

In the present case, the Court finds no grave abuse of discretion on the part of public respondent HRET when it dismissed petitioner's election protest. Public respondent HRET conducted a revision and appreciation of all the ballots from all the precincts. This was done despite the fact that results of initial revision proceedings in 25% of the precincts increased the winning margin of private respondent from 242 to 265 votes. Out of due diligence and to remove all doubts on the victory of

private respondent, the HRET directed continuation of revision proceedings. This was done despite the dissent of three of its members, representatives Franklin P. Bautista, Rufus B. Rodriguez, and Joselito Andrew R. Mendoza. The three voted "for the dismissal of the instant election protest without further proceedings for lack of reasonable recovery of votes in the pilot protested clustered precincts."

Thus, in reaching the assailed decision, the HRET took pains in reviewing the validity or invalidity of each contested ballot with prudence. This is evident from the decision's ballot enumeration specifying with concrete basis and clarity the reason for its denial or admittance. The results, as well as the objections, claims, admissions, and rejections of ballots were explained sufficiently and addressed by the HRET in its Decision.

In the absence of any showing of grave abuse of discretion by the HRET, there is no reason for this Court to annul respondent tribunal's decision or to substitute it with its own.

But still, to erase all lingering doubts, the Court looked into the contested ballots. Marks made by the voter unintentionally do not invalidate the ballot. Neither do marks made by some person other than the voter. Moreover, the Omnibus Election Code provides explicitly that every ballot shall be presumed valid unless there is clear and good reason to justify its rejection. Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot.

Ballots with an Over-Voting count occur when a voter shaded more than two or more ovals pertaining to two or more candidates for representative. The HRET admitted 10 ballots in favor of Lagdameo owing to the untenability of the objections raised. On the other hand, all 597 ballots in favor of petitioner Locsin were admitted.

Lastly, the HRET found without merit objections made on miscellaneous grounds and admitted one (1) ballot for petitioner and four (4) ballots for Lagdameo.

This Court finds no grave abuse of discretion by the HRET in its findings after HRET's careful review of the objected ballots and guided by existing principles, rules and rulings on its appreciation.

SILVERIO R. TAGOLINO v. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND LUCY MARIE TORRES-GOMEZ
G.R. No. 202202, 19 March 2013, EN BANC (Perlas-Bernabe, J.)

Richard Gomez filed his certificate of candidacy with the COMELEC, seeking congressional office as Representative for the Fourth Legislative District of Leyte under the Liberal Part. Subsequently, one of the opposing candidates, Buenaventura Juntilla, filed a Verified Petition, alleging that Gomez, who was actually a resident of San Juan City, Metro Manila, misrepresented in his CoC that he resided in Ormoc City. In this regard, the opposing party asserted that Gomez failed to meet the 1 year residency requirement under Section 6, Article VI of the 1987 Constitution and thus should be declared disqualified/ineligible to run for the said office.

The COMELEC First Division rendered a Resolution granting the petition without any qualification. Aggrieved, Gomez moved for reconsideration but the same was denied by the COMELEC en banc. Thereafter, Gomez accepted the said resolution with finality "in order to enable his substitute to facilitate the filing of the necessary documents for substitution."

Later on, private respondent Torres-Gomez filed her CoC together with a Certificate of Nomination and Acceptance from the Liberal Party endorsing her as the party's official substitute candidate vice her husband, Gomez, for the same congressional post. The COMELEC en ban, in the exercise of its administrative functions, issued a resolution, approving, among others, the recommendation to allow the substitution of private respondent.

Juntilla filed an Extremely Urgent Motion for Reconsideration of the COMELEC en banc resolution. Pending resolution of Juntilla's motion, the national and local elections were conducted as schedule on May 10, 2010. During the elections, Gomez, whose name remained on the ballots, garnered the highest number of vote for the congressional post as opposed his opponents, one of which is petitioner Silverio Tagolino. In view of the aforementioned substitution, Gomez's votes were credited in favor of private respondent and as a result, she was proclaimed the duly-elected Representative of the Fourth District of Leyte.

Juntilla filed an Extremely Urgent Motion to resolve the pending motion in relation to the COMELEC en banc's resolution. The said motion, however, remained unacted. Petitioner filed a petition for quo warranto before the HRET in order to oust private respondent from her congressional seat, claiming that: (1) she failed to comply with the one (1) year residency requirement under Section 6, Article VI of the Constitution; (2) she did not validly substitute Gomez as his CoC was void ab initio; and (3) private respondent's CoC was void due to her non-compliance with the prescribed notarial requirements. After due proceedings, the HRET issued a Decision which dismissed the quo warranto petition and declared that private respondent was a qualified candidate for the position of Leyte Representative (Fourth Legislative District). It observed that the resolution denying Richard's candidacy, the COMELEC First Division's Resolution, spoke of disqualification and not of CoC cancellation. Hence, it held that the substitution of private respondent in lieu of Gomez was legal and valid. Hence, the instant petition.

ISSUE:

Whether or not the decision of the HRET which declared the validity of private respondent Torres-Gomez's substitution as the Liberal Party's replacement candidate for the position of Leyte Representative (Fourth Legislative District) in lieu of her husband, Richard Gomez is valid.

RULING:

No. Firstly, there is a distinction between a petition for disqualification and a petition to deny due course to/cancel a certificate of candidacy. The Omnibus Election Code (OEC) provides for certain remedies to assail a candidate's bid for public office. Among these which obtain particular significance to this case are: (1) a petition for disqualification under Section 68; and (2) a petition to deny due course to and/or cancel a certificate of candidacy under Section 78. The distinctions between the two are well-perceived.

Primarily, a disqualification case under Section 68 of the OEC is hinged on either: (a) a candidate's possession of a permanent resident status in a foreign country; or (b) his or her commission of certain acts of disqualification. Anent the latter, the prohibited acts under Section 68 refer to election offenses under the OEC, and not to violations of other penal laws. In particular, these are: (1) giving money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (2) committing acts of terrorism to enhance one's candidacy; (3) spending in one's election campaign an amount in excess of that allowed by the OEC; (4) soliciting, receiving or making any contribution prohibited under Sections 89, 95, 96, 97 and 104 of the OEC; and (5) violating Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6 of the OEC. Accordingly, the same provision (Section 68) states that any candidate who, in an action or protest in which he or she is a party, is declared by final decision of a competent court guilty of, or found by the COMELEC to have committed any of the foregoing acts shall be disqualified from continuing as a candidate for public office, or disallowed from holding the same, if he or she had already been elected.

It must be stressed that one who is disqualified under Section 68 is still technically considered to have been a candidate, albeit proscribed to continue as such only because of supervening infractions which do not, however, deny his or her statutory eligibility. In other words, while the candidate's compliance with the eligibility requirements as prescribed by law, such as age, residency, and citizenship, is not in question, he or she is, however, ordered to discontinue such candidacy as a form of penal sanction brought by the commission of the above-mentioned election offenses.

On the other hand, a denial of due course to and/or cancellation of a CoC proceeding under Section 78 of the OEC is premised on a person's misrepresentation of any of the material qualifications required for the elective office aspired for. It is not enough that a person lacks the relevant qualification; he or she must have also made a false representation of the same in the CoC. XXX

"Pertinently, while a disqualified candidate under Section 68 is still considered to have been a candidate for all intents and purposes, on the other hand, a person whose CoC had been denied due course to and/or cancelled under Section 78 is deemed to have not been a candidate at all."

Finally, a valid CoC is a condition sine qua non for candidate substitution. Section 77 of the OEC provides that if an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, a person belonging to and certified by the same political party may file a CoC to replace the candidate who died, withdrew or was disqualified.

"Sec. 77. Candidates in case of death, disqualification or withdrawal of another. - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified."

Evidently, Section 77 requires that there be an "official candidate" before candidate substitution proceeds. Thus, whether the ground for substitution is death, withdrawal or disqualification of a candidate, the said section unequivocally states that only an official candidate of a registered or accredited party may be substituted.43

In this case, it is undisputed that Gomez was disqualified to run in the May 10, 2010 elections due to his failure to comply with the one year residency requirement. The confusion, however, stemmed from the use of the word "disqualified" in the February 17, 2010 Resolution of the COMELEC First Division, which was adopted by the COMELEC En Banc in granting the substitution of private respondent, and even further perpetuated by the HRET in denying the quo warranto petition.

Owing to the lack of proper substitution in its case, private respondent was therefore not a bona fide candidate for the position of Representative for the Fourth District of Leyte when she ran for office, which means that she could not have been elected. Considering this pronouncement, there exists no cogent reason to further dwell on the other issues respecting private respondent's own qualification to office.

REPUBLIC OF THE PHILIPPINES v. LI CHING CHUNG, a.k.a. BERNABE LUNA LI, a.k.a. STEPHEN LEE KENG
G.R. No. 197450, 20 March 2013, Third Division (Mendoza, J.)

Bernabe Luna Li or Stephen Lee Keng, a Chinese national, filed his Declaration of Intention to Become a Citizen of the Philippines before the OSG. Almost seven months after filing his declaration of intention, Li filed his Petition for Naturalization before the RTC.

Li filed his Amended Petition for Naturalization, wherein he alleged that he was born in China, which granted the same privilege of naturalization to Filipinos; that he came to the Philippines on March 15, 1988; that on November 19, 1989, he married Cindy Sze Mei Ngar, a British national, with whom he had 4 children, all born in Manila; that he had been continuously and permanently residing in the country since his arrival and is currently a resident of Manila with prior residence in Malabon; that he could speak and write in English and Tagalog; that he was entitled to the benefit of Sec 3 of Commonwealth Act (CA) No. 473 reducing to 5 years the requirement under Sec 2 of ten years of continuous residence, because he knew English and Filipino having obtained his education in Manila; and that he had successfully established a trading general merchandise business. He attached several documentary evidence in support of his application.

The petition was set for initial hearing on April 3, 2009 and its notice was posted in a conspicuous place at the Manila City Hall and was published in the Official Gazette and in the Manila Times. Thereafter, Li filed the Motion for Early Setting praying that the hearing be moved from April 3, 2009 to July 31, 2008 so he could acquire real estate properties.

The OSG filed its Opposition, arguing that the said motion for early setting was a "clear violation of Sec 1, RA 530, which provides that hearing on the petition should be held not earlier than 6 months from the date of last publication of the notice." The last publication in the newspaper of general circulation was on June 13, 2008, the earliest setting could only be scheduled 6 months later or on December 15, 2008.

The RTC granted respondent's application for naturalization as a Filipino citizen. And CA affirmed. The CA held that although the petition for naturalization was filed less than 1 year from the time of the declaration of intent before the OSG, this defect was not fatal.

The OSG argues that "the petition for naturalization should not be granted in view of its patent jurisdictional infirmities, particularly because: 1) it was filed within the one (1) year proscribed period from the filing of declaration of intention; 2) no certificate of arrival, which is indispensable to the validity of the Declaration of Intention, was attached to the petition; and 3) respondent's failure to comply with the publication and posting requirements set under CA 473." In particular, the OSG points out that the publication and posting requirements were not strictly followed, specifically citing that: "(a) the hearing of the petition on 15 December 2008 was set ahead of the scheduled date of hearing on 3 April 2009; (b) the order moving the date of hearing (Order dated 31 July 2008) was not published; and, (c) the petition was heard within six (6) months (15 December 2008) from the last publication (on 14 July 2008).

ISSUE:

Whether the Li should be admitted as a Filipino citizen despite his undisputed failure to comply with the requirements provided for in CA No. 473, as amended – which are mandatory and jurisdictional in character – particularly: (i) the filing of his petition for naturalization within the one (1) year

proscribed period from the date he filed his declaration of intention to become a Filipino citizen; (ii) the failure to attach to the petition his certificate of arrival; and (iii) the failure to comply with the publication and posting requirements prescribed by CA No. 473.

RULING:

No. Section 5 of CA No. 473,47 as amended,48 expressly states:

Section 5. Declaration of intention. – One year prior to the filing of his petition for admission to Philippine citizenship, the applicant for Philippine citizenship shall file with the Bureau of Justice (now Office of the Solicitor General) a declaration under oath that it is bona fide his intention to become a citizen of the Philippines. Such declaration shall set forth name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel or aircraft, if any, in which he came to the Philippines, and the place of residence in the Philippines at the time of making the declaration. No declaration shall be valid until lawful entry for permanent residence has been established and a certificate showing the date, place, and manner of his arrival has been issued. The declarant must also state that he has enrolled his minor children, if any, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government, and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen. Each declarant must furnish two photographs of himself.

As held in Tan v. Republic, "the period of one year required therein is the time fixed for the State to make inquiries as to the qualifications of the applicant. If this period of time is not given to it, the State will have no sufficient opportunity to investigate the qualifications of the applicants and gather evidence thereon. An applicant may then impose upon the courts, as the State would have no opportunity to gather evidence that it may present to contradict whatever evidence that the applicant may adduce on behalf of his petition." The period is designed to give the government ample time to screen and examine the qualifications of an applicant and to measure the latter's good intention and sincerity of purpose. Stated otherwise, the waiting period will unmask the true intentions of those who seek Philippine citizenship for selfish reasons alone, such as, but not limited to, those who are merely interested in protecting their wealth, as distinguished from those who have truly come to love the Philippines and its culture and who wish to become genuine partners in nation building.

The only exception to the mandatory filing of a declaration of intention is specifically stated in Section 6 of CA No. 473, to wit:

Section 6. Persons exempt from requirement to make a declaration of intention. – Persons born in the Philippines and have received their primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality, and those who have resided continuously in the Philippines for a period of thirty years or more before filing their application, may be naturalized without having to make a declaration of intention upon complying with the other requirements of this Act. To such requirements shall be added that which establishes that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the Government and not limited to any race or nationality. The same shall be understood applicable with respect to the widow and minor children of an alien who has declared his intention to become a citizen of the Philippines, and dies before he is actually naturalized.

Unquestionably, Li does not fall into the category of such exempt individuals that would excuse him from filing a declaration of intention one year prior to the filing of a petition for naturalization.

Contrary to the CA finding, respondent's premature filing of his petition for naturalization before the expiration of the one-year period is fatal.

In naturalization proceedings, the burden of proof is upon the applicant to show full and complete compliance with the requirements of the law. The opportunity of a foreigner to become a citizen by naturalization is a mere matter of grace, favor or privilege extended to him by the State; the applicant does not possess any natural, inherent, existing or vested right to be admitted to Philippine citizenship. The only right that a foreigner has, to be given the chance to become a Filipino citizen, is that which the statute confers upon him; and to acquire such right, he must strictly comply with all the statutory conditions and requirements. The absence of one jurisdictional requirement is fatal to the petition as this necessarily results in the dismissal or severance of the naturalization process.

ATONG PAGLAUM, et al. v. COMMISSION ON ELECTIONS
G.R. No. 203766, 02 April 2013, EN BANC (Carpio, J.)

The Commission on Elections (COMELEC) disqualified Atong Paglaum and other aspiring party-list groups in the 2013 Elections because Paglaum, et. al. are not sectoral groups and they failed to represent the marginalized and the underrepresented sectors of the society. However, Atong Paglaum, et al. contends that the party-list election was never intended to be exclusively for sectoral groups.

ISSUE:

Is the party-list election intended to be exclusively for sectoral groups?

RULING:

No. Section 5(1), Article VI of the Constitution is crystal-clear that there shall be "a party-list system of registered national, regional, and sectoral parties or organizations." The commas after the words "national[,]" and "regional[,]" separate national and regional parties from sectoral parties. Had the framers of the 1987 Constitution intended national and regional parties to be at the same time sectoral, they would have stated "national and regional sectoral parties." They did not, precisely because it was never their intention to make the party-list system exclusively sectoral.

What the framers intended, and what they expressly wrote in Section5(1), could not be any clearer: the party-list system is composed of three different groups: (1) national parties or organizations; (2) regional parties or organizations; and (3) sectoral parties or organizations, and the sectoral parties belong to only one of the three groups. The text of Section 5(1) leaves no room for any doubt that national and regional parties are separate from sectoral parties. National and regional parties or organizations are different from sectoral parties or organizations. National and regional parties or organizations need not be organized along sectoral lines and need not represent any particular sector.

Moreover, Section 3(a) of R.A. No. 7941 or the Party-List System Act defines a "party" as "either a political party or a sectoral party or a coalition of parties." Clearly, a political party is different from a sectoral party. Section 3(c) of R.A. No. 7941 further provides that a "political party refers to an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government." On the other hand, Section 3(d) of R.A. No. 7941 provides that a "sectoral party refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5 hereof whose principal advocacy pertains to the special interest and concerns of their sector." R.A. No.7941 provides different definitions for a political and a sectoral party. Obviously, they are separate and distinct from each other.

R.A. No. 7941 does not require national and regional parties or organizations to represent the "marginalized and underrepresented" sectors. To require all national and regional parties under the party-list system to represent the "marginalized and underrepresented" is to deprive and exclude, by judicial fiat, ideology-based and cause-oriented parties from the party-list system. To exclude them from the party-list system is to prevent them from joining the parliamentary struggle, leaving as their only option the armed struggle. To exclude them from the party-list system is, apart from being obviously senseless, patently contrary to the clear intent and express wording of the 1987 Constitution and R.A. No. 7941.

The Court overturned the ruling in Ang Bagong Bayard v. COMELEC and BANAT v. COMELEC, and laid down new rules regarding the party-list system and elections:

1. Three different groups may participate in the party-list system: (a) national parties or organizations, (b) regional parties or organizations, and (c) sectoral parties or organizations.

2. National parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any "marginalized and underrepresented" sector.

3. Political parties can participate in party-list elections provided they register under the party-list system and do not field candidates in legislative district elections. A political party, whether major or not, that fields candidates in legislative district elections can participate in partylist elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition.

4. Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interest and concerns of their sector. The sectors that are "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack "well-defined political constituencies" include professionals, the elderly, women, and the youth.

5. A majority of the members of sectoral parties or organizations that represent the "marginalized and underrepresented" must belong to the "marginalized and underrepresented" sector they represent. Similarly, a majority of the members of sectoral parties or organizations that lack "well-defined political constituencies" must belong to the sector they represent. The nominees of sectoral parties or organizations that represent the "marginalized and underrepresented," or that represent those who lack "well-defined political constituencies," either must belong to their respective sectors, or must have a track record of advocacy for their respective sectors. The nominees of national and regional parties or organizations must be bona-fide members of such parties or organizations.

6. National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remains qualified.

SALIC DUMARPA v. COMMISSION ON ELECTIONS
G.R. No. 192249, 2 April 2013, EN BANC (Perez, J.)

Dumarpa was a congressional candidate for the 1st District of Lanao del Sur at the 10 May 2010 elections. The COMELEC declared a total failure of elections in seven (7) municipalities, including the three (3) Municipalities of Masiu, Lumba Bayabao and Kapai, which are situated in the 1st Congressional District of Province of Lanao del Sur. The conduct of special elections in the seven (7) Lanao del Sur municipalities was originally scheduled for 29 May 2010.

On 25 May 2010, COMELEC issued Resolution No. 8946, resetting the special elections to 3 June 2010. Subsequently, COMELEC issued the herein assailed resolution which provided, among others, the constitution of Special Board of Election Inspectors (SBEI) in Section 4 and Clustering of Precincts in Section 12.

Dumarpa filed a Motion for Reconsideration concerning only Sections 4 and 12 thereof as it may apply to the Municipality of Masiu, Lanao del Sur. The COMELEC did not act on Dumarpas motion.

A day before the scheduled special elections, on 2 June 2010, Dumarpa filed the instant petition alleging that "both provisions on Re-clustering of Precincts (Section 12) and constitution of SBEIs [Special Board of Election Inspectors] (Section 4) affect the Municipality of Masiu, Lanao del Sur, and will definitely doom petitioner to certain defeat, if its implementation is not restrained or prohibited by the Honorable Supreme Court."

Parenthetically, at the time of the filing of this petition, Dumarpa was leading by a slim margin over his opponent Hussin Pangandaman in the canvassed votes for the areas which are part of the 1st Congressional District of Lanao del Sur where there was no failure of elections.

A temporary restraining order or a writ of preliminary injunction was not issued. Thus, the special elections on 3 June 2010 proceeded as scheduled.

ISSUE:

Whether or not the COMELEC validly acted within its powers.

RULING:

Yes. COMELEC issued the assailed Resolution, in the exercise of its plenary powers in the conduct of elections enshrined in the Constitution and statute. Thus, it brooks no argument that the COMELEC's broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall, carries with it all necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections.

The Commission on Elections, by constitutional mandate, must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created - to promote free, orderly, and honest elections. The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with.

Dumarpas objections conveniently fail to take into account that COMELEC Resolution No. 8965, containing the assailed provisions on re-clustering of the precincts and the designation of special board of election inspectors, was issued precisely because of the total failure of elections in seven (7) Municipalities in the Province of Lanao del Sur, a total of fifteen (15) Municipalities where there was a failure of elections. Notably, the COMELEC's declaration of a failure of elections is not being questioned by Dumarpa. In fact, he confines his objections on the re-clustering of precincts, and only as regards the Municipality of Masiu.

Plainly, it is precisely to prevent another occurrence of a failure of elections in the fifteen (15) municipalities in the province of Lanao del Sur that the COMELEC issued the assailed Resolution No. 8965. The COMELEC, through its deputized officials in the field, is in the best position to assess the actual condition prevailing in that area and to make judgment calls based thereon. Too often, COMELEC has to make snap judgments to meet unforeseen circumstances that threaten to subvert the will of our voters. In the process, the actions of COMELEC may not be impeccable, indeed, may even be debatable. The Court cannot, however, engage in an academic criticism of these actions often taken under very difficult circumstances.

LEAGUE OF PROVINCES OF THE PHILIPPINES v. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND HON. ANGELO T. REYES, IN HIS CAPACITY AS SECRETARY OF DENR
GR No.175368, 11 April 2013, EN BANC (Peralta, J.)

On February 10, 2004, Eduardo D. Mercado, Benedicto S. Cruz, Gerardo R. Cruz and LiberatoSembrano filed with the Provincial Environment and Natural Resources Office (PENRO) of Bulacan their respective Applications for Quarry Permit (APQ), which covered the same area subject of Golden Falcon Mineral Exploration Corporation's Application for Financial and Technical Assistance Agreement (FTAA). Meanwhile, on September 13, 2004, Atlantic Mines and Trading Corporation (AMTC) filed with the PENRO of Bulacan an Application for Exploration Permit (AEP) covering the same area of Golden Falcon's Application.

As the case was still pending when Mercado, et al. filed for their application, AMTC contends that their application fell within the valid period. However, the Provincial Government decided that the application of Benedicto et al. also already fell within the valid period of application and thus, AMTC petitioned.

The Provincial Governor of Bulacan subsequently approved the Applications for Small-Scale Mining permits to Mercado et al. (formerly application for Quarry permits). AMTC continued their protest up until the petition reached the DENR. On August 8, 2006, respondent DENR Secretary rendered a Decision in favor of AMTC and nullified the decision of the Provincial Governor of Bulacan. Hence, this petition.

ISSUES:

Whether or not Section 17(B)(3)(III) of the 1991 Local Government Code AND Section 24 of the People's Small-Scale Mining Act of 1991 are unconstitutional for providing for executive control and infringing upon the local autonomy of provinces.

RULING:

No. The power of control and review by the DENR/ DENR Secretary over small-scale mining in the provinces is granted by three statues (1) Section 17 of R.A. No. 7061 or the Local Government Code (LGC) of 1991, 2) Section 24 of the R.A. No. 7076 or the People's Small Scale Mining Act of 1991; and 3) R.A. No. 7942, otherwise known as the Philippine Mining Act of 1995.

Paragraph 1 of Section 2, Article XIII (National Economy and Patrimony) of the Constitution provides that "the exploration, development and utilization of natural resources shall be under the full control and supervision of the State. Also, Paragraph 3 of Section 2, Article XII of the Constitution provides that "the Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens."

The Administrative Code provides that the enforcement of the small-scale mining law is made subject to the control of the DENR under the LGC of 1991, while the People's Small-Scale Mining Act of 1991 provides that the People's Small-Scale Mining Program is to be implemented by the DENR Secretary in coordination with other concerned local government agencies.

More importantly, the Court has clarified that the constitutional guarantee of local autonomy in the Constitution [Art. X, Sec.2] refers to the administrative autonomy of local government units or, cast

in more technical language, the decentralization of government authority. It does not make local governments sovereign within the State.

It is clear that Section 17(b)(3)(iii) of the LGC is in harmony with R.A. No. 7076 or the People's Small-Scale Mining Act of 1991, which established a People's Small-Scale Mining Program to be implemented by the Secretary of the DENR.

In relation to this, it must be clarified that the decision of the DENR Secretary in declaring that the Application for Exploration Permit of AMTC was valid and may be given due course, and cancelling the Small-Scale Mining Permits issued by the Provincial Governor, emanated from the power of review granted to the DENR Secretary under R.A. No. 7076 and its IRRs. This power to review is a quasi-judicial function and cannot be equated to "control" or "substitution of judgment". Lastly, laws are always construed in favor of its constitutionality. Petitioner failed to raise grounds that can topple this.

MAYOR EMMANUEL L. MALIKSI v. COMMISSION ON ELECTIONS AND HOMER T. SAQUILAVAN
G.R. No. 203302, 11 April 2013, EN BANC (Bersamin, J.)

In Maliksi's Extremely Urgent Motion for Reconsideration he argued that the Supreme Court en banc gravely erred in dismissing the instant petition despite a clear violation of Maliksi's constitutional right to due process of law considering that decryption, printing and examination of the digital images of the ballots, which is the basis for the assailed 14 September 2012 resolution of the public respondent, which in turn affirmed the 15 August 2012 resolution of the COMELEC First Division, were done inconspicuously upon a motuproprio directive of the COMELEC First Division sans any notice to the petitioner, and for the first time on appeal.

ISSUE:

Whether or not there was a violation of due process.

RULING:

Yes. The Court grants Maliksi's Extremely Urgent Motion for Reconsideration, and reverses the decision promulgated on March 12, 2013 on the ground that the First Division of the COMELEC denied to him the right to due process by failing to give due notice on the decryption and printing of the ballot images. Consequently, the Court annuls the recount proceedings conducted by the First Division with the use of the printouts of the ballot images.

It bears stressing at the outset that the First Division should not have conducted the assailed recount proceedings because it was then exercising appellate jurisdiction as to which no existing rule of procedure allowed it to conduct a recount in the first instance. The recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, as amended, are to be conducted by the COMELEC Divisions only in the exercise of their exclusive original jurisdiction over all election protests involving elective regional (the autonomous regions), provincial and city officials. As we see it, the First Division arbitrarily arrogated unto itself the conduct of the recount proceedings, contrary to the regular procedure of remanding the protest to the RTC and directing the reconstitution of the Revision Committee for the decryption and printing of the picture images and the revision of the ballots on the basis thereof. Quite unexpectedly, the COMELEC En Banc upheld the First Division's unwarranted deviation from the standard procedures by invoking the COMELEC's power to "take such measures as [the Presiding Commissioner] may deem proper," and even citing the Court's minute resolution in Alliance of Barangay Concerns (ABC) Party-List v. Commission on Elections5 to the effect that the "COMELEC has the power to adopt procedures that will ensure the speedy resolution of its cases. The Court will not interfere with its exercise of this prerogative so long as the parties are amply heard on their opposing claims."

Based on the pronouncement in Alliance of Barangay Concerns (ABC) v. Commission on Elections, the power of the COMELEC to adopt procedures that will ensure the speedy resolution of its cases should still be exercised only after giving to all the parties the opportunity to be heard on their opposing claims. The parties' right to be heard upon adversarial issues and matters is never to be waived or sacrificed, or to be treated so lightly because of the possibility of the substantial prejudice to be thereby caused to the parties, or to any of them. Thus, the COMELEC En Banc should not have upheld the First Division's deviation from the regular procedure in the guise of speedily resolving the election protest, in view of its failure to provide the parties with notice of its proceedings and an opportunity to be heard, the most basic requirements of due process.

CASAN MACODE MAQUILING v. COMMISSION ON ELECTIONS
G.R. Nos. 195649, 16 April 2013, EN BANC (Sereno, CJ.)

Rommel Arnado is a natural born Filipino citizen who lost his citizenship upon his naturalization as a citizen of the United States. Subsequently, he availed of the benefits of RA 9225, the Citizenship Retention and Re-acquisition Act of 2003 and ran as Mayor of Kauswagan, Lanao del Norte in the 2010 local elections.

Linog C. Balua (Balua), another mayoralty candidate, filed a petition to disqualify Arnado, contending that Arnado is a foreigner. It turned out that Arnado has been using his US Passport in entering and departing the Philippines.

The Commission on Elections First Division (COMELEC) annulled the proclamation of Arnado and consequently directed that that order of succession under Section 44 of the Local Government Code of 1991 be followed. It ruled that Arnado's act of consistently using his US passport after renouncing his US citizenship negated his Affidavit of Renunciation.

Petitioner Casan Macode Maquiling (Maquiling), another candidate for mayor of Kauswagan, and who garnered the second highest number of votes in the 2010 elections, intervened in the case. Maquiling argued that while the First Division correctly disqualified Arnado, the order of succession under Section 44 of the Local Government Code is not applicable in this case. Maquiling claims that due to the cancellation of Arnado's candidacy and the nullification of the latter's proclamation, he should be proclaimed as the winner.

ISSUES:

(1) Is the use of a foreign passport after renouncing foreign citizenship affects one's qualifications to run for public office?

(2) Is the rule on succession in the Local Government Code applicable to this case?

RULING:

(1) Yes. The act of using a foreign passport after renouncing one's foreign citizenship is fatal to Arnado's bid for public office. By renouncing his foreign citizenship, Arnado was deemed to be solely a Filipino citizen, regardless of the effect of such renunciation under the laws of the foreign country. However, this legal presumption does not operate permanently and is open to attack when, after renouncing the foreign citizenship, the citizen performs positive acts showing his continued possession of a foreign citizenship.

While the act of using a foreign passport is not one of the acts enumerated in Commonwealth Act No. 63 constituting renunciation and loss of Philippine citizenship, it is nevertheless an act which repudiates the very oath of renunciation required for a former Filipino citizen who is also a citizen of another country to be qualified to run for a local elective position.

The Court agrees with the COMELEC En Banc that such act of using a foreign passport does not divest Arnado of his Filipino citizenship, which he acquired by repatriation. However, by representing himself as an American citizen, Arnado voluntarily and effectively reverted to his earlier status as a dual citizen. Such reversion was not retroactive; it took place the instant Arnado represented himself as an American citizen by using his US passport.

Thus, by the time he filed his certificate of candidacy, Arnado was a dual citizen enjoying the rights and privileges of Filipino and American citizenship. He was qualified to vote, but by the express disqualification under Section 40(d) of the Local Government Code, he was not qualified to run for a local elective position.

(2) No. The rule on succession under the Local Government Code will not apply. The electorate's awareness of the candidate's disqualification is not a prerequisite for the disqualification to attach to the candidate. The very existence of a disqualifying circumstance makes the candidate ineligible. Knowledge by the electorate of a candidate's disqualification is not necessary before a qualified candidate who placed second to a disqualified one can be proclaimed as the winner. The second-placer in the vote count is actually the first-placer among the qualified candidates.

The disqualifying circumstance surrounding Arnado's candidacy involves his citizenship. It does not involve the commission of election offenses as provided for in the first sentence of Section 68 of the Omnibus Election Code, the effect of which is to disqualify the individual from continuing as a candidate, or if he has already been elected, from holding the office.

With Amado being barred from even becoming a candidate, his certificate of candidacy is thus rendered void from the beginning. Arnado being a non-candidate, the votes cast in his favor should not have been counted. This leaves Maquiling as the qualified candidate who obtained the highest number of votes. Therefore, the rule on succession under the Local Government Code will not apply.

FRANCISCO CHAVEZ v. JUDICIAL BAR COUNCIL, et al.
G.R. No. 202242, 16 April 2013, EN BANC (Mendoza, J.)

From the moment of the creation of the Judicial and Bar Council OBC), Congress designates one representative to sit in the JBC to act as one of the ex-officio members. Each House sent a representative to the JBC, not together, but alternately or by rotation. In 1994, the seven-member composition of the JBC was substantially altered. An eighth member was added to the JBC as the two (2) representatives from Congress began sitting simultaneously in the JBC, with each having one-half (1/2) of a vote. In 2001, the JBC En Banc decided to allow the representatives from the Senate and the House of Representatives one full vote each. It has been the situation since then.

Francisco Chavez, in his petition, asked the Supreme Court (SC) to determine whether the first paragraph of Section 8, Article VIII of the 1987 Constitution allows more than one member of Congress to sit in the JBC. Senator Francis Joseph G. Escudero and Congressman Niel C. Tupas, Jr. however argues that it would be absurd if there will only be one member from the Congress in the JBC despite the Congress' bicameral nature. They added that the framers of the 1987 Constitution committed a plain oversight by not making the adjustments on the members of the JBC, in view of the Congress' shift from unicameralism to bicameralism.

ISSUE:

Does the first paragraph of Section 8, Article VIII of the 1987 Constitution allow more than one member of Congress to sit in the JBC

RULING:

No. It is basic that what the Constitution clearly says, according to its plain text, compels acceptance. For this reason, the Court cannot accede to the argument of plain oversight in order to justify constitutional construction. In opting to use the singular letter "a" to describe "representative of Congress," the Filipino people through the framers intended that Congress be entitled to only one (1) seat in the JBC. Had the intention been otherwise, the Constitution could have so provided, as can be read in its other provisions.

The rationale why the framers of the Constitution added a representative of Congress to sit in the JBC is to equally represent all three co-equal branches of the Government in the JBC. Despite the Congress' bicameral nature, the framers did not adjust the provision on congressional representation in the JBC because it was not in the exercise of the Congress' primary function — to legislate. JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function.

Moreover, the creation of the JBC is intended to curtail the influence of Congress politics in the appointment of judges. As such, the interpretation that two representatives from Congress shall sit in the JBC runs counter to the intendment of the framers. Such interpretation actually gives Congress more influence in the appointment of judges. Also, two votes for Congress would increase the number of JBC members to eight, which could lead to voting deadlock by reason of even-numbered membership, and a clear violation of 7 enumerated members in the Constitution.

LIWAYWAY VINZONS-CHATO v. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND ELMER E. PANOTES
G.R. No. 204637, 16 April 2013, EN BANC (Reyes, J.)

In the May 10, 2010 elections, Chato and Panotes both ran for the congressional seat to represent the Second District of Camarines Norte. On May 12, 2010, Panotes was proclaimed as the winner for having garnered 51,704 votes. The votes cast for Chato totalled 47,822. Thereafter, Chato filed an electoral protest claiming that in four of the seven municipalities4comprising the Second District of Camarines Norte, several irregularities occurred.

Consequently, the HRET started the initial revision of ballots in 25% of the pilot protested clustered precincts (CPs). Per physical count, Chato's votes increased by 518, while those cast for Panotes decreased by 2,875 votes. The HRET issued Resolution No. 12-079 directing the continuance of the revision of ballots in 75% of the contested CPs. There was a substantial discrepancy between the figures indicated in the ERs/Statements of Votes by Precinct (SOVPs) on one hand, and the results of the physical count during the revision, on the other. In the 160 protested CPs, there were substantial variances in the figures per machine count as indicated in the ERs, on one hand, and per physical count, on the other, in a total of 69 CPs, 23 of which were in Basud and 46 in Daet. The HRET found that out of the 160 contested CPs, there were 91 without substantial variances between the results of the automatic and the manual count. However, in 69 CPs in Basud and Daet, the variances were glaring. Thus, the HRET rendered a decision dismissing Chato's electoral protest. Hence, the petition.

Chato reiterates her allegations in the proceedings before the HRET. She stresses that in the order issued, the HRET ruled that as regards the conditions of the ballot boxes in Basud and Daet, the self-locking security seals and padlocks were attached and locked, hence, "there was substantial compliance with statutory safety measures to prevent reasonable opportunity for tampering with their contents x x x." Chato likewise argues that under Republic Act (R.A.) No. 9369, the May 10, 2010 Automated Election System was paper-based and the picture image files of ballots (PIBs) are not the official ballots. Further, under Section 15 of R.A. No. 8436, what should be regarded as the official ballots are those printed by the National Printing Office (NPO) and/or the Bangko Sentral ng Pilipinas (BSP), or by private printers contracted by the COMELEC in the event that the NPO and the BSP both certify that they cannot meet the printing requirements.

Panotes on the other hand points out that in Liwayway Vinzons-Chato v. HRET and Elmer Panotes, the Court sustained the PIBs as the functional equivalent of paper ballots, thus, they may be used for revision purposes. Further, the HRET had categorically ruled in the herein assailed decision that the physical ballots were altered or tampered, hence, not reflective of the true will of the electorate. Besides, Chato's electoral protest was flimsily anchored on the alleged missing compact flash (CF) card in CP No. 44 of Daet. Panotes emphasizes that the CF card had already been retrieved. Even if it were not found, there are 14 CPs in Daet and one incident of a missing CF card cannot create a strong presumption that all such cards in the entire Second District of Camarines Norte had been tampered.

ISSUE:

Whether or not the HRET committed grave abuse of discretion when it (a) disregarded the results of the physical count in the 69 CPs when the HRET had previously held that the integrity of the ballot boxes was preserved and that the results of the revision proceedings can be the bases to overturn those reflected in the election returns; (b) resorted to the PIBs, regarded them as the equivalent of the paper ballots, and thereafter ruled that the integrity of the latter was doubtful; (c) held that Chato had

failed to prove by substantial evidence that the CF cards used in the May 10, 2010 elections were not preserved.

RULING:

No. It bears stressing that the HRET's Order dated April 10, 2012 was issued to resolve Panotes' motion to suspend the continuance of the revision proceedings in 75% of the contested CPs. The HRET's findings then anent the integrity of the ballot boxes were at the most, preliminary in nature. The HRET was in no way estopped from subsequently holding otherwise after it had the opportunity to exhaustively observe and examine in the course of the entire revision proceedings the conditions of all the ballot boxes and their contents, including the ballots themselves, the MOV, SOVs and ERs.

As ruled in Liwayway Vinzons-Chato v. HRET and Elmer Panotes and Elmer E. Panotes v. HRET and Liwayway Vinzons-Chato:

Section 2(3) of R.A. No. 9369 defines "official ballot" where AES [Automated Election System] is utilized as the "paper ballot, whether printed or generated by the technology applied, that faithfully captures or represents the votes cast by a voter recorded or to be recorded in electronic form."

x x x x

[T]he May 10, 2010 elections used a paper-based technology that allowed voters to fill out an official paper ballot by shading the oval opposite the names of their chosen candidates. Each voter was then required to personally feed his ballot into the Precinct Count Optical Scan (PCOS) machine which scanned both sides of the ballots simultaneously, meaning, in just one pass. As established during the required demo tests, the system captured the images of the ballots in encrypted format which, when decrypted for verification, were found to be digitized representations of the ballots cast.

As such, the printouts thereof [PIBs] are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest.

x x x x

x x x [T]he HRET found Chato's evidence insufficient. The testimonies of the witnesses she presented were declared irrelevant and immaterial as they did not refer to the CF cards used in the 20 precincts in the Municipalities of Basud and Daet with substantial variances x x x.

To substitute our own judgment to the findings of the HRET will doubtless constitute an intrusion into its domain and a curtailment of its power to act of its own accord on its evaluation of the evidentiary weight of testimonies presented before it. Thus, for failure of Chato to discharge her burden of proving that the integrity of the questioned cards had not been preserved, no further protestations to the use of the picture images of the ballots as stored in the CF cards should be entertained.

Chato attempts to convince us that the integrity of the physical ballots was preserved, while that of the CF cards was not. As mentioned above, the integrity of the CF cards is already a settled matter. Anent that of the physical ballots, this is a factual issue which calls for a re-calibration of evidence. Generally, we do not resolve factual questions unless the decision, resolution or order brought to us for review can be shown to have been rendered or issued with grave abuse of discretion. In the case at bar, the HRET disposed of Chato's electoral protest without grave abuse of discretion. The herein assailed decision and resolution were rendered on the bases of existing evidence and records presented before the HRET.

AGAPAY NG INDIGENOUS PEOPLES RIGHTS ALLIANCE (A-IPRA) v. COMMISSION ON ELECTIONS, ET AL.
G.R. No. 204591, 16 April 2013, EN BANC (Reyes, J.)

Agapay ng Indigenous Peoples Rights Alliance (A-IPRA) is a sectoral political party whose primordial objectives are the recognition, protection and promotion of the rights of the indigenous people. It was allowed registration and accreditation by the COMELEC. A-IPRA participated in the May 2010 elections with several nominees. Unfortunately, the group failed to muster the necessary number of votes to obtain a seat in Congress. On May 31, 2012, A-IPRA filed a Manifestation of Intent to Participate in the May 2013 Elections with the COMELEC. Appended in the manifestation is a new list of nominees and officers (Lota Group).

Subsequently, the COMELEC en banc issued a resolution to review and affirm the grant of registration and accreditation to party-list groups and organizations in order that it may fulfill its role of ensuring that only those parties, groups or organizations with the requisite character consistent with the purpose of the party-list system are registered and accredited to participate in the party-list system of representation. It also suspended the application of Section 19 of the COMELEC Rules of Procedure which pertains to the filing of a motion for reconsideration. Thereafter, the COMELEC en banc required A-IPRA to appear before them to present documentary evidence which will establish its continuing compliance with the requirements set forth under Republic Act No. 7941 (R.A. No. 7941) and the guidelines in Ang Bagong Bayani-OFW Labor Party v. COMELEC.

Thereafter, the Insigne Group, under the name of A-IPRA, filed a Petition for Intervention with Opposition to the Nomination filed by Bogus Officers of A-IPRA. They alleged that their members remain the legitimate nominees and officers of A-IPRA as they were never replaced in accordance with procedure stated in the by-laws of the organization. Further, they pointed out that the members of the Lota Group are complete strangers to the organization and that their names do not appear in the roster of A-IPRA membership. Even more, they do not appear to be members of the indigenous cultural communities/indigenous people as they are all residents of Metro Manila and are unknown to the members of A-IPRA. Finally, they charged the Lota Group of submitting fake documents which contained forged signatures. Thus, they prayed that the Lota Group be disqualified as nominees and officers of A-IPRA and that they be recognized as the legitimate nominees and officers of the group and be allowed to participate in the May 2013 elections. Consequently, the COMELEC En Banc cancelled the registration and accreditation of A-IPRA.

ISSUE:

Whether or not the COMELEC En Banc gravely abused its discretion in cancelling the registration and accreditation of A-IPRA.

RULING:

No. The Insigne Group impute grave abuse of discretion on the part of the COMELEC in issuing Resolution dated November 7, 2012 which cancelled A-IPRA's registration/accreditation on the ground of disqualification of its nominees. This issue, however, had already been resolved by the Court in Atong Paglaum, Inc. v. Commission on Elections. It is well to remember that the Lota Group also filed a separate petition for certiorari with this Court, challenging the same resolution of the COMELEC. The said petition was docketed as G.R. No. 204125 and was consolidated with several other cases questioning similar issuances by the COMELEC. Eventually, the Court resolved the consolidated cases in Atong Paglaum by upholding the validity of the issuances of the COMELEC, albeit, ordering that all

the petitions be remanded to the COMELEC for reevaluation of the qualifications of the party-list groups based on the new set of parameters laid down in the mentioned decision.

In Atong Paglaum, the Court specifically ruled that the COMELEC did not gravely abuse its discretion, thus:

We hold that the COMELEC did not commit grave abuse of discretion in following prevailing decisions of this Court in disqualifying petitioners from participating in the coming 13 May 2013 party-list elections. However, since the Court adopts in this Decision new parameters in the qualification of national, regional, and sectoral parties under the party-list system, thereby abandoning the rulings in the decisions applied by the COMELEC in disqualifying petitioners, we remand to the COMELEC all the present petitions for the COMELEC to determine who are qualified to register under the partylist system, and to participate in the coming 13 May 2013 party-list elections, under the new parameters prescribed in this Decision.

With a definite ruling of this Court on the absence of grave abuse of discretion in the consolidated cases of Atong Paglaum, the instant petition had become moot and academic and must therefore be dismissed.

Moreover, the determination of who is the rightful representative of a political party or the legitimate nominee of a party-list group lies with the COMELEC, as part and parcel of its constitutional task of registering political parties, organizations and coalitions under Section 2(5), Article IX(C) of the 1987 Constitution. In Laban ng Demokratikong Pilipino v. COMELEC, this Court held that the COMELEC correctly ruled that "the ascertainment of the identity of a political party and its legitimate officers is a matter that is well within its authority. The source of this authority is no other than the fundamental law itself, which vests upon the COMELEC the power and function to enforce and administer all laws and regulations relative to the conduct of an election."

AMELIA AQUINO, ET AL. v. PHILIPPINE PORTS AUTHORITY
G.R. NO. 181973, 17 April 2013, Second Division (Perez, J.)

Amelia Aquino, et.al, who are second category PPA officials filed a Petition for Mandamus and Prohibition before the RTC claiming anew that they are entitled to RATA in the amount not exceeding 40% of their respective basic salaries. They anchor their petition on recent developments allegedly brought about by the decision of the Supreme Court in the case of De Jesus v. Commission on Audit, et al. which was decided almost six (6) years after the Court's decision in PPA v. COA, et al. They further claim that certain issuances were released by the COA and the Department of Budget and Management (DBM), which in effect, extended the cut-off date in the grant of the 40% RATA, thus entitling them to these benefits. PPA filed a motion to dismiss on the ground of res judicata under paragraph (f), Rule 16 of the Rules of Court. It argued that a case involving the same parties, subject matter and cause of action had already been resolved by this Court in PPA v. COA, et al. The RTC ordered the dismissal of the petition. The CA however declared that the principle of res judicata is not applicable to the case. After due proceedings, the trial court ruled in favor of Aquino, et al. and commanded PPA to pay the claim for RATA equivalent to 40% of Aquino et. al's standardized basic salaries authorized under LOI No. 97, commencing from their respective dates of appointments or on 23 October 2001 when the case of Irene V. Cruz, et al. v. COA was promulgated by the Supreme Court, whichever is later. The appellate court however, reversed the decision of the trial court. Hence, the petition.

ISSUE:

Whether or not PPA, in denying the claim of petitioners for 40% rata, has committed a violation of their constitutional right to equal protection.

RULING:

No. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not prohibit discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate. The equal protection of the laws clause of the Constitution allows classification. x x x. A law is not invalid simply because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class.

The different treatment accorded the second sentence (first paragraph) of Section 12 of RA 6758 to the incumbents as of 1 July 1989, on one hand, and those employees hired on or after the said date, on the other, with respect to the grant of non-integrated benefits lies in the fact that the legislature intended to gradually phase out the said benefits without, however, upsetting its policy of non-diminution of pay and benefits. The consequential outcome under Sections 12 and 17 is that if the incumbent resigns or is promoted to a higher position, his successor is no longer entitled to his predecessor's RATA privilege or to the transition allowance. After 1 July 1989, the additional financial incentives such as RATA may no longer be given by the GOCCs with the exemption of those which were authorized to be continued under Section 12 of RA 6758. Therefore, the aforesaid provision does not infringe the equal protection clause of the Constitution as it is based on reasonable classification intended to protect the rights of the incumbents against diminution of their pay and benefits.

NAGKAKAISANG MARALITA NG SITIO MASIGASIG, INC. v. MILITARY SHRINE SERVICES - PHILIPPINE VETERANS AFFAIRS OFFICE, DEPARTMENT OF NATIONAL DEFENSE,
G.R. No. 187587 June 5, 2013, First Division (Sereno, CJ.)

On 12 July 1957, by virtue of Proclamation No. 423, President Carlos P. Garcia reserved parcels of land in the Municipalities of Pasig, Taguig, Parañaque, Province of Rizal and Pasay City for a military reservation. The military reservation, then known as Fort William McKinley, was later on renamed Fort Andres Bonifacio (Fort Bonifacio). On 28 May 1967, President Ferdinand E. Marcos (President Marcos) issued Proclamation No. 208, amending Proclamation No. 423, which excluded a certain area of Fort Bonifacio and reserved it for a national shrine. The excluded area is now known as LibinganngmgaBayani, which is under the administration of Military Shrine Services-Philippine Veterans Affairs Office (MSS-PVAO). Again, on 7 January 1986, President Marcos issued Proclamation No. 2476, further amending Proclamation No. 423, which excluded barangays Lower Bicutan, Upper Bicutan and Signal Village from the operation of Proclamation No. 423 and declared it open for disposition under the provisions of Republic Act Nos. (R.A.) 274 and 730. At the bottom of Proclamation No. 2476, President Marcos made a handwritten addendum, which reads: "P.S. This includes Western Bicutan(SGD.) Ferdinand E. Marcos"

The crux of the controversy started when Proclamation No. 2476 was published in the Official Gazette on 3 February 1986, without the above-quoted addendum. Years later, President Corazon C. Aquino issued Proclamation No. 172 which substantially reiterated Proclamation No. 2476, as published, but this time excluded Lots 1 and 2 of Western Bicutan from the operation of Proclamation No. 423 and declared the said lots open for disposition under the provisions of R.A. 274 and 730. Through the years, informal settlers increased and occupied some areas of Fort Bonifacio including portions of the LibinganngmgaBayani. Thus, Brigadier General Fredelito Bautista issued General Order No. 1323 creating Task Force Bantay (TFB), primarily to prevent further unauthorized occupation and to cause the demolition of illegal structures at Fort Bonifacio. On 27 August 1999, members of petitioner NagkakaisangMaralitangSitioMasigasig, Inc. (NMSMI) filed a Petition with the Commission on Settlement of Land Problems (COSLAP). Thus, on 1 September 2006, COSLAP issued a Resolution granting the Petition and declaring the portions of land in question alienable and disposable, with Associate Commissioner Lina Aguilar-General dissenting. The COSLAP ruled that the handwritten addendum of President Marcos was an integral part of Proclamation No. 2476, and was therefore, controlling. The intention of the President could not be defeated by the negligence or inadvertence of others. Herein respondent MSS-PVAO filed a Motion for Reconsideration, which was denied by the COSLAP. MSS-PVAO filed a Petition with the Court of Appeals seeking to reverse the COSLAP Resolutions. The Court of Appeals First Division rendered the assailed Decision granting MSS-PVAO's Petition. Both NMSMI and WBLOAI appealed the said Decision.

ISSUE:

Whether or not the handwritten addendum was considered published also at the time the Proclamation was published.

RULING:

No. Considering that petitioners were occupying Lots 3 and 7 of Western Bicutan (subject lots), their claims were anchored on the handwritten addendum of President Marcos to Proclamation No. 2476. They allege that the former President intended to include all Western Bicutan in the reclassification of portions of Fort Bonifacio as disposable public land when he made a notation just

below the printed version of Proclamation No. 2476. However, it is undisputed that the handwritten addendum was not included when Proclamation No. 2476 was published in the Official Gazette. The resolution of whether the subject lots were declared as reclassified and disposable lies in the determination of whether the handwritten addendum of President Marcos has the force and effect of law. In relation thereto, Article 2 of the Civil Code expressly provides: ART. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This Code shall take effect one year after such publication. Under the above provision, the requirement of publication is indispensable to give effect to the law, unless the law itself has otherwise provided. The phrase "unless otherwise provided" refers to a different effectivity date other than after fifteen days following the completion of the law's publication in the Official Gazette, but does not imply that the requirement of publication may be dispensed with.

The issue of the requirement of publication was already settled in the landmark case Tañada v. Hon. Tuvera. Court cannot rely on a handwritten note that was not part of Proclamation No. 2476 as published. Without publication, the note never had any legal force and effect. Furthermore, under Section 24, Chapter 6, Book I of the Administrative Code, "the publication of any law, resolution or other official documents in the Official Gazette shall be prima facie evidence of its authority." Thus, whether or not President Marcos intended to include Western Bicutan is not only irrelevant but speculative. Simply put, the courts may not speculate as to the probable intent of the legislature apart from the words appearing in the law.

This Court cannot rule that a word appears in the law when, evidently, there is none. In Pagpalain Haulers, Inc. v. Hon. Trajano, the Court ruled that "under Article 8 of the Civil Code, 'judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.' This does not mean, however, that courts can create law. The courts exist for interpreting the law, not for enacting it. To allow otherwise would be violative of the principle of separation of powers, inasmuch as the sole function of our courts is to apply or interpret the laws, particularly where gaps or lacunae exist or where ambiguities becloud issues, but it will not arrogate unto itself the task of legislating." The remedy sought in these Petitions is not judicial interpretation, but another legislation that would amend the law 'to include petitioners' lots in the reclassification

PRIVATIZATION and MANAGEMENT OFFICE v.
STRATEGIC DEVELOPMENT and/or PHILIPPINE ESTATE CORPORATION
G.R. No. 200402, 13 June 2013, First Division (Sereno, CJ.)

Asset Privatization Trust (APT) slated the privatization of Philippine National Construction Corporation (PNCC) in order to generate maximum cash recovery for the government. Thus, it announced the holding of a public bidding involving the "as is, where is basis" package sale of stocks, receivables, and securities owned by the National Government in the PNCC.

Dong-A Consortium, which was formed by STRADEC and Dong-A Pharmaceuticals, signified its intention to bid. APT conducted the bid. It first declared that Dong-A Consortium, Pacific Infrastructure Development International, and Philippine Exporters Confederation qualified as bidders. Thereafter, it announced that the indicative price of the PNCC properties was seven billion pesos (P7,000,000,000). Relying on their own due diligence examinations, they protested that the indicative price was too high, considering the financial statements and bid documents given by APT. Notwithstanding their protests, APT continued with the bidding and opened the bid envelopes. The next day, APT faxed a letter to Dong-A Consortium informing the latter that its offer had been rejected.

STRADEC filed a Complaint for Declaration of Right to a Notice of Award and/or Damages on behalf of Dong-A Consortium against PMO and PNCC. It contested the high indicative price that caused it to lose the bid. STRADEC also pushed for the reduction of the indicative price and demanded that a Notice of Award of the PNCC properties be issued in its favor.

The RTC ruled that PMO had committed grave abuse of discretion in refusing to explain the basis of the indicative price. The trial court explained that since competitive public bidding is vested with public interest, it then follows that the government has an affirmative duty to disclose its reasons for rejecting a bid. The court concluded that the refusal to explain the indicative price constituted a violation of the public's right to information and the State's policy of full transparency in transactions involving public interest. PMO and PNCC appealed before the CA. In its assailed Decision, the CA emphasized that competitive public bidding must be fair, legitimate and honest. From this standard, it went on to state that PMO must not only reveal the basis of the indicative price, but must also award the sale of the PNCC assets to Dong-A Consortium.

ISSUE:

Whether or not the people's right to information has been violated.

RULING:

No. Whether or not the people's right to information has been violated by APT's failure to disclose the basis of the indicative price, that right cannot be used as a ground to direct the issuance of the Notice of Award to Dong-A Consortium. Under the ASBR, respondent must at least match the indicative price in order to win.

Under the circumstances, the right to information, at most, affords to the claimant access to records, documents, and papers – which only means the opportunity to inspect and copy them at his expense. The right to information allows the public to hold public officials accountable to the people and aids them in engaging in public discussions leading to the formulation of government policies and their effective implementation. By itself, it does not extend to causing the award of the sale of

government assets in failed public biddings. Thus, assuming that Dong-A Consortium may access the records for the purpose of validating the indicative price under the right to information, it does not follow that respondent is entitled to the award.

The Court cannot condone the incongruous interpretation of the courts a quo that the public's right to information merits both an explanation of the indicative price and an automatic award of the bid to Dong-A Consortium. This interpretation is illogical considering that, in order to win a bid, bidders could simply demand explanations ad infinitum. Government agencies would then be required to discuss each and every method of computation used in arriving at a valuation. As a result, the bidders would unduly exhaust the time, efforts, and resources of all participants in the process. Worse, this stance could open the courts to a multitude of suits assailing the iterations of the bidding evaluations. We cannot allow such distorted interpretation of the transparency requirement of public bidding, as an interpretation that causes inconvenience and absurdity is not favored. Notably, even if the computations for arriving at the P7,000,000,000 valuation were explained, none of the participants would have won, since all of their offers were way below the indicative price.

LAND BANK OF THE PHILIPINES v. VIRGINIA PALMARES, ET AL.
G.R. No. 192890, 17 June 2013, Second Division, PERLAS-BERNABE, J.

Palmares, et.al. inherited a 19.98 hectare agricultural land located in Iloilo. In 1995, they voluntarily offered the land for sale to the government pursuant to the Comprehensive Agrarian Law of 1988. DAR acquired 19.107 hectares of the entire are which was valued by LBP at P440,355.92. Respondents rejected said amount. DARAB resolved to adopt LBPs valuation. Hence, the same amount was deposited to respondents credit as provisional compensation.

The RTC of Iloilo ordered LBP to recomputed hence the land increased from 440,355.92 to 503,148.97. Respondents still rejected the offer. RTC rendered a decision fixing the just compensation to 669,962.53. The trial court arrived at its own computation by getting an average of the price per hectare as computed by LBP in accordance with DAR guidelines and the market value of the land per hectare as shown in the tax declaration. LBP appealed to the CA arguing that the computation made by the RTC failed to consider the factors in determining just compensation an enumerated under section 17 of RA 6657. The appellate court affirmed RTC ruling as having been arrived at in consonance with Section 17 of RA 6657. It emphasized that the determination of just compensation in eminent domain proceedings is essentially a judicial function and, in the exercise thereof, courts should be given ample discretion and should not be delimited by mathematical formulas.

ISSUE:

Whether or not the computation of the just compensation is correct.

RULING:

The principal basis of the computation for just compensation is Section 17 of RA 6657,which enumerates the following factors to guide the special agrarian courts in the determination thereof :

1. Acquisition cost of the land
2. Current value of the properties
3. Its nature, actual use, and income
4. The sworn valuation by the owner
5. The tax declaration
6. The assessment made by government assessors
7. The social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property.

The non payment of taxes or loans secured from any government financing institution of the said land, if any, in the instant case, the trial court found to be unrealistically low the total valuation by LBP and the DAR in the amount of P440,355.92, which was computed on the basis of DAR AO No. 6 series of 1992 as amended by DAR AO No. 11 Series of 1994. It then merely proceeded to add said valuation to the market value of the subject land as appearing in the 1997 tax declaration, and used the average of such values to fix the just compensation.

While the determination of just compensation is essentially a judicial function vestd in the RTC acting as a special agrarian court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. The Court agree with the LBP that the double take up of the market value per tax declaration as a valuation factor completely destroys the rationale of the formula laid down by the DAR.

ROMEO JALOSJOS v. COMMISSION ON ELECTIONS, et al.
G.R. No. 205033, 18 June 2013, EN BANC (Perlas-Bernabe, J.)

The Court convicted Romeo G. Jalosjos by final judgment of two counts of statutory rape and six counts of acts of lasciviousness and was sentenced to suffer reclusion perpetua which carried the accessory penalty of perpetual absolute disqualification. Subsequently, President Gloria Macapagal Arroyo issued an order commuting his prison term to 16 years, 3 months and 3 days and he was later issued a Certificate of Discharge. Later, Jalosjos applied to register as a voter in Zamboanga City but was denied, prompting him to file a Petition for Inclusion in the Permanent List of Voters in the Municipal Trial Court (MTC). While the petition was pending, he filed a Certificate of Candidacy (CoC) seeking to run as a mayor in the local elections on May 13, 2013. However, the MTC denied his petition because of his perpetual absolute disqualification which deprives him the right to vote in any election. Meanwhile, five petitions were lodged before the Commission on Elections' (COMELEC) Divisions, praying for the denial of Jalosjos' CoC. COMELEC En Banc issued a motuproptio resolution resolving to cancel and deny the CoC of Jalosjos due to his perpetual absolute disqualification and his failure to comply with the voter registration requirement.

ISSUE:

Is Jalosjos' perpetual absolute disqualification to run for elective office been removed by Section 40(a) of the LGC?

RULING:

No, Jalosjos' perpetual absolute disqualification to run for elective office is not removed by Section 40(a) of the LGC for it should not be deemed to cover cases wherein the law imposes a penalty, either as principal or accessory which has the effect of disqualifying the convict to run for elective office. Said provision states that persons sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment are disqualified from running for any elective local position within two years after serving sentence.

In the present case, Jalosjos was sentenced to suffer the principal penalties of reclusion perpetua and reclusion temporal which, pursuant to Article 41 of the Revised Penal Code, carried with it the accessory penalty of perpetual absolute disqualification and in turn, pursuant to Article 30 of the RPC, disqualified him to run for elective office. As discussed, Section 40(a) of the LGC would not apply to cases wherein a penal provision — such as Article 41 in this case — directly and specifically prohibits the convict from running for elective office. Hence, despite the lapse of two (2) years from petitioner's service of his commuted prison term, he remains bound to suffer the accessory penalty of perpetual absolute disqualification which consequently, disqualifies him to run as mayor for Zamboanga City.

The accessory penalty of perpetual special disqualification takes effect immediately once the judgment of conviction becomes final. The effectivity of this accessory penalty does not depend on the duration of the principal penalty, or on whether the convict serves his jail sentence or not. The last sentence of Article 32 states that "the offender shall not be permitted to hold any public office during the period of his [perpetual special] disqualification." Once the judgment of conviction becomes final, it is immediately executory. Any public office that the convict may be holding at the time of his conviction becomes vacant upon finality of the judgment, and the convict becomes ineligible to run for any elective public office perpetually.

REGINA ONGSIAKO REYES v. COMMISSION ON ELECTIONS and JOSEPH SOCORRO B. TAN
G.R. No. 207264, 25 JUNE 2013, EN BANC (Perez, J.)

This is a Motion for Reconsideration of the En Banc Resolution of June 25, 2013 which found no grave abuse of discretion on the part of the Commission on Elections and affirmed the March 27, 2013 Resolution of the COMELEC First Division.

Reyes raised the issue in the petition which is: Whether or not Respondent COMELEC is without jurisdiction over Petitioner who is duly proclaimed winner and who has already taken her oath of office for the position of Member of the House of Representatives for the lone congressional district of Marinduque. Petitioner is a duly proclaimed winner and having taken her oath of office as member of the House of Representatives, all questions regarding her qualifications are outside the jurisdiction of the COMELEC and are within the HRET exclusive jurisdiction.

The averred proclamation is the critical pointer to the correctness of petitioner submission.The crucial question is whether or not petitioner could be proclaimed on May 18, 2013. Differently stated, was there basis for the proclamation of petitioner on May 18 , 2013.

The June 25, 2013 resolution held that before May 18, 2013, the COMELEC En Banc had already finally disposed of the issue of petitioner lack of Filipino citizenship and residency via its resolution dated May 14, 2013, cancelling petitioner certificate of candidacy. The proclamation which petitioner secured on May 18, 2013 was without any basis. On June 10, 2013, petitioner went to the Supreme Court questioning the COMELEC First Division ruling and the May 14, 2013 COMELEC En Banc decision, baseless proclamation on 18 May 2013 did not by that fact of promulgation alone become valid and legal.

ISSUE:

Whether or not Petitioner was denied of due process.

RULING:

Yes. Reyes alleges that the COMELEC gravely abused its discretion when it took cognizance of "newly-discovered evidence" without the same having been testified on and offered and admitted in evidence. She assails the admission of the blog article of Eli Obligacion as hearsay and the photocopy of the Certification from the Bureau of Immigration. She likewise contends that there was a violation of her right to due process of law because she was not given the opportunity to question and present controverting evidence.

It must be emphasized that the COMELEC is not bound to strictly adhere to the technical rules of procedure in the presentation of evidence. Under Section 2 of Rule I, the COMELEC Rules of Procedure "shall be liberally construed in order to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission." In view of the fact that the proceedings in a petition to deny due course or to cancel certificate of candidacy are summary in nature, then the "newly discovered evidence" was properly admitted by respondent COMELEC.

Furthermore, there was no denial of due process in the case at bar as petitioner was given every opportunity to argue her case before the COMELEC. From 10 October 2012 when Tan's petition was

filed up to 27 March 2013 when the First Division rendered its resolution, petitioner had a period of five (5) months to adduce evidence. Unfortunately, she did not avail herself of the opportunity given her.

In administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard. As held in the case of Sahali v. COMELEC: The petitioners should be reminded that due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard. One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and predictable than oral argument, through pleadings. In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense. Indeed, deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.

In moving for the cancellation of Reyes' COC, respondent submitted records of the Bureau of Immigration showing that petitioner is a holder of a US passport, and that her status is that of a "balikbayan." At this point, the burden of proof shifted to petitioner, imposing upon her the duty to prove that she is a natural-born Filipino citizen and has not lost the same, or that she has re-acquired such status in accordance with the provisions of R.A. No. 9225. Aside from the bare allegation that she is a natural-born citizen, however, petitioner submitted no proof to support such contention. Neither did she submit any proof as to the inapplicability of R.A. No. 9225 to her.

SVETLANA P. JALOSJOS v. COMMISSION ON ELECTIONS, EDWIN ELIM TUMPAG and RODOLFO Y. ESTRELLADA
G.R. No. 193314, 25 JUNE 2013, EN BANC (Sereno, J.)

Jalosjos filed her Certificate of Candidacy (CoC) for mayor of Baliangao, Misamis Occidental for the 10 May 2010 elections. She indicated therein her place of birth and residence as Barangay Tugas, Municipality of Baliangao, Misamis Occidental (Brgy. Tugas). Asserting otherwise, Tumpag and Estrellada filed against petitioner a Petition to Deny Due Course to or Cancel the Certificate of Candidacy, in which they argued t hat she had falsely represented her place of birth and residence, because she was in fact born in San Juan, Metro Manila, and had not totally abandoned her previous domicile, Dapitan City.

On the other hand, Jalosjos averred that she had established her residence in the said barangay since December 2008 when she purchased two parcels of land there, and that she had been staying in the house of a certain Mrs. Lourdes Yap (Yap) while the former was overseeing the construction of her house. Furthermore, petitioner asserted that the error in her place of birth was committed by her secretary. Nevertheless, in CoC, an error in the declaration of the place of birth is not a material misrepresentation that would lead to disqualification, because it is not one of the qualifications provided by law.

The Petition to Deny Due Course to or Cancel the Certificate of Candidacy remained pending as of the day of the elections, in which petitioner garnered the highest number of votes. On 10 May 2010, the Municipal Board of Canvassers of Baliangao, Misamis Occidental, proclaimed her as the duly elected municipal mayor.

Thereafter, the COMELEC Second Division ruled that respondent was DISQUALIFIED for the position of mayor. The COMELEC En Banc promulgated a Resolution on 19 August 2010 denying the Motion for Reconsideration of petitioner for lack of merit and affirming the Resolution of the Second Division denying due course to or cancelling her CoC.

ISSUE:

Whether COMELEC committed grave abuse of discretion in holding that petitioner had failed to prove compliance with the one-year residency requirement for local elective officials.

RULING:

No. Petitioner failed to comply with the one-year residency requirement for local elective officials. Petitioner uncontroverted domicile of origin is Dapitan City. The question is whether she was able to establish, through clear and positive proof, that she had acquired a domicile of choice in Baliangao, Misamis Occidental, prior to the May 2010 elections.

When it comes to the qualifications for running for public office, residence is synonymous with domicile. Accordingly, Nuval v. Gurayheld as follows:

The term residence, as so used, is synonymous with domicile which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention. There are three requisites for a person to acquire a new domicile by choice. First, residence or bodily presence in the new locality. Second, an intention to remain there. Third, an intention to abandon the old domicile.

These circumstances must be established by clear and positive proof, as held in Romualdez-Marcos v. COMELEC and subsequently in Dumpit- Michelena v. Boado:

In the absence of clear and positive proof based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing concurrence of all three requirements can the presumption of continuity or residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time.

Moreover, even if these requisites are established by clear and positive proof, the date of acquisition of the domicile of choice, or the critical date, must also be established to be within at least one year prior to the elections using the same standard of evidence.

In the instant case, we find that petitioner failed to establish by clear and positive proof that she had resided in Baliangao, Misamis Occidental, one year prior to the 10 May 2010 elections. There were inconsistencies in the Affidavits of Acas-Yap, Yap III, Villanueva, Duhaylungsod, Estrellada, Jumawan, Medija, Bagundol, Colaljo, Tenorio, Analasan, Bation, Maghilum and Javier. First, they stated that they personally knew petitioner to be an actual and physical resident of Brgy. Tugassince 2008. However, they declared in the same Affidavits that she stayed in Brgy. Punta Miray while her house was being constructed in Brgy. Tugas. Second, construction workers Yap III, Villanueva, Duhaylungsod and Estrellada asserted that in December 2009, construction was still ongoing. By their assertion, they were implying that six months before the 10 May 2010 elections, petitioner had not yet moved into her house at Brgy. Tugas. Third, the same construction workers admitted that petitioner only visited Baliangao occasionally when they stated that "at times when she (petitioner) was in Baliangao, she used to stay at the house of Lourdes Yap while her residential house was being constructed."

These discrepancies bolster the statement of the Brgy. Tugas officials that petitioner was not and never had been a resident of their barangay. At most, the Affidavits of all the witnesses only show that petitioner was building and developing a beach resort and a house in Brgy. Tugas, and that she only stayed in Brgy. PuntaMiray whenever she wanted to oversee the construction of the resort and the house.

Assuming that the claim of property ownership of petitioner is true, Fernandez v. COMELEC has established that the ownership of a house or some other property does not establish domicile. This principle is especially true in this case as petitioner has failed to establish her bodily presence in the locality and her intent to stay there at least a year before the elections.

Finally, the approval of the application for registration of petitioner as a voter only shows, at most, that she had met the minimum residency requirement as a voter. This minimum requirement is different from that for acquiring a new domicile of choice for the purpose of running for public office.

JESUS C. GARCIA v. THE HONORABLE RAY ALAN T. DRILON, et al.
G.R. No. 179267, 25 June 2013, EN BANC (Perlas-Bernabe, J.)

Petitioner Jesus C. Garcia married Rosalie Jaype-Garcia in 2002. They had three children. Rosalie describes her husband as dominant, controlling and demands absolute obedience from his wife and children. Things turned worse when Jesus took up an affair with a bank manager of Robinson's Bank, Bacolod City, who is the godmother of one of their sons. Jesus' infidelity spawned a series of fights with his wife and on one occasion, he also turned his ire on their daughter, who had seen the text messages he sent to his paramour. Rosalie is determined to separate from her husband but she is afraid that he would take her children from her and deprive her of financial support. Jesus had previously warned her that if she goes on legal battle with him, she would not get a single centavo. Jesus is the President of the three family businesses.

Rosalie filed a verified petition before the Regional Trial Court of Bacolod City for the issuance of Temporary Protection Order ("I PO) against her husband pursuant to R.A. 9262. She claimed to be a victim of physical abuse, emotional, psychological, and economic violence as a result of marital infidelity on the part of Jesus, with threats of deprivation of custody of her children and of financial support. RTC issued a TPO and a modified TPO in favor of Rosalie.

During the pendency of the civil case,Jesus filed before the Court of Appeals a petition challenging the constitutionality of R.A. 9262 or An Act Defining Violence Against Women and Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefore, and For Other Purposes for being violative of the due process and equal protection clauses and undue delegation of judicial power.

ISSUE:

Is R.A. 9262 unconstitutional for being violative of the equal protection and due process clauses, and an undue delegation of judicial power to barangay officials?

RULING:

No. R.A. 9262 is not unconstitutional. First, R.A. 9262 does not violate the guaranty of equal protection of the laws. The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law. As Justice McIntyre succinctly states, "the accommodation of differences ... is the essence of true equality."

The distinction between men and women is germane to the purpose of R.A. 9262, which is to address violence committed against women and children. As spelled out in its Declaration of Policy Section 2, the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security. Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

Moreover, the applicationof R.A.9262isnotlimited to the existingconditions when it was promulgated, but to future conditions as well, for as long as the safety and security of women and their children are threatened by violence and abuse.

Second, R.A. 9262 is not violative of the due process clause of the Constitution. The fear of Jesus of being "stripped of family, property, guns, money, children, job, future employment and reputation, all in a matter of seconds, without an inkling of what happened" is a mere product of an overactive imagination. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.

Lastly, there is no undue delegation of judicial power to barangay officials. As clearly delimited by Sec. 14 of Barangay Protection Orders, the BPO issued by the Punong Barangay or, in his unavailability, by any available Barangay Kagawad, merely orders the perpetrator to desist from (a) causing physical harm to the woman or her child; and (2) threatening to cause the woman or her child physical harm. Such function of the Punong Barangay is, thus, purely executive in nature, in pursuance of his duty under the Local Government Code to "enforce all laws and ordinances," and to "maintain public order in the barangay."

SPOUSES BILL AND VICTORIA HING v. ALEXANDER CHOACHUY SR. AND ALLAN CHOACHUY
G.R. No. 179736, 26 June 2013, SECOND DIVISION (Del Castillo, J.)

Spouses Bill and Victoria Hing own a parcel of land adjacent to the property of Alexander Choachuy, owner of Aldo Development & Resources Inc. (ALDO). ALDO filed a case for Injunction and Damages against the spouses, claiming that they were constructing a fence without a valid permit and that the said construction would destroy the wall of its building. In order to get evidence to support said case, ALDO illegally set-up and installed on the building of Aldo Goodyear Servitec two video surveillance cameras facing Spouses Fling's property and also took pictures of the spouses' on-going construction. Thus, Spouses Hing prayed that ALDO be ordered to remove the video surveillance cameras at the left side of their building overlooking the side of spouses' lot and enjoined from conducting illegal surveillance.

The Regional Trial Court (RTC) issued an Order granting the application for a Temporary Restraining Order and directed Aldo to remove immediately the revolving camera that they installed and to transfer and operate it elsewhere at the back where the spouses' property can no longer be viewed. On appeal the Court of Appeals (CA) reversed the RTC's decision explaining that the right to privacy of residence under Art. 26 of the Civil Code was not violated since the property subject of the controversy is not used as a residence.

ISSUE:

Did ALDO violate Spouses Fling's right to privacy?

RULING:

Yes. Article 26(1) of the Civil Code states that every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. Prying into the privacy of another's residence, though it may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief.

An individual's right to privacy under Article 26(1) of the Civil Code should not be confined to his house or residence as it may extend to places where he has the right to exclude the public or deny them access. The phrase "prying into the privacy of another's residence," therefore, covers places, locations, or even situations which an individual considers as private. And as long as his right is recognized by society, other individuals may not infringe on his right to privac-y. The CA, therefore, erred in limiting the application of Article 26(1) of the Civil Code only to residences.

In ascertaining whether there is a violation of the right to privacy, courts use the "reasonable expectation of privacy" test. This test determines whether a person has a reasonable expectation of privacy and whether the expectation has been violated. In Opk Torres, the Court enunciated that "the reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether, by his conduct, the individual has exhibited an expectation of privacy; and (2) this expectation is one that society recognizes as reasonable." Customs, community norms, and practices may, therefore, limit or extend an individual's "reasonable expectation of privacy?' Hence, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case.

The RTC, thus, considered that spouses Bill and Victoria Hing have a "reasonable expectation of privacy" in their property, whether they use it as a business office or as a residence and that the installation of video surveillance cameras directly facing Spouses Bill and Victoria Hing's property or covering a significant portion thereof, without their consent, is a clear violation of their right to privacy. As the Court sees then, the issuance of a preliminary injunction was justified.

ATTY. ROMULO B. MACALINTAL v. PRESIDENTIAL ELECTORAL TRIBUNAL
G.R. No. 191618, 7 June 2011, EN BANC (Nachura, J.) Resolution

A Motion for Reconsideration was filed by Atty. Romulo B. Macalintal from a decision dismissing his petition and declaring the establishment of respondent Presidential Electoral Tribunal (PET) as constitutional. Macalintal reiterates his arguments on the alleged unconstitutional creation of the PET that Section 4, Article VII of the Constitution does not provide for the creation of the PET. Thus, PET violates Section 12, Article VIII of the Constitution. To bolster his arguments that the PET is an illegal and unauthorized progeny of Section 4, Article VII of the Constitution, petitioner invokes our ruling on the constitutionality of the Philippine Truth Commission (PTC). Petitioner cites the concurring opinion of Justice Teresita J. Leonardo-de Castro that the PTC is a public office which cannot be created by the President, the power to do so being lodged exclusively with Congress. Thus, petitioner submits that if the President, as head of the Executive Department, cannot create the PTC, the Supreme Court, likewise, cannot create the PET in the absence of an act of legislature.

ISSUE:

Is the establishment of Presidential Electoral Tribunal (PET) constitutional?

RULING:

Yes. The decision of the Court still stands on its constitutionality. The Court reiterated that the PET is authorized by the last paragraph of Section 4, Article VII of the Constitution and as supported by the discussions of the Members of the Constitutional Commission, which drafted the present Constitution. The explicit reference by the framers of our Constitution to constitutionalizing what was merely statutory before is not diluted by the absence of a phrase, line or word, mandating the Supreme Court to create a Presidential Electoral Tribunal.

Suffice it to state that the Constitution, verbose as it already is, cannot contain the specific wording required by petitioner in order for him to accept the constitutionality of the PET. Judicial power granted to the Supreme Court by the same Constitution is plenary. And under the doctrine of necessary implication, the additional jurisdiction bestowed by the last paragraph of Section 4, Article VII of the Constitution to decide presidential and vice-presidential elections contests includes the means necessary to carry it into effect. Thus:

Obvious from the foregoing is the intent to bestow independence to the Supreme Court as the PET, to undertake the Herculean task of deciding election protests involving presidential and vice-presidential candidates in accordance with the process outlined by former Chief Justice Roberto Concepcion. It was made in response to the concern aired by delegate Jose E. Suarez that the additional duty may prove too burdensome for the Supreme Court. This explicit grant of independence and of the plenary powers needed to discharge this burden justifies the budget allocation of the PET.

The conferment of additional jurisdiction to the Supreme Court, with the duty characterized as an "awesome" task, includes the means necessary to carry it into effect under the doctrine of necessary implication. The Court cannot overemphasize that the abstraction of the PET from the explicit grant of power to the Supreme Court, given our abundant experience, is not unwarranted.

A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting en banc. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, the grant of power does not contain any

limitation on the Supreme Court's exercise thereof. The Supreme Court's method of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to "promulgate its rules for the purpose."

The conferment of full authority to the Supreme Court, as a PET, is equivalent to the full authority conferred upon the electoral tribunals of the Senate and the House of Representatives, i.e., the Senate Electoral Tribunal (SET) and the House of Representatives Electoral Tribunal (HRET), which we have affirmed on numerous occasions.

It is also beyond cavil that when the Supreme Court, as PET, resolves a presidential or vice-presidential election contest, it performs what is essentially a judicial power. With the explicit provision, the present Constitution has allocated to the Supreme Court, in conjunction with latter's exercise of judicial power inherent in all courts, the task of deciding presidential and vice-presidential election contests, with full authority in the exercise thereof. The power wielded by PET is a derivative of the plenary judicial power allocated to courts of law, expressly provided in the Constitution. On the whole, the Constitution draws a thin, but, nevertheless, distinct line between the PET and the Supreme Court.

The Court has previously declared that the PET is not simply an agency to which Members of the Court were designated. Once again, the PET, as intended by the framers of the Constitution, is to be an institution independent, but not separate, from the judicial department, i.e., the Supreme Court. McCulloch v. State of Maryland proclaimed that "[a] power without the means to use it, is a nullity."

The decision therein held that the PTC "finds justification under Section 17, Article VII of the Constitution." A plain reading of the constitutional provisions, i.e., last paragraph of Section 4 and Section 17, both of Article VII on the Executive Branch, reveals that the two are differently worded and deal with separate powers of the Executive and the Judicial Branches of government. And as previously adverted to, the basis for the constitution of the PET was, in fact, mentioned in the deliberations of the Members of the Constitutional Commission during the drafting of the present Constitution.

DATU ZALDY UY AMPATUAN ET AL. v. HON. RONALDO PUNO
G.R. No. 190259, 7 June 2011, EN BANC (Abad, J.)

On 24 November 2009, the day after the Maguindanao Massacre, then Pres. Arroyo issued Proclamation 1946, placing "the Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato under a state of emergency." She directed the AFP and the PNP "to undertake such measures as may be allowed by the Constitution and by law to prevent and suppress all incidents of lawless violence" in the named places. Three days later, she also issued AO 273 "transferring" supervision of the ARMM from the Office of the President to the DILG. She subsequently issued AO 273-A, which amended the former AO (the term "transfer" used in AO 273 was amended to "delegate", referring to the supervision of the ARMM by the DILG).

Claiming that the President's issuances encroached on the ARMM's autonomy, petitioners Datu Zaldy Uy Ampatuan, Ansaruddin Adiong, and Regie Sahali-Generale, all ARMM officials, filed this petition for prohibition under Rule 65. They alleged that the President's proclamation and orders encroached on the ARMM's autonomy as these issuances empowered the DILG Secretary to take over ARMM's operations and to seize the regional government's powers. They also claimed that the President had no factual basis for declaring a state of emergency, especially in the Province of Sultan Kudarat and the City of Cotabato, where no critical violent incidents occurred and that the deployment of troops and the taking over of the ARMM constitutes an invalid exercise of the President's emergency powers. Petitioners asked that Proclamation 1946 as well as AOs 273 and 273-A be declared unconstitutional.

ISSUES:

1. Do Proclamation 1946 and AOs 273 and 273-A violate the principle of local autonomy under the Constitution and The Expanded ARMM Act?

2. Did President Arroyo invalidly exercise emergency powers when she called out the AFP and the PNP to prevent and suppress all incidents of lawless violence in Maguindanao, Sultan Kudarat, and Cotabato City?

3. Does the President have factual bases for her action?

RULING:

1. No. The principle of local autonomy was not violated. DILG Secretary did not take over control of the powers of the ARMM. After law enforcement agents took the Governor of ARMM into custody for alleged complicity in the Maguindanao Massacre, the ARMM Vice-Governor, petitioner Adiong, assumed the vacated post on 10 Dec. 2009 pursuant to the rule on succession found in Sec. 12 Art.VII of RA 9054. In turn, Acting Governor Adiong named the then Speaker of the ARMM Regional Assembly, petitioner Sahali-Generale, Acting ARMM Vice-Governor. The DILG Secretary therefore did not take over the administration or the operations of the ARMM.

2. No. The deployment is not by itself an exercise of emergency powers as understood under Section 23 (2), Article VI of the Constitution. The President did not proclaim a national emergency, only a state of emergency in the three places mentioned. And she did not act pursuant to any law enacted by Congress that authorized her to exercise extraordinary powers. The calling out of the armed forces to prevent or suppress lawless violence in such places is a power that the Constitution directly vests in the President. She did not need a congressional authority to exercise the same.

3. Yes. The President's call on the armed forces to prevent or suppress lawless violence springs from the power vested in her under Section 18, Article VII of the Constitution. While it is true that the Court may inquire into the factual bases for the President's exercise of the above power, it would generally defer to her judgment on the matter. As the Court acknowledged in Integrated Bar of the Philippines v. Hon. Zamora, it is clearly to the President that the Constitution entrusts the determination of the need for calling out the armed forces to prevent and suppress lawless violence. Unless it is shown that such determination was attended by grave abuse of discretion, the Court will accord respect to the President's judgment. Thus, the Court said:

If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.

On the other hand, the President, as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call, on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property. Indeed, the decision to call out the military to prevent or suppress lawless violence must be done swiftly and decisively if it were to have any effect at all. x x x.

Here, Ampatuan et al. failed to show that the declaration of a state of emergency in the Provinces of Maguindanao, Sultan Kudarat and Cotabato City, as well as the President's exercise of the "calling out" power had no factual basis. They simply alleged that, since not all areas under the ARMM were placed under a state of emergency, it follows that the takeover of the entire ARMM by the DILG Secretary had no basis too.

The imminence of violence and anarchy at the time the President issued Proclamation 1946 was too grave to ignore and she had to act to prevent further bloodshed and hostilities in the places mentioned. Progress reports also indicated that there was movement in these places of both high-powered firearms and armed men sympathetic to the two clans. Thus, to pacify the people's fears and stabilize the situation, the President had to take preventive action. She called out the armed forces to control the proliferation of loose firearms and dismantle the armed groups that continuously threatened the peace and security in the affected places.

Since Ampatuan et al. are not able to demonstrate that the proclamation of state of emergency in the subject places and the calling out of the armed forces to prevent or suppress lawless violence there have clearly no factual bases, the Court must respect the President's actions.

RE: PETITION FOR RADIO AND TELEVISION COVERAGE OF THE MULTIPLE MURDER CASES AGAINST MAGUINDANAO GOVERNOR ZALDY AMPATUAN, ET AL. A.M. No. 10-11-5-SC, 14 June 2011, EN BANC, (Carpio-Morales, J.)

On November 23, 2009, 57 people including 32 journalists and media practitioners were killed on their way to ShariffAguak in Maguindanao. This tragic incident came to be known as Maguindanao massacre´ spawned charges for 57 counts of murder and additional charges of rebellion against 197 accused, docketed as Criminal Case Nos. Q-09-162148-72, Q-09-162216-31, Q-10-162652-66, and Q-10-163766, commonly entitled People v. Datu Andal Ampatuan, Jr., et al.

Following the transfer of venue and the reraffling of the cases, the cases are being tried by Presiding Judge Jocelyn Solis-Reyes of Branch 221 of the Regional Trial Court (RTC) of Quezon City. Almost a year later on November 19 2010, the National Union of Journalists of the Philippines (NUJP), ABS-CBN Broadcasting Corporation, GMA Network Inc., relatives of the victims, individual journalists from various media entities and members of the academe filed a petition before this court praying that live television and radio coverage of the trial in this criminal cases be allowed, recording devises be permitted inside the court room to assist the working journalists, and reasonable guidelines be formulated to govern the broadcast coverage and the use of devices. The Court docketed the petition as A.M. No. 10-11-5-SC.

President Benigno S. Aquino III, by letter of November 22, 2010 addressed to Chief Justice Renato Corona, came out in support of those who have petitioned this Court to permit television and radio broadcast of the trial." The Court docketed the matter as A.M. No. 10-11-7-SC.

By separate Resolutions of November 23, 2010, the Court consolidated A.M. No. 10-11-7-SC with A.M. No. 10-11-5-SC.

Petitioners state that the trial of the Maguindanao Massacre cases has attracted intense media coverage due to the gruesomeness of the crime, prominence of the accused, and the number of media personnel killed. They inform that reporters are being frisked and searched for cameras, recorders, and cellular devices upon entry, and that under strict orders of the trial court against live broadcast coverage, the number of media practitioners allowed inside the courtroom has been limited to one reporter for each media institution. Hence, the present petitions which assert the exercise of right to a fair and public trial and the lifting of the absolute ban on live television and radio coverage of court proceedings. They principally urge the Court to revisit the 1991 ruling in Re: Live TV and Radio Coverage of the Hearing of President Corazon C. Aquinos Libel Case and the 2001 ruling in Re: Request Radio-TV Coverage of the Trial in the Sandiganbayan of the Plunder Cases Against the Former President Joseph E. Estrada which rulings, they contend, violate the doctrine that proposed restrictions on constitutional rights are to be narrowly construed and outright prohibition cannot stand when regulation is a viable alternative.

ISSUE:

May the petition for radio and television coverage of the Maguindanao Massacre should be allowed?

RULING:

The Court partially GRANTS pro hac vice petitioners' prayer for a live broadcast of the trial court proceedings, subject to guidelines. Respecting the possible influence of media coverage on the impartiality of trial court judges, petitioners correctly explain that prejudicial publicity insofar as it undermines the right to a fair trial must pass the totality of circumstances test, applied in People v.

Teehankee, Jr. and Estrada v. Desierto, that the right of an accused to a fair trial is not incompatible to a free press, that pervasive publicity is not per se prejudicial to the right of an accused to a fair trial, and that there must be allegation and proof of the impaired capacity of a judge to render a bias-free decision. Mere fear of possible undue influence is not tantamount to actual prejudice resulting in the deprivation of the right to a fair trial.

On public trial, Estrada basically discusses:

An accused has a right to a public trial but it is a right that belongs to him, more than anyone else, where his life or liberty can be held critically in balance. A public trial aims to ensure that he is fairly dealt with and would not be unjustly condemned and that his rights are not compromised in secrete conclaves of long ago. A public trial is not synonymous with publicized trial; it only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with decorum and observe the trial process. In the constitutional sense, a courtroom should have enough facilities for a reasonable number of the public to observe the proceedings, not too small as to render the openness negligible and not too large as to distract the trial participants from their proper functions, who shall then be totally free to report what they have observed during the proceedings.

Compliance with regulations, not curtailment of a right, provides a workable solution to the concerns raised in these administrative matters, while, at the same time, maintaining the same underlying principles upheld in the two previous cases.

The basic principle upheld in Aquino is firm — [a] trial of any kind or in any court is a matter of serious importance to all concerned and should not be treated as a means of entertainment, and to so treat it deprives the court of the dignity which pertains to it and departs from the orderly and serious quest for truth for which our judicial proceedings are formulated. The observation that massive intrusion of representatives of the news media into the trial itself can so alter and destroy the constitutionally necessary atmosphere and decorum stands.

The Court had another unique opportunity in Estrada to revisit the question of live radio and television coverage of court proceedings in a criminal case. It held that the propriety of granting or denying the instant petition involves the weighing out of the constitutional guarantees of freedom of the press and the right to public information, on the one hand, and the fundamental rights of the accused, on the other hand, along with the constitutional power of a court to control its proceedings in ensuring a fair and impartial trialIn so allowing pro hac vice the live broadcasting by radio and television of the Maguindanao Massacre cases, the Court lays down the following guidelines toward addressing the concerns mentioned in Aquino and Estrada:

(a) An audio-visual recording of the Maguindanao massacre cases may be made both for documentary purposes and for transmittal to live radio and television broadcasting.

(b) Media entities must file with the trial court a letter of application, manifesting that they intend to broadcast the audio-visual recording of the proceedings and that they have the necessary technological equipment and technical plan to carry out the same, with an undertaking that they will faithfully comply with the guidelines and regulations and cover the entire remaining proceedings until promulgation of judgment. No selective or partial coverage shall be allowed. No media entity shall be allowed to broadcast the proceedings without an application duly approved by the trial court.

(c) A single fixed compact camera shall be installed inconspicuously inside the courtroom to provide a single wide-angle full-view of the sala of the trial court. No panning and zooming shall be allowed to avoid unduly highlighting or downplaying incidents in the proceedings. The camera and the

necessary equipment shall be operated and controlled only by a duly designated official or employee of the Supreme Court. The camera equipment should not produce or beam any distracting sound or light rays. Signal lights or signs showing the equipment is operating should not be visible. A limited number of microphones and the least installation of wiring, if not wireless technology, must be unobtrusively located in places indicated by the trial court. The Public Information Office and the Office of the Court Administrator shall coordinate and assist the trial court on the physical set-up of the camera and equipment.

(d) The transmittal of the audio-visual recording from inside the courtroom to the media entities shall be conducted in such a way that the least physical disturbance shall be ensured in keeping with the dignity and solemnity of the proceedings and the exclusivity of the access to the media entities. The hardware for establishing an interconnection or link with the camera equipment monitoring the proceedings shall be for the account of the media entities, which should employ technology that can (i) avoid the cumbersome snaking cables inside the courtroom, (ii) minimize the unnecessary ingress or egress of technicians, and (iii) preclude undue commotion in case of technical glitches. If the premises outside the courtroom lack space for the set-up of the media entities facilities, the media entities shall access the audio-visual recording either via wireless technology accessible even from outside the court premises or from one common web broadcasting platform from which streaming can be accessed or derived to feed the images and sounds. At all times, exclusive access by the media entities to the real-time audio-visual recording should be protected or encrypted.

(e) The broadcasting of the proceedings for a particular day must be continuous and in its entirety, excepting such portions thereof where Sec. 21 of Rule 119 of the Rules of Court applies, and where the trial court excludes, upon motion, prospective witnesses from the courtroom, in instances where, inter alia, there are unresolved identification issues or there are issues which involve the security of the witnesses and the integrity of their testimony (e.g., the dovetailing of corroborative testimonies is material, minority of the witness). The trial court may, with the consent of the parties, order only the pixelization of the image of the witness or mute the audio output, or both.

(f) (f) To provide a faithful and complete broadcast of the proceedings, no commercial break or any other gap shall be allowed until the days proceedings are adjourned, except during the period of recess called by the trial court and during portions of the proceedings wherein the public is ordered excluded.

(g) To avoid overriding or superimposing the audio output from the on-going proceedings, the proceedings shall be broadcast without any voice-overs, except brief annotations of scenes depicted therein as may be necessary to explain them at the start or at the end of the scene. Any commentary shall observe the sub judice rule and be subject to the contempt power of the court;

(h) No repeat airing of the audio-visual recording shall be allowed until after the finality of judgment, except brief footages and still images derived from or cartographic sketches of scenes based on the recording, only for news purposes, which shall likewise observe the sub judice rule and be subject to the contempt power of the court;

(i) The original audio-recording shall be deposited in the National Museum and the Records Management and Archives Office for preservation and exhibition in accordance with law.

(j) The audio-visual recording of the proceedings shall be made under the supervision and control of the trial court which may issue supplementary directives, as the exigency requires, including the suspension or revocation of the grant of application by the media entities.

(k) The Court shall create a special committee which shall forthwith study, design and recommend appropriate arrangements, implementing regulations, and administrative matters referred to it by the Court concerning the live broadcast of the proceedings pro hac vice, in accordance with the above-outlined guidelines. The Special Committee shall also report and recommend on the feasibility, availability and affordability of the latest technology that would meet the herein requirements.It may conduct consultations with resource persons and experts in the field of information and communication technology.

(l) (l) All other present directives in the conduct of the proceedings of the trial court (i.e., prohibition on recording devices such as still cameras, tape recorders; and allowable number of media practitioners inside the courtroom) shall be observed in addition to these guidelines.

NATIONAL POWER CORPORATION v. YUNITA TUAZON, ROSAURO TUAZON and MARIA TERESA TUAZON
G.R. No. 193023, 22 June 2011, SECOND DIVISION, (Brion, J.)

The Tuazons are co-owners of a 136,736-square-meter coconut land in Barangay Sta. Cruz, Tarangnan, Samar. The land has been declared for tax purposes in the name of the respondents' predecessor-in-interest, the late Mr. Pascual Tuazon. Sometime in 1996, NAPOCOR installed transmission lines on a portion of the land for its 350 KV Leyte-Luzon HVDC Power TL Project. In the process, several improvements on the land were destroyed. Instead of initiating expropriation proceedings, however, NAPOCOR entered into a mere right-of-way agreement with Mr. Tuazon for the total amount of P26,978.21. The amount represents payments for "damaged improvements, easement and tower occupancy fees, and additional damaged improvements.

In 2002, the Tuazons filed a complaint against NAPOCOR for just compensation and damages, claiming that no expropriation proceedings were made and that they only allowed NAPOCOR entry into the land after being told that the fair market value would be paid. They also stated that lots similarly located in Catbalogan, Samar, likewise utilized by NAPOCOR for the similar projects, were paid just compensation pursuant to the determination made by different branches of the RTC in Samar.

NAPOCOR filed a motion to dismiss based on the full satisfaction of the respondents' claims which was granted by the Regional Trial Court. The Tuazons appealed before the Court of Appeals. Before the CA, the NAPOCOR denied that expropriation had occurred. Instead, it claimed to have lawfully established a right-of-way easement on the land per its agreement with Mr. Tuazon, which agreement is in accord with its charter, Republic Act No. (R.A.) 6395. NAPOCOR maintained that Section 3-A(b) of R.A. 6395 gave it the right to acquire a right-of-way easement upon payment of "just compensation" equivalent to not more than 10% of the market value of a private lot traversed by transmission lines.

The CA reversed the RTC decision and held that there was taking under the power of eminent domain and therefore NAPOCOR is liable to pay the Tuazons just compensation and not only easement fee.

ISSUE:

Is the prescribed formula for easement fee of 10% of the Market Value pursuant to NAPOCOR's charter R.A. 6395, shall constitute Just Compensation.

RULING:

No. The determination of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government. This judicial function has constitutional raison d'être; Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation.

Section 3A-(b) of R.A. No. 6395, as amended, is not binding on the Court. It has been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function and that any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.

NPC vehemently insists that its Charter [Section 3A (b) of R.A. 6395] obliges it to pay only a maximum of 10% of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower. To uphold such a contention would not only interfere with a judicial function but would also render as useless the protection guaranteed by our Constitution in Section 9, Article III of our Constitution that no private property shall be taken for public use without payment of just compensation.

As earlier mentioned, Section 3A of R.A. No. 6395, as amended, substantially provides that properties which will be traversed by transmission lines will only be considered as easements and just compensation for such right of way easement shall not exceed 10 percent of the market value. However, this Court has repeatedly ruled that when petitioner takes private property to construct transmission lines, it is liable to pay the full market value upon proper determination by the courts.

HACIENDA LUISITA, INCORPORATED ET AL., v. PRESIDENTIAL AGRARIAN REFORM COUNCIL ET AL.,
G.R. No. 171101, 5, July 2011, EN BANC (Velasco, Jr., J.)

In its July 5, 2011 Decision, the Supreme Court denied the petition for review filed by Hacienda Luisita Inc. (HLI) and affirmed the assailed Presidential Agrarian Reform Council (PARC) Resolutions with the modification that the original 6,296 qualified farmworker-beneficiaries of Hacienda Luisita (FWBs) shall have the option to remain as stockholders of HLI.

Upon separate motions of the parties for reconsideration, the Court, by Resolution dated November 22, 2011, recalled and set aside the option thus granted to the original FWBs to remain as stockholders of HLI, while maintaining that all the benefits and homelots received by all the FWBs shall be respected with no obligation to refund or return them. HLI filed a Motion to Clarify and Reconsider Resolution of November 22, 2011dated December 16, 2011 contending among others, that since the Stock Distribution Plan (SDP) is a modality which the agrarian reform law gives the landowner as alternative to compulsory coverage, then the FWBs cannot be considered as owners and possessors of the agricultural lands of Hacienda Luisita at the time the SDP was approved by PARC on November 21, 1989. It further claims that the approval of the SDP is not akin to a Notice of Coverage in compulsory coverage situations because stock distribution option and compulsory acquisition are two (2) different modalities with independent and separate rules and mechanisms. Concomitantly, HLI maintains that the Notice of Coverage issued on January 2, 2006 may, at the very least, be considered as the date of taking as this was the only time that the agricultural lands of Hacienda Luisita were placed under compulsory acquisition in view of its failure to perform certain obligations under the SDP.

ISSUE:

Whether the Court erred in ruling that the time of "taking" was on November 21, 1989 and not January 2, 2006.

RULING:

No. In Land Bank of the Philippines v. Livioco, the Court held that the 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic. It should be noted, however, that "taking" does not only take place upon the issuance of title either in the name of the Republic or the beneficiaries of the Comprehensive Agrarian Reform Program (CARP). "Taking" also occurs when agricultural lands are voluntarily offered by a landowner and approved by PARC for CARP coverage through the stock distribution scheme, as in the instant case. Thus, HLI's submitting its SDP for approval is an acknowledgment on its part that the agricultural lands of Hacienda Luisita are covered by CARP. However, it was the PARC approval which should be considered as the effective date of "taking" as it was only during this time that the government officially confirmed the CARP coverage of these lands.

NERI vs. SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES
GR. No. 202243, 7 August 2013, THIRD DIVISION (Velasco Jr., J.)

Petitioner Neri served as Director General of the National Economic and Development Authority (NEDA) during the administration of former President Gloria Macapagal-Arroyo. In connection with what had been played up as the botched ZTE-NBN Project, the Office of the Ombudsman (OMB) filed with the Sandiganbayan two (2) criminal Informations, the first against Benjamin Abalos for violation of the Anti-Graft and Corrupt Practices Act, docketed as SB-10-CRM-0098 (People v. Abalos) was raffleed to the Fourth Division of the Sandiganbayan. The second Information against Neri, also for the same violation was docketed as SB-10-CRM-0099 (People v. Neri) and raffled to the Fifth Division of the Sandiganbayan. In the meantime, the Office of the Special Prosecutor (OSP) moved for the consolidation of the two cases. The stated reason proffered: to promote a more expeditious and less expensive resolution of the controversy of cases involving the same business transaction. Neri opposed and argued against the said consolidation, stating, amongg other things, that the desired consolidation is oppressive and violates his rights as an accuse since it would just delay the trial of the case against the petitioner, as well as that

against Abalos, because these cases are already in the advanced stages of the trial. Worse, in the Abalos case, the prosecution has listed 50 witnesses and it has still to present 33 more witnesses while in the case against the petitioner the prosecution (after presenting six witnesses) has no more witnesses to present and is now about to terminate its evidence in chief. Clearly, a consolidation of trial of these two (2) cases would unreasonably and unduly delay the trial of the case against the petitioner in violation of his right to a speedy trial. Neverthelesss, the cases were consolidated.

ISSUE:

Whether or not the respondent court erred in ordering the consolidation on the ground that it violates thee petitioner's right to a speedy trial.

RULING:

Yes. The petition is meritorious. Consolidation here would force petitioner to await the conclusion of testimonies against Abalos, however irrelevant or immaterial as to him (Neri) before the case against the latter may be resolved—a needless, hence, oppressive delay in the resolution of the criminal case against him.

The rights of an accused take precedence over minimizing the cost incidental to the resolution of the controversies in question.

VIVAS vs. MONETARY BOARD and PHILIPPINE DEPOSIT INSURANCE CORPORATION
GR. No. 191424, 7 August 2013, THIRD DIVISION (MENDOZA, J.)

Petitioner Vivas and his principals acquired the controlling interest in Rural Bank Faire, a bank whose corporate life has already expired. BSP authorized extending the banks' corporate life and was later renamed to Euro Credit Community Bank (ECBI). Through a series of examinations conducted by the BSP, the findings bore that ECBI was illiquid, insolvent, and was performing transactions which are considered unsafe and unsound banking practices. Consequently, ECBI was placed under receivership with the PDIC as the designated receiver.

Vivas assails the constitutionality of Section 30 of R.A. No. 7653 (The Central Bank Act) claiming that said provision vested upon the BSP the unbridled power to close and place under receivership a hapless rural bank instead of aiding its financial needs. He is of the view that such power goes way beyond its constitutional limitation and has transformed the BSP to a sovereign in its own "kingdom of banks."

In other words, he claims that the said provision was an undue delegation of legislative power.

ISSUE:

Whether or not the said provision is unconstitutional on the ground that it is an undue delegation of legislative power.

RULING:

No. Preliminarily, Vivas' attempt to assail the constitutionality of Section 30 of R.A. No. 7653 constitutes collateral attack on the said provision of law. Nothing is more settled than the rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.

Be that as it may, there is no violation of the non-delegation of legislative power. The rationale for the constitutional proscription is that "legislative discretion as to the substantive contents of the law cannot be delegated. What can be delegated is the discretion to determine how the law may be enforced, not what the law shall be. The ascertainment of the latter subject is a prerogative of the legislature. This prerogative cannot be abdicated or surrendered by the legislature to the delegate.

There are two accepted tests to determine whether or not there is a valid delegation of legislative power, viz, the completeness test and the sufficient standard test. Under the completeness test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate the only thing he will have to do is enforce it. Under the sufficient standard test, there must be adequate guidelines or stations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. Both tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative.

In this case, under the two tests, there was no undue delegation of legislative authority in the issuance of R.A. No. 7653. To address the growing concerns in the banking industry, the legislature has sufficiently empowered the MB to effectively monitor and supervise banks and financial institutions and, if circumstances warrant, to forbid them to do business, to take over their management or to place them under receivership. The legislature has clearly spelled out the reasonable parameters of the power entrusted to the MB and assigned to it only the manner of enforcing said power. In other words, the MB was given

a wide discretion and latitude only as to how the law should be implemented in order to attain its objective of protecting the interest of the public, the banking industry and the economy.

CALAWAG vs. UP VISAYAS, ET.AL
G.R. Nos. 207412 & 207542, 7 August 2013, SECOND DIVISION (Brion, J.)

Petitioners Flord Nicson Calawag, et. al. enrolled in the Master of Science in Fisheries Biology at the University of the Philippines Visayas (UPV) under a scholarship program from the DOST. In their second year, they enrolled in the thesis program. All requirements were satisfied. Thereafter, they sought the approval of their thesis from Dean Baylon who later disapproved it on the ground that the thesis titles connot a historical and social dimension study which is not appropriate for their chosen master's degree. Because of this, the petitioners filed a petition for certiorari and mandamus before the RTC, asking it to order Dean Baylon to approve and constitute the petitioners' thesis committees and approve their thesis titles. The RTC granted their prayer, but Dean Baylon allegedly refused to follow. The CA reversed te ruling of the trial court stating that the petitioners has no clear right to compel Dean Baylon to approve their thesis titles and to thereafter constitute thesis committees.

ISSUE:

May Dean Baylon be compelled to approve the petitioners' thesis title and to thereafter constitute thesis committees for petitioners on the ground of their right to education.

RULING:

No. The right to education is not absolute. Section 5(e), Article XIV of the Constitution provides that "[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements." The thesis requirement and the compliance with the procedures leading to it, are part of the reasonable academic requirements a person desiring to complete a course of study would have to comply with.

Verily, the academic freedom accorded to institutions of higher learning gives them the right to decide for themselves their aims and objectives and how best to attain them. They are given the exclusive discretion to determine who can and cannot study in them, as well as to whom they can confer the honor and distinction of being their graduates.

The petitioners failed to show a clear and unmistakable right that needs the protection of a preliminary mandatory injunction. The dean has the discretion to approve or disapprove the composition of a thesis committee. Hence, the petitioners had no right for an automatic approval and composition of their thesis committees.

RAMONITO O. ACAAC, ET AL., v. MELQUIADES D. AZCUNA, JR., and MARIETES B. BONALOS,
G.R. No. 187378, 30 September 2013, SECOND DIVISION (Perlas-Bernabe, J.)

PETAL Foundation is a non-governmental organization, which is engaged in the protection and conservation of ecology, tourism, and livelihood projects within Misamis Occidental. PETAL built some cottages on Capayas Island which it rented out to the public and became the source of livelihood of its beneficiaries, among whom are Hector Acaac (Acaac) and Romeo Bulawin (Bulawin).

Mayor Azcuna and Building Official Bonalos issued Notices of Illegal Construction against PETAL for its failure to apply for a building permit prior to the construction of its buildings in violation of the Building Code ordering it to stop all illegal building activities on Capayas Island. On July 8, 2002 the Sangguniang Bayan of Jaena Lopez adopted a Municipal Ordinance which prohibited, among others: (a) the entry of any entity, association, corporation or organization inside the sanctuaries; and (b) the construction of any structures, permanent or temporary, on the premises, except if authorized by the local government.

On July 12, 2002, Azcuna approved the subject ordinance; hence, the same was submitted to the Sangguniang Panlalawigan of Misamis Occidental (SP), which in turn, conducted a joint hearing on the matter. Thereafter, notices were posted at the designated areas, including Capayas Island, declaring the premises as government property and prohibiting ingress and egress thereto. A Notice of Voluntary Demolition was served upon PETAL directing it to remove the structures it built on Capayas Island.

Acaac and Bulawin filed an action praying for the issuance of a TRO, injunction and damages against respondents alleging that they have prior vested rights to occupy and utilize Capayas Island. Moreover, PETAL assailed the validity of the subject ordinance on the following grounds : (a) it was adopted without public consultation; (b) it was not published in a newspaper of general circulation in the province as required by the Local Government Code (LGC); and (c) it was not approved by the SP. Therefore, its implementation should be enjoined. The RTC declared the ordinance as invalid/void. On appeal, the CA held that the subject ordinance was deemed approved upon failure of the SP to declare the same invalid within 30 days after its submission in accordance with Section 56 of the LGC. Hence, the CA pronounced that the subject ordinance is valid.

ISSUE:

Whether or not the subject ordinance is valid and enforceable against petitioners.

RULING:

Yes. It is noteworthy that petitioner's own evidence reveals that a public hearing was conducted prior to the promulgation of the subject ordinance. Moreover, other than their bare allegations, petitioners failed to present any evidence to show that no publication or posting of the subject ordinance was made.

While it is true that he likewise failed to submit any other evidence thereon, still, in accordance with the presumption of validity in favor of an ordinance, its constitutionality or legality should be upheld in the absence of any controverting evidence that the procedure prescribed by law was not observed in its enactment. Likewise, petitioners had the burden of proving their own allegation, which they, however, failed to do.

In the similar case of Figuerres v. CA, citing United States v. Cristobal, the Court upheld the presumptive validity of the ordinance therein despite the lack of controverting evidence on the part of the local government to show that public hearings were conducted in light of : (a) the oppositors equal lack of controverting evidence to demonstrate the local governments non-compliance with the said public hearing; and (b) the fact that the local governments non-compliance was a negative allegation essential to the oppositors cause of action. Hence, as petitioner is the party asserting it, she has the burden of proof. Since petitioner failed to rebut the presumption of validity in favor of the subject ordinances and to discharge the burden of proving that no public hearings were conducted prior to the enactment thereof, we are constrained to uphold their constitutionality or legality.

REPUBLIC OF THE PHILIPPINES v. AZUCENA SAAVEDRA BATUIGAS
G.R. No. 1182110, 7 October 2013, SECOND DIVISION (Del Castillo, J.)

Azucena Saavedra Batuigas (Azucena) was born to Chinese parents in Zamboanga in 1941. She had never departed the Philippines since birth. She can speak several Philippine languages and dialects, and studied in Philippine schools, graduating with a degree in Bachelor of Science in education. She practiced teaching for five years. In 1968, she married Santiago, a Filipino citizen. They have five children, who studied in Philippine schools and are now professionals, two working abroad. She then helped her husband in their business of rice milling, retail business and rice and corn distribution. As proof of income, she submitted their joint income tax return. On December 2, 2002, Azucena filed a petition for naturalization before the Regional Trial Court (RTC) of Zamboanga del Sur, alleging that she possesses all the qualifications and none of the disqualifications required under Commonwealth Act (CA) 473. The Office of the Solicitor General (OSG) filed a Motion to Dismiss, alleging that she did not possess the lawful income or occupation required for naturalization. Ruling that the matter is evidentiary, the RTC denied the same. After compliance with jurisdictional requisites, where no representatives from the OSG or the Provincial Prosecutor appeared, the RTC on motion of Azucena's counsel, allowed her to present evidence ex-parte before the Clerk of Court. After completion of the testimony, the RTC granted Azucena's petition and declared her eligible for Filipino citizenship, which the OSG contested, citing as grounds the lack of a public hearing when the court allowed ex-parte presentation of evidence, and the lack of proof of lawful income/occupation by Azucena. On appeal, the Court of Appeals affirmed the judgment of the RTC, hence, the OSG elevated the case to the Supreme Court.

ISSUES:

1. Whether Azucena should be permitted to acquire Philippine Citizenship
2. Whether Azucena has met the income and public hearing requirements under CA 473 to become a naturalized Filipino citizen?

RULING:

1. Yes. Regarding the steps that should be taken by an alien woman married to a Filipino citizen in order to acquire Philippine citizenship, the procedure followed in the Bureau of Immigration is as follows: The alien woman must file a petition for the cancellation of her alien certificate of registration alleging, among other things, that she is married to a Filipino citizen and that she is not disqualified from acquiring her husband's citizenship pursuant to Section 4 of Commonwealth Act No. 473, as amended. Upon the filing of said petition, which should be accompanied or supported by the joint affidavit of the petitioner and her Filipino husband to the effect that the petitioner does not belong to any of the groups disqualified by the cited section from becoming naturalized Filipino citizen x x x, the Bureau of Immigration conducts an investigation and thereafter promulgates its order or decision granting or denying the petition.40

Records however show that in February 1980, Azucena applied before the then Commission on Immigration and Deportation (CID) for the cancellation of her Alien Certificate of Registration (ACR) No. 03070541 by reason of her marriage to a Filipino citizen. The CID granted her application. However, the Ministry of Justice set aside the ruling of the CID as it found no sufficient evidence that Azucena's husband is a Filipino citizen as only their marriage certificate was presented to establish his citizenship.

Having been denied of the process in the CID, Azucena was constrained to file a Petition for judicial naturalization based on CA 473. While this would have been unnecessary if the process at the

CID was granted in her favor, there is nothing that prevents her from seeking acquisition of Philippine citizenship through regular naturalization proceedings available to all qualified foreign nationals. The choice of what option to take in order to acquire Philippine citizenship rests with the applicant. In this case, Azucena has chosen to file a Petition for judicial naturalization under CA 473. The fact that her application for derivative naturalization under Section 15 of CA 473 was denied should not prevent her from seeking judicial naturalization under the same law. It is to be remembered that her application at the CID was denied not because she was found to be disqualified, but because her husband's citizenship was not proven. Even if the denial was based on other grounds, it is proper, in a judicial naturalization proceeding, for the courts to determine whether there are in fact grounds to deny her of Philippine citizenship based on regular judicial naturalization proceedings.

2. Yes. The OSG had the opportunity to contest the qualifications of Azucena during the initial hearing scheduled on May 18, 2004.However, the OSG or the Office of the Provincial Prosecutor failed to appear in said hearing, prompting the lower court to order ex parte presentation of evidence before the Clerk of Court on November 5, 2004. The OSG was also notified of the ex parte proceeding, but despite notice, again failed to appear. The issue should not further delay the grant of Philippine citizenship to a woman who was born and lived all her life, in the Philippines, and devoted all her life to the care of her Filipino family. She has more than demonstrated, under judicial scrutiny, her being a qualified Philippine citizen. On the second issue, we also affirm the findings of the CA that since the government who has an interest in, and the only one who can contest, the citizenship of a person, was duly notified through the OSG and the Provincial Prosecutor's office, the proceedings have complied with the public hearing requirement under CA 473.

Azucena is a teacher by profession and has actually exercised her profession before she had to quit her teaching job to assume her family duties and take on her role as joint provider, together with her husband, in order to support her family. Together, husband and wife were able to raise all their five children, provided them with education, and have all become professionals and responsible citizens of this country. Certainly, this is proof enough of both husband and wife's lucrative trade. Azucena herself is a professional and can resume teaching at anytime. Her profession never leaves her, and this is more than sufficient guarantee that she will not be a charge to the only country she has known since birth.

REGINA ONGSIAKO REYES v. COMMISSION ON ELECTIONS and JOSEPH SOCORRO B. TAN
G.R. No. 207264, 22 October 2013, EN BANC (Perez, J.)

This is a Motion for Reconsideration of the En Banc Resolution of June 25, 2013 which found no grave abuse of discretion on the part of the Commission on Elections and affirmed the March 27, 2013 Resolution of the COMELEC First Division.

Petitioner raised the issue in the petition which is: Whether or not Respondent COMELEC is without jurisdiction over Petitioner who is duly proclaimed winner and who has already taken her oath of office for the position of Member of the House of Representatives for the lone congressional district of Marinduque. Petitioner is a duly proclaimed winner and having taken her oath of office as member of the House of Representatives, all questions regarding her qualifications are outside the jurisdiction of the COMELEC and are within the HRET exclusive jurisdiction.

The averred proclamation is the critical pointer to the correctness of petitioner submission.The crucial question is whether or not petitioner could be proclaimed on May 18, 2013. Differently stated, was there basis for the proclamation of petitioner on May 18 , 2013.

The June 25, 2013 resolution held that before May 18, 2013, the COMELEC En Banc had already finally disposed of the issue of petitioner lack of Filipino citizenship and residency via its resolution dated May 14, 2013, cancelling petitioner certificate of candidacy. The proclamation which petitioner secured on May 18, 2013 was without any basis. On June 10, 2013, petitioner went to the Supreme Court questioning the COMELEC First Division ruling and the May 14, 2013 COMELEC En Banc decision, baseless proclamation on 18 May 2013 did not by that fact of promulgation alone become valid and legal.

ISSUE:

Whether Reyes was denied of due process.

RULING:

Yes. Petitioner alleges that the COMELEC gravely abused its discretion when it took cognizance of "newly-discovered evidence" without the same having been testified on and offered and admitted in evidence. She assails the admission of the blog article of Eli Obligacion as hearsay and the photocopy of the Certification from the Bureau of Immigration. She likewise contends that there was a violation of her right to due process of law because she was not given the opportunity to question and present controverting evidence.

It must be emphasized that the COMELEC is not bound to strictly adhere to the technical rules of procedure in the presentation of evidence. Under Section 2 of Rule I, the COMELEC Rules of Procedure "shall be liberally construed in order to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission." In view of the fact that the proceedings in a petition to deny due course or to cancel certificate of candidacy are summary in nature, then the "newly discovered evidence" was properly admitted by respondent COMELEC.

Furthermore, there was no denial of due process in the case at bar as petitioner was given every opportunity to argue her case before the COMELEC. From 10 October 2012 when Tan's petition was

filed up to 27 March 2013 when the First Division rendered its resolution, petitioner had a period of five (5) months to adduce evidence. Unfortunately, she did not avail herself of the opportunity given her.

In administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard. As held in the case of Sahali v. COMELEC: The petitioners should be reminded that due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard. One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and predictable than oral argument, through pleadings. In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense. Indeed, deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.

In moving for the cancellation of petitioner's COC, respondent submitted records of the Bureau of Immigration showing that petitioner is a holder of a US passport, and that her status is that of a "balikbayan." At this point, the burden of proof shifted to petitioner, imposing upon her the duty to prove that she is a natural-born Filipino citizen and has not lost the same, or that she has re-acquired such status in accordance with the provisions of R.A. No. 9225. Aside from the bare allegation that she is a natural-born citizen, however, petitioner submitted no proof to support such contention. Neither did she submit any proof as to the inapplicability of R.A. No. 9225 to her.

ABANG LINGKOD PARTY-LIST (ABANG LINGKOD) v. COMMISSION ON ELECTIONS
G.R. No. 206952, 22 October 2013, EN BANC (Reyes, J.)

ABANG LINGKOD is a sectoral organization that represents the interests of peasant farmers and fisherfolks, and was registered under the party-list system on December 22, 2009. It failed to obtain the number of votes needed in the May 2010 elections for a seat in the House of Representatives.

On August 16, 2012, ABANG LINGKOD, in compliance with the COMELEC August 9, 2012 resolution, filed with the COMELEC pertinent documents to prove its continuing compliance with the requirements under R.A. No. 7941. In a Resolution dated November 7, 2012, the COMELEC En Banc cancelled ABANG LINGKOD registration as a party-list group. It pointed out that ABANG LINGKOD failed to establish its track record in uplifting the cause of the marginalized and underrepresented; that it merely offered photographs of some alleged activities it conducted after the May 2010 elections.

ABANG LINGKOD field a petitioner for certiorari alleging that the COMELEC gravely abused its discretion in cancelling its registration under the party-list system. The said petition was consolidated with the separate petitions filed by 51 other party-list groups whose registration were cancelled or who were denied registration under the party-list system. The said party-list groups, including ABANG LINGKOD, were able to obtain status quo ante orders from the court. The Court remanded to the COMELEC the cases of previously registered party-list groups, including that of ABANG LINGKOD, to determine whether they are qualified under the party-list system pursuant to the new parameters laid down by the Court and, in the affirmative, be allowed to participate in the May 2013 party-list elections.

On May 10, 2013, the COMELEC issued the herein assailed Resolution, which, inter alia, affirmed the cancellation of ABANG LINGKOD's registration under the party-list system. The COMELEC issued the Resolution dated May 10, 2013 sans any summary evidentiary hearing, citing the proximity of the May 13, 2013 elections as the reason therefor. On May 12, 2013, ABANG LINGKOD sought a reconsideration of the COMELEC's Resolution dated May 10, 2013. However, on May 15, 2013, ABANG LINGKOD withdrew the motion for reconsideration it filed with the COMELEC and, instead, instituted the instant petition with this Court, alleging that there may not be enough time for the COMELEC to pass upon the merits of its motion for reconsideration considering that the election returns were already being canvassed and consolidated by the COMELEC.

ISSUES:

1. Whether ABANG LINGKOD was denied due process?
2. Whether COMELEC abused its discretion in cancelling the registration of ABANG LINGKOD under the party-list system?

RULING:

1. No. The essence of due process is simply an opportunity to be heard or as applied to administrative or quasi-judicial proceedings, an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. A formal or trial type hearing is not at all times and in all instances essential. The requirements are satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice or hearing.

In the instant case, while the petitioner laments that it was denied due process, the Court finds that the COMELEC had afforded ABANG LINGKOD sufficient opportunity to present evidence establishing its qualification as a party-list group. It was notified through Resolution No. 9513 that its registration was to be reviewed by the COMELEC. That ABANG LINGKOD was able to file its Manifestation of Intent and other pertinent documents to prove its continuing compliance with the requirements under R.A. No. 7941, which the COMELEC set for summary hearing on three separate dates, belies its claim that it was denied due process.

There was no necessity for the COMELEC to conduct further summary evidentiary hearing to assess the qualification of ABANG LINGKOD pursuant to Atong Paglaum. ABANG LINGKOD's Manifestation of Intent and all the evidence adduced by it to establish its qualification as a party-list group are already in the possession of the COMELEC. Thus, conducting further summary evidentiary hearing for the sole purpose of determining ABANG LINGKOD's qualification under the party-list system pursuant to Atong Paglaumwould just be a superfluity.

Contrary to ABANG LINGKOD's claim, the Court, in Atong Paglaum, did not categorically require the COMELEC to conduct a summary evidentiary hearing for the purpose of determining the qualifications of the petitioners therein pursuant to the new parameters for screening party-list groups.

2. Yes. The Court finds that the COMELEC gravely abused its discretion in cancelling the registration of ABANG LINGKOD under the party-list system. The COMELEC affirmed the cancellation of ABANG LINGKOD's registration on the ground that it declared untruthful statement in its bid for accreditation as a party-list group in the May 2013 elections, pointing out that it deliberately submitted digitally altered photographs of activities to make it appear that it had a track record in representing the marginalized and underrepresented. Essentially, ABANG LINGKOD's registration was cancelled on the ground that it failed to adduce evidence showing its track record in representing the marginalized and underrepresented.

R.A. No. 7941 did not require groups intending to register under the party-list system to submit proof of their track record as a group. The track record requirement was only imposed in Ang Bagong Bayani where the Court held that national, regional, and sectoral parties or organizations seeking registration under the party-list system must prove through their, inter alia, track record that they truly represent the marginalized and underrepresented.

In Atong Paglaum, the Court has modified to a great extent the jurisprudential doctrines on who may register under the party-list system and the representation of the marginalized and underrepresented. For purposes of registration under the party-list system, national or regional parties or organizations need not represent any marginalized and underrepresented sector; that representation of the marginalized and underrepresented is only required of sectoral organizations that represent the sectors stated under Section 5 of R.A. No. 7941 that are, by their nature, economically marginalized and underrepresented.

Contrary to the COMELEC's claim, sectoral parties or organizations, such as ABANG LINGKOD, are no longer required to adduce evidence showing their track record, i.e. proof of activities that they have undertaken to further the cause of the sector they represent. Indeed, it is enough that their principal advocacy pertains to the special interest and concerns of their sector. Otherwise stated, it is sufficient that the ideals represented by the sectoral organizations are geared towards the cause of the sector/s, which they represent.

WIGBERTO R. TANADA JR. v. COMISSION ON ELECTIONS, ET AL.
G.R. No. 207199-200, 22 October 2013, EN BANC (Perlas-Bernabe, J.)

Wigberto Tanada filed twin petitions before the COMELEC to cancel the COC of Alvin John Tanada for false representations and to declare him as a nuisance candidate. They were both candidates for the position of Congress Representative. A COMELEC division denied both his petitions, but on reconsideration, the COMELEC en banc on April 13, 2013 granted to cancel the COC of Alvin John for false representations. The petition to declare him as nuisance candidate however was denied. Wigberto again sought reconsideration of the denial of his petition on the basis of a newly discovered evidence. Comes election day and the name of Alvin John remained in the ballots, whichafter Angelica Tan was the winning candidate, and Wigberto only second.

Wigberto filed before the PBOC a petition to correct manifest mistakes concerning the cancelled candidacy of Alvin John and a motion to consolidate Alvin John's votes with the votes he garnered. The PBOC denied the motion to consolidate the votes because Alvin John was not a nuisance candidate. PBOC then proclaimed Angelica as the winner.

On May 21, 2013, Wigberto filed a supplemental petition before the COMELEC to annul the proclamation of Tan, which was granted and affirmed by the COMELEC en banc. However, Angelica had by then taken her oath and assumed office past noon time of June 30, 2013, thereby rendering the adverse resolution on her proclamation moot.

On May 27, 2013, before the SC, Wigberto filed a certiorari assailing the April 25, 2013 COMELEC en banc's ruling declaring Alvin John not a nuisance candidate and an election protest claiming that fraud has been perpetrated. The SC, noting that the proclaimed candidate has already assumed office, dismissed the election protest and directed Wigberto to file the protest before the proper tribunal which is the HRET. The certiorari was also dismissed for being filed beyond the 5-day reglementary period.

Before the HRET, the election protest was dismissed for being insufficient in form and substance and for lack of jurisdiction over John Alvin who was not a member of the House of Representatives.

ISSUES:

1. Whether the votes for Alvin John should be credited in favor of Wigberto as a result of the cancellation of Alvin John's candidacy
2. Whether the filing of a Motion for Reconsideration of the COMELEC En Banc's ruling is proper
3. Whether Wigberto's petition for certiorari of the COMELEC En Banc's ruling was timely
4. Whether SC has jurisdiction to resolve issues on the conduct of canvassing after the proclamation of a winning candidate
5. Whether the HRET has jurisdiction over the election protest filed by Wigberto regarding the cancelled candidacy of John Alvin

RULING:

1. No. The votes cast for Alvin John whose COC was cancelled are stray votes only. A COC cancelled on ground of false representations under Sec 78 of the Omnibus Election Code, unlike in

being a nuisance candidate in Sec 69, does not have the effect of crediting the votes in favor of another candidate.

2. No. The motion for reconsideration is a prohibited pleading. Rule 13 Sec 1(d) of the COMELEC Rules of Procedure specifically prohibits the filing of a motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases. Consequently, when a COMELEC en banc ruling become final and executory, it precludes a party from raising again in any other forum the nuisance candidacy as an issue.

3. No. The petition assailing the COMELEC's en banc ruling was filed beyond the 5-day period provided by COMELEC Rules of Procedure. Rule 37, Sec 3 thereof provides that decisions in pre-proclamation cases and petitions to deny due course to or cancel COC, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory after the lapse of 5 days from their promulgation, unless restrained by the SC.

The COMELEC en banc promulgated its resolution on Alvin John's alleged nuisance candidacy on April 25 2013. When Wigberto filed his petition for certiorari before the SC on May 27,2013, the COMELEC en banc's resolution was already final and executory.

4. No. The SC no longer has jurisdiction over questions involving the elections, returns and qualifications of candidates who have already assumed their office as members of House of Representatives. Issues concerning the conduct of the canvass and the resulting proclamation of candidates are matters which fall under the scope of the terms "election" and "returns" and hence, properly fall under the HRET's sole jurisdiction.

5. No. Article VI, Sec 17 of the 1987 Constitution and Rule 15 of the 2011 HRET Rules declare that HRET's power to judge election contests is limited to Members of the House of Representatives. Alvin John is not a Member of the House of Representatives.

MARC DOUGLAS IV C. CAGAS v. COMMISSION ON ELECTIONS, ET AL.
G.R. No. 209185, 25 October 2013, EN BANC (Carpio, J.)

Marc Douglas Iv C. Cagas Respondents: Commission On Elections Represented By Its Chairman Atty. Sixto Brillantes Jr. And The Provincial Election Officer Of Davao Del Sur, Represented By Atty. Ma. Febes Barlaan,Respondents. FACTS: Cagas, while he was representative of the first legislative district of Davao del Sur, filed with Hon. Franklin Bautista, then representative of the second legislative district of the same province, House Bill No. 4451 (H.B. No. 4451), a bill creating the province of Davao Occidental. H.B. No. 4451 was signed into law as Republic Act No. 10360 (R.A. No. 10360), the Charter of the Province of Davao Occidental. Section 46 of R.A. No. 10360 provides for the date of the holding of a plebiscite. Sec. 46. Plebiscite. The Province of Davao Occidental shall be created, as provided for in this Charter, upon approval by the majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC) within sixty (60) days from the date of the effectivity of this Charter. As early as 27 November 2012, prior to the effectivity of R.A. No. 10360, the COMELEC suspended the conduct of all plebiscites as a matter of policy and in view of the preparations for the 13 May 2013 National and Local Elections. During a meeting held on 31 July 2013, the COMELEC decided to hold the plebiscite for the creation of Davao Occidental simultaneously with the 28 October 2013 Barangay Elections to save on expenses. Cagas filed a petition for prohibition, contending that the COMELEC is without authority to amend or modify section 46 of RA 10360 by mere resolution because it is only Congress who can do so thus, COMELEC's act of suspending the plebiscite is unconstitutional.

ISSUE:

Whether the COMELEC acted with grave abuse of discretion when it resolved to hold the plebiscite for the creation of the Province of Davao Occidental on 28 October 2013, simultaneous with the Barangay Elections

RULING:

No. The COMELEC's power to administer elections includes the power to conduct a plebiscite beyond the schedule prescribed by law. The conduct of a plebiscite is necessary for the creation of a province. Sections 10 and 11 of Article X of the Constitution provide that: Sec. 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. Sec. 11. The Congress may, by law, create special metropolitan political subdivisions, subject toa plebiscite as set forth in Section 10 hereof. The component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executive and legislative assemblies. The jurisdiction of the metropolitan authority that will thereby be created shall be limited to basic services requiring coordination. Section 10, Article X of the Constitution emphasizes the direct exercise by the people of their sovereignty. After the legislative branch's enactment of a law to create, divide, merge or alter the boundaries of a local government unit or units, the people in the local government unit or units directly affected vote in a plebiscite to register their approval or disapproval of the change. The Constitution does not specify a date as to when plebiscites should be held. This is in contrast with its provisions for the election of members of the legislature in Section 8, 4, Article VII. The Constitution recognizes that the power to fix date of elections is legislative in nature, which is shown by the exceptions in previously mentioned Constitutional provisions, as well as in the election of local government officials.

GRECO ANTONIOUS BELGICA, ET AL. v.
HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, ET AL.
G.R. No. 208566/G.R. No. 208493/G.R. No. 209251, 19 November 2013,
EN BANC (Perlas-Bernabe, J.)

This case is consolidated with G.R. No. 208493 and G.R. No. 209251.

The so-called pork barrel system has been around in the Philippines since about 1922. Pork Barrel is commonly known as the lump-sum, discretionary funds of the members of the Congress. It underwent several legal designations from "Congressional Pork Barrel" to the latest "Priority Development Assistance Fund" or PDAF. The allocation for the pork barrel is integrated in the annual General Appropriations Act (GAA).

Since 2011, the allocation of the PDAF has been done in the following manner:

a. P70 million: for each member of the lower house; broken down to – P40 million for "hard projects" (infrastructure projects like roads, buildings, schools, etc.), and P30 million for "soft projects" (scholarship grants, medical assistance, livelihood programs, IT development, etc.);

b. P200 million: for each senator; broken down to – P100 million for hard projects, P100 million for soft projects;

c. P200 million: for the Vice-President; broken down to – P100 million for hard projects, P100 million for soft projects.

The PDAF articles in the GAA do provide for realignment of funds whereby certain cabinet members may request for the realignment of funds into their department provided that the request for realignment is approved or concurred by the legislator concerned.

Presidential Pork Barrel

The president does have his own source of fund albeit not included in the GAA. The so-called presidential pork barrel comes from two sources: (a) the Malampaya Funds, from the Malampaya Gas Project – this has been around since 1976, and (b) the Presidential Social Fund which is derived from the earnings of PAGCOR – this has been around since about 1983.

Pork Barrel Scam Controversy

Ever since, the pork barrel system has been besieged by allegations of corruption. In July 2013, six whistle blowers, headed by Benhur Luy, exposed that for the last decade, the corruption in the pork barrel system had been facilitated by Janet Lim Napoles. Napoles had been helping lawmakers in funneling their pork barrel funds into about 20 bogus NGO's (non-government organizations) which would make it appear that government funds are being used in legit existing projects but are in fact going to "ghost" projects. An audit was then conducted by the Commission on Audit and the results thereof concurred with the exposes of Luy et al.

Motivated by the foregoing, Greco Belgica and several others, filed various petitions before the Supreme Court questioning the constitutionality of the pork barrel system.

ISSUES:

1. Whether or not the congressional pork barrel system is constitutional.

2. Whether or not presidential pork barrel system is constitutional.

RULING:

1. No, the congressional pork barrel system is unconstitutional. It is unconstitutional because it violates the following principles:

a. Separation of Powers

As a rule, the budgeting power lies in Congress. It regulates the release of funds (power of the purse). The executive, on the other hand, implements the laws – this includes the GAA to which the PDAF is a part of. Only the executive may implement the law but under the pork barrel system, what's happening was that, after the GAA, itself a law, was enacted, the legislators themselves dictate as to which projects their PDAF funds should be allocated to – a clear act of implementing the law they enacted – a violation of the principle of separation of powers. (Note in the older case of PHILCONSA vs Enriquez, it was ruled that pork barrel, then called as CDF or the Countrywide Development Fund, was constitutional insofar as the legislators only recommend where their pork barrel funds go).

This is also highlighted by the fact that in realigning the PDAF, the executive will still have to get the concurrence of the legislator concerned.

b. Non-delegability of Legislative Power

As a rule, the Constitution vests legislative power in Congress alone. (The Constitution does grant the people legislative power but only insofar as the processes of referendum and initiative are concerned). That being, legislative power cannot be delegated by Congress for it cannot delegate further that which was delegated to it by the Constitution.

Exceptions to the rule are:

(i) delegated legislative power to local government units but this shall involve purely local matters;

(ii) authority of the President to, by law, exercise powers necessary and proper to carry out a declared national policy in times of war or other national emergency, or fix within specified limits, and subject to such limitations and restrictions as Congress may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

In this case, the PDAF articles which allow the individual legislator to identify the projects to which his PDAF money should go to is a violation of the rule on non-delegability of legislative power. The power to appropriate funds is solely lodged in Congress (in the two houses comprising it) collectively and not lodged in the individual members. Further, nowhere in the exceptions does it state that the Congress can delegate the power to the individual member of Congress.

c. Principle of Checks and Balances

One feature in the principle of checks and balances is the power of the president to veto items in the GAA which he may deem to be inappropriate. But this power is already being undermined because of the fact that once the GAA is approved, the legislator can now identify the project to which he will appropriate his PDAF. Under such system, how can the president veto the appropriation made by the legislator if the appropriation is made after the approval of the GAA – again, "Congress cannot choose a mode of budgeting which effectively renders the constitutionally-given power of the President useless."

d. Local Autonomy

As a rule, the local governments have the power to manage their local affairs. Through their Local Development Councils (LDCs), the LGUs can develop their own programs and policies concerning their localities. But with the PDAF, particularly on the part of the members of the house of representatives, what's happening is that a congressman can either bypass or duplicate a project by the LDC and later on claim it as his own. This is an instance where the national government (note, a congressman is a national officer) meddles with the affairs of the local government – and this is contrary to the State policy embodied in the Constitution on local autonomy. It's good if that's all that is happening under the pork barrel system but worse, the PDAF becomes more of a personal fund on the part of legislators.

2. Yes.The main issue raised by Belgica et al against the presidential pork barrel is that it is unconstitutional because it violates Section 29 (1), Article VI of the Constitution which provides: No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. Belgica et al emphasized that the presidential pork comes from the earnings of the Malampaya and PAGCOR and not from any appropriation from a particular legislation.

The Supreme Court disagrees as it ruled that PD 910, which created the Malampaya Fund, as well as PD 1869 (as amended by PD 1993), which amended PAGCOR's charter, provided for the appropriation, to wit:

(i) PD 910: Section 8 thereof provides that all fees, among others, collected from certain energy-related ventures shall form part of a special fund (the Malampaya Fund) which shall be used to further finance energy resource development and for other purposes which the President may direct;

(ii) PD 1869, as amended: Section 12 thereof provides that a part of PAGCOR's earnings shall be allocated to a General Fund (the Presidential Social Fund) which shall be used in government infrastructure projects.

These are sufficient laws which met the requirement of Section 29, Article VI of the Constitution. The appropriation contemplated therein does not have to be a particular appropriation as it can be a general appropriation as in the case of PD 910 and PD 1869.

BANKERS ASSOCIATION OF THE PHILIPPINES AND PERRY L. PE v. COMMISSION ON ELECTIONS
G.R. No. 206794, 26, November 2013, EN BANC (Brion, J.)

This was a petition for the issuance of a status quo to enjoin the implementation of the Money Ban Resolution issued by the Commission on Elections (COMELEC). The said ban prohibits the withdrawal of cash, encashment, of checks and conversion of any monetary instrument to cash from May 8 to 13, 2013 exceeding P100, 000.00 or its equivalent in any foreign currency, per day in banks, finance companies, quasi-banks, pawnshops, remittance companies and institutions performing similar functions. However, all other non-cash transactions are not covered. For this purpose, the Bangko Sentral ng Pilipinas (BSP) and other financial agencies of the government are hereby deputized to implement with utmost dispatch and ensure strict compliance with this resolution without violating the provisions of Republic Act No. 1405 (RA 1405), as amended and Republic Act No. 6426 (RA 6426).

ISSUE:

Whether the COMELEC's Resolution was exercised in excess of its duty

RULING:

No. The Court dismissed the case for being moot and academic. The Court has issued a Status Quo Ante on 10 May 2013, thus the Money Ban Resolution was not in force during the most critical period of the elections. In addition, nothing in the exceptions of "moot and academic" principle relates to the case at bar. The Court considers it significant that the BSP and the Monetary Board continue to possess full and sufficient authority to address the COMELEC's concerns and to limit banking transactions to legitimate purposes without need for any formal COMEELC Resolution if and when the need arises. Likewise, the Congress should take note of the Money Ban Resolution and the evil it sought to prevent in application of its plenary power for future elections, thus rendering unnecessary further action on the merits of the assailed Money Ban Resolution at this point.

JAIME C. REGIO v. COMMISSION ON ELECTIONS and RONNIE C. CO
G.R. No. 204828, 3 December 2013, EN BANC (Velasco, Jr., J.)

This case involves an election protest regarding the October 25, 2010 barangay elections where Jaime C. Regio (Regio) and Ronnie C. Co (Co) were candidates for the position of the punong barangay. Immediately following the counting and canvassing of the votes, Regio was proclaimed the elected punong barangay with 478 votes as against the 335 votes garnered by Co. Due to this, Co filed an election protest before the Metropolitan Trial Court (MeTC). Co claims that the Board of Election Tellers (BET) ignored the rules on appreciation of ballots, resulting in misreading, miscounting, and misappreciation of ballots. Additionally, he alleged that Regio committed vote-buying, and engaged in distribution of sample ballots inside the polling centers during the day of the elections. In the course of the proceedings when it was Co's turn to present evidence, he limited his offer to the revision committee report, showing that he garnered the highest number of votes. Regio, on the other hand, denied that the elections were tainted with irregularities. He claimed that the results of the revision are products of post-elections operations, as the ballots were tampered with, switched, and altered drastically to change the results of the elections. He presented poll watchers, volunteers and Chairpersons of the BET as witnesses. The court ruled against Co who appealed the case to the COMELEC First Division and such appeal was dismissed. Thereafter, Co elevated the case to the COMELEC En Banc which reconsidered its prior Resolution and ruled that Co has sufficiently established that no untoward incident had attended the preservation of the ballots after the termination of the proceedings of the Board of Election Tellers or from the time the custody of the ballot boxes is transferred from the BET to the City Treasurer and finally to the trial court.

ISSUES:

Whether the COMELEC erred in ruling that Co had successfully discharged the burden of proving the integrity of the ballots subjected to revision

RULING:

No. The Court ruled that at the outset, it must be noted that the protest case is dismissible for being moot and academic. The court takes judicial notice of the holding of barangay elections last October 28, 2013. Following the elections, the new set of barangay officials already assumed office as of noon of November 30, 2013. It goes without saying, then, that the term of office of those who were elected during the October 2010 barangay elections also expired by noon on November 30, 2013. In fine, with the election of a new punong barangay during the October 28, 2013 elections, the issue of who the rightful winner of the 2010 barangay elections has already been rendered moot and academic.

The doctrine in Rosal v. COMELEC and considering the results of the revision vis-à-vis the results reflected in the official canvassing In Rosal, this Court summarized the standards to be observed in an election contest predicated on the theory that the election returns do not accurately reflect the will of the voters due to alleged irregularities in the appreciation and counting of ballots. These guiding standards are:

(1) The ballots cannot be used to overturn the official count as reflected in the election returns unless it is first shown affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and suspicion of change, abstraction or substitution;

(2) The burden of proving that the integrity of the ballots has been preserved in such a manner is on the protestant;

(3) Where a mode of preserving the ballots is enjoined by law, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end;

(4) It is only when the protestant has shown substantial compliance with the provisions of law on the preservation of ballots that the burden of proving actual tampering or likelihood thereof shifts to the protestee; and

(5) Only if it appears to the satisfaction of the court of COMELEC that the integrity of the ballots has been preserved should it adopt the result as shown by the recount and not as reflected in the election returns. In the same case, the Court referred to various provisions in the Omnibus Election Code providing for the safe-keeping and preservation of the ballots, more specifically Secs. 160, 217, 219, and 220 of the Code.

Rosal was promulgated precisely to honor the presumption of regularity in the performance of official functions. Following Rosal, it is presumed that the BET and Board of Canvassers had faithfully performed the solemn duty reposed unto them during the day of the elections. Thus, primacy is given to the official results of the canvassing, even in cases where there is a discrepancy between such results and the results of the revision proceedings. It is only when the protestant has successfully discharged the burden of proving that the re-counted ballots are the very same ones counted during the revision proceedings, will the court or the Commission, as the case may be, even consider the revision results.

Co has not proved that the integrity of the ballots has been preserved Applying Rosal, viewed in conjunction with A.M. No. 07-4-15-SC, this Court rules that the COMELEC En Banc committed grave abuse of discretion in ruling that private respondent had successfully discharged the burden of proving that the ballots counted during the revision proceedings are the same ballots cast and counted during the day of the elections. That is the essence of the second paragraph in the Rosal doctrine. It is well to note that the respondent Co did not present any testimonial evidence to prove that the election paraphernalia inside the protested ballot boxes had been preserved. He mainly relied on the report of the revision committee.

Co admits having, under the Rosal doctrine, the burden of proving the preservation of the ballots, and corollarily, that their integrity have not been compromised before the revision proceedings. He, however, argues that he had successfully discharged that burden. First, he pointed out that from the moment the various BETs placed the counted official ballots inside the ballot boxes until they were transported for canvassing, and until they were transmitted to the Election Officer/City Treasurer of Manila for storage and custody, no irregularities or ballot-box snatching were reported; neither was there any news or record of ballot box tampering in the protested precincts. Second, no untoward incident or irregularity which may taint or affect the integrity of the ballot boxes was ever reported when they were transported to the storage area of the trial court. Third, the storage place of the ballot boxes was at all times tightly secured, properly protected, and well safeguarded. Fourth, all the protested ballot boxes were properly locked and sealed. Fifth, the petitioner never questioned or raised any issue on the preservation of the integrity of the protested ballot boxes. And sixth, the Technical Examination Report signed by the COMELEC representative confirmed the genuineness, authenticity, and integrity of all the ballots found during the revision. The Court hold, however, that the foregoing statements do not, by themselves, constitute sufficient evidence that the ballots have been preserved.

ALLIANCE FOR RURAL AND AGRARIAN RECONSTRUCTION, INC. (ARARO) v. COMMISSION ON ELECTIONS
G.R. No. 192803, 10 December, 2013, EN BANC (Leonen, J.)

Alliance for Rural and Agrarian Reconstruction, Inc. (ARARO) was a duly accredited party-list garnered a total of 147,204 votes in the May 10, 2010 elections and ranked 50th. The COMELEC En Banc sitting as the National Board of Canvassers initially proclaimed twenty-eight (28) party-list organizations as winners involving a total of thirty-five (35) seats guaranteed and additional seats. The petitioner questioned the formula used by the COMELEC and filed the present Petition for Review on Certiorari with Prayer for Preliminary Injunction and Temporary Restraining Order

The petitioner suggests that the formula used by the Commission on Elections is flawed because votes that were spoiled or that were not made for any party-lists were not counted. According to the petitioner, around seven million (7,000,000) votes were disregarded as a result of the Commission on Elections' erroneous interpretation. 7,112,792 (Total number of disregarded votes according to petitioner ARARO)

On the other hand, the formula used by the Commission on Elections En Banc sitting as the National Board of Canvassers is the following:

Number of seats available to legislative districts_x .20 =Number of seats available to party-list representatives .80

Thus, the total number of party-list seats available for the May 2010 elections is 57 as shown below:

229__x .20 =57 .80

The National Board of Canvassers' (NBC) Resolution No. 10-009 applies the formula used in Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC to arrive at the winning party-list groups and their guaranteed seats, where:

Number of votes of party-list
_____=
Proportion or Percentage of votes garnered by party-list
Total number of votes for party-list candidates

the Commission on Elections through the Office of the Solicitor General took the position that invalid or stray votes should not be counted in determining the divisor. The Commission on Elections argues that this will contradict Citizens' Battle Against Corruption (CIBAC) v. COMELEC22 and Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC. It asserts that neither can the phrase be construed to include the number of voters who did not even vote for any qualified party-list candidate, as these voters cannot be considered to have cast any vote "for the party-list system."

ISSUES:

1. Whether the case is already moot and academic
2. Whether petitioners have legal standing
3. Whether the COMELEC committed grave abuse of discretion in its interpretation of the formula used in BANAT v. COMELEC to determine the party-list groups that would be proclaimed in the 2010 elections

RULING:

1. Yes. This case is moot and academic but the Court discussed the issues raised by the petitioner as these are capable of repetition yet evading review and for the guidance of the bench, bar, and public.

2. The computation proposed by petitioner ARARO even lowers its chances to meet the 2% threshold required by law for a guaranteed seat. Its arguments will neither benefit nor injure the party. Thus, it has no legal standing to raise the argument in this Court.

3. The Court agree with the petitioner but only to the extent that votes later on determined to be invalid due to no cause attributable to the voter should not be excluded in the divisor. In other words, votes cast validly for a party-list group listed in the ballot but later on disqualified should be counted as part of the divisor. To do otherwise would be to disenfranchise the voters who voted on the basis of good faith that that ballot contained all the qualified candidates. However, following this rationale, party-list groups listed in the ballot but whose disqualification attained finality prior to the elections and whose disqualification was reasonably made known by the Commission on Elections to the voters prior to such elections should not be included in the divisor.

Section 11(b) of Republic Act No. 7941 is clear that only those votes cast for the party-list system shall be considered in the computation of the percentage of representation:

11 (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list systemshall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.

The formula in determining the winning party-list groups, as used and interpreted in the case of BANAT v. COMELEC, is MODIFIED as follows:

Number of votes. of party-list Total number of valid votes for party-list candidates Proportion or Percentage of votes garnered by party-list

The divisor shall be the total number of valid votes cast for the party-list system including votes cast for party-list groups whose names are in the ballot but are subsequently disqualified. Party-list groups listed in the ballot but whose disqualification attained finality prior to the elections and whose disqualification was reasonably made known by the Commission on Elections to the voters prior to such elections should not be included in the divisor. The divisor shall also not include votes that are declared spoiled or invalid.

VALENTINO L. LEGASPI v. CITY OF CEBU, ET AL.
G.R.No. 159110/G.R. No. 159692, 10 December 2013, EN BANC (Bersamin, J.)

On January 27, 1997, the Sangguniang Panlungsod of the City of Cebu enacted Ordinance No. 1664 to authorize the traffic enforcers of Cebu City to immobilize any motor vehicle violating the parking restrictions and prohibitions defined in Ordinance No. 801 (Traffic Code of Cebu City). Two complaints assailing the constitutionality of Ordinance 1644 were consolidated before the Regional Trial Court (RTC). The first complaint alleged that such ordinance was in violation of due process because the plaintiff who was an owner of a parked car in a paying parking area was found his car being immobilized by a steel clamp, and a notice was posted on his car to the effect that it would be a criminal offense to break the clamp. The second complaint was brought by the petitioner in this case, Valentino Legaspi (Legaspi) who averred that he had left his car occupying a portion of the sidewalk and the street outside the gate of his house to make way for the vehicle of the anay exterminator who had asked to be allowed to unload his materials and equipment from the front of the residence; after a short while, his son–in–law informed him that unknown persons had clamped the front wheel of his car; that he rushed outside and found a traffic citation stating that his car had been clamped by CITOM representatives with a warning that the unauthorized removal of the clamp would subject the remover to criminal charges. The RTC ruled that Ordinance No. 1664 is null and void. The City of Cebu and its co-defendants appealed to the CA which overturned the RTC decision and declared the same Ordinance as valid.

ISSUES:

1. Whether Ordinance No. 1664 was enacted within the ambit of the legislative powers of the City of Cebu
2. Whether Ordinance No. 1664 complied with the requirements for validity and constitutionality; substantially and procedurally

RULING:

1. Yes. with no issues being hereby raised against the formalities attendant to the enactment of Ordinance No. 1664, we presume its full compliance with the test in that regard. Congress enacted the LGC as the implementing law for the delegation to the various LGUs of the State's great powers, namely: the police power, the power of eminent domain, and the power of taxation. The LGC was fashioned to delineate the specific parameters and limitations to be complied with by each LGU in the exercise of these delegated powers with the view of making each LGU a fully functioning subdivision of the State subject to the constitutional and statutory limitations.

In particular, police power is regarded as the most essential, insistent and the least limitable of powers, extending as it does 'to all the great public needs. In point is the exercise by the LGU of the City of Cebu of delegated police power. In Metropolitan Manila Development Authority v. Bel–Air Village Association, Inc., the Court cogently observed:

It bears stressing that police power is lodged primarily in the National Legislature. It cannot be exercised by any group or body of individuals not possessing legislative power. The National Legislature, however, may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body.

The CA opined, and correctly so, that vesting cities like the City of Cebu with the legislative power to enact traffic rules and regulations was expressly done through Section 458 of the LGC, and also generally by virtue of the General Welfare Clause embodied in Section 16 of the LGC.

2. Yes. Considering that traffic congestions were already retarding the growth and progress in the population and economic centers of the country, the plain objective of Ordinance No. 1664 was to serve the public interest and advance the general welfare in the City of Cebu. Its adoption was, therefore, in order to fulfill the compelling government purpose of immediately addressing the burgeoning traffic congestions caused by illegally parked vehicles obstructing the streets of the City of Cebu.

Legaspi's attack against the provisions of Ordinance No. 1664 for being vague and ambiguous cannot stand scrutiny. As can be readily seen, its text was forthright and unambiguous in all respects. There could be no confusion on the meaning and coverage of the ordinance. But should there be any vagueness

and ambiguity in the provisions, which the OSG does not concede, there was nothing that a proper application of the basic rules of statutory construction could not justly rectify.

Firstly, Ordinance No. 1664 was far from oppressive and arbitrary. Any driver or vehicle owner whose vehicle was immobilized by clamping could protest such action of a traffic enforcer or PNP personnel enforcing the ordinance. Section 3 of Ordinance No. 1664, supra, textually afforded an administrative escape in the form of permitting the release of the immobilized vehicle upon a protest directly made to the Chairman of CITOM; or to the Chairman of the Committee on Police, Fire and Penology of the City of Cebu; or to Asst. City Prosecutor Felipe Belciña – officials named in the ordinance itself. The release could be ordered by any of such officials even without the payment of the stipulated fine. That none of the petitioners, albeit lawyers all, resorted to such recourse did not diminish the fairness and reasonableness of the escape clause written in the ordinance. Secondly, the immobilization of a vehicle by clamping pursuant to the ordinance was not necessary if the driver or vehicle owner was around at the time of the apprehension for illegal parking or obstruction. In that situation, the enforcer would simply either require the driver to move the vehicle or issue a traffic citation should the latter persist in his violation. The clamping would happen only to prevent the transgressor from using the vehicle itself to escape the due sanctions. And, lastly, the towing away of the immobilized vehicle was not equivalent to a summary impounding, but designed to prevent the immobilized vehicle from obstructing traffic in the vicinity of the apprehension and thereby ensure the smooth flow of traffic. The owner of the towed vehicle would not be deprived of his property.

Notice and hearing are the essential requirements of procedural due process. Yet, there are many instances under our laws in which the absence of one or both of such requirements is not necessarily a denial or deprivation of due process. Among the instances are the cancellation of the passport of a person being sought for the commission of a crime, the preventive suspension of a civil servant facing administrative charges, the distraint of properties to answer for tax delinquencies, the padlocking of restaurants found to be unsanitary or of theaters showing obscene movies, and the abatement of nuisance per se. Add to them the arrest of a person in flagrante delicto. The clamping of the petitioners' vehicles pursuant to Ordinance No. 1664 (and of the vehicles of others similarly situated) was of the same character as the aforecited established exceptions dispensing with notice and hearing. As already said, the immobilization of illegally parked vehicles by clamping the tires was necessary because the transgressors were not around at the time of apprehension.

WORLD WIDE WEB CORPORATION v. PLDT
G.R. NO. 161106, JANUARY 13, 2014

Police Chief Inspector Villegas of the Regional Intelligence Special Operations Office of the PNP filed applications for warrants before the RTC of Quezon City to search the office premises of Worldwide Web Corporation and Planet Internet Corporation. The applications alleged that petitioners were conducting illegal toll bypass operations, which amounted to theft and violation of P.D. No. 401 (Penalizing the Unauthorized Installation of Water, Electrical or Telephone Connections, the Use of Tampered Water or Electrical Meters and Other Acts), to the damage and prejudice of the PLDT.

The trial court conducted a hearing on the applications for search warrants. The applicants Rivera and Gali of the Alternative Calling Pattern Detection Division of PLDT testified as witnesses.

According to Rivera, a legitimate international long distance call should pass through the local exchange or public switch telephone network (PSTN) on to the toll center of one of the international gateway facilities (IGFs) in the Philippines. The call is then transmitted to the other country through voice circuits, either via fiber optic submarine cable or microwave radio using satellite facilities, and passes the toll center of one of the IGFs in the destination country. The toll center would then meter the call, which will pass through the PSTN of the called number to complete the circuit. In contrast, WWC and Planet Internet were able to provide international long distance call services to any part of the world by using PLDT's telephone lines, but bypassing its IGF. This scheme constitutes toll bypass, a "method of routing and completing international long distance calls using lines, cables, antenna and/or wave or frequency which connects directly to the local or domestic exchange facilities of the originating country or the country where the call is originated."

On the other hand, Gali claimed that a phone number serviced by PLDT and registered to WWC was used to provide a service called GlobalTalk, "an internet-based international call service, which can be availed of via prepaid or billed/post-paid accounts." During a test call using GlobalTalk, Gali dialed the local PLDT telephone number 6891135, the given access line. After a voice prompt required him to enter the user code and PIN provided under a GlobalTalk prepaid account, he was then requested to enter the destination number, which included the country code, phone number and a pound sign. The call was completed to a phone number in Taiwan. However, when he checked the records, it showed that the call was only directed to the local number 6891135. This indicated that the international test call using GlobalTalk bypassed PLDT's IGF.

Based on the records of PLDT, telephone number 6891135 is registered to WWC. However, upon an ocular inspection conducted by Rivera at this address, it was found that the occupant of the unit is Planet Internet, which also uses the telephone lines registered to WWC. These telephone lines are interconnected to a server and used as dial-up access lines/numbers of WWC.

Gali further alleged that because PLDT lines and equipment had been illegally connected by petitioners to a piece of equipment that routed the international calls and bypassed PLDT's IGF, they violated P.D. No. 401 as amended, on unauthorized installation of telephone connections. Petitioners also committed theft, because through their misuse of PLDT phone lines/numbers and equipment and with clear intent to gain, they illegally stole business and revenues that rightly belong to PLDT. Moreover, they acted contrary to the letter and intent of R. A. No. 7925, because in bypassing the IGF of PLDT, they evaded the payment of access and bypass charges in its favor while "piggy-backing" on its multi-million dollar facilities and infrastructure, thus stealing its business revenues from international long distance calls. Further, petitioners acted in gross violation of Memorandum Circular No. 6-2-92 of

the National Telecommunications Commission prohibiting the use of customs premises equipment without first securing type approval license from the latter. PLDT computed a monthly revenue loss of P764,718.09. They alleged that petitioners deprived it of foreign exchange revenues, and evaded the payment of taxes, license fees, and charges, to the prejudice of the government.

During the hearing, the trial court required the identification of the office premises/units to be searched, as well as their floor plans showing the location of particular computers and servers that would be taken. The RTC granted the application for search warrants. Three warrants were issued against the office premises of petitioners, authorizing police officers to seize various items in the office premises of WWC and Planet Internet, which includes various telecommunications equipment consisting of computers, lines, cables, antennas, modems, or routers, multiplexers, PABX or switching equipment, and support equipment such as software, diskettes, tapes, manuals and other documentary records to support the illegal toll bypass operations. The warrants were implemented on the same day by RISOO operatives of the NCR-PNP.

Over a hundred items were seized, including 15 CPUs, 10 monitors, numerous wires, cables, diskettes and files, and a laptop computer. Planet Internet notes that even personal diskettes of its employees were confiscated; and areas not devoted to the transmission of international calls, such as the President's Office and the Information Desk, were searched. Voltage regulators, as well as reserve and broken computers, were also seized. Petitioners filed their respective motions to quash the search warrants, citing basically the same grounds: (1) the search warrants were issued without probable cause, since the acts complained of did not constitute theft; (2) toll bypass, the act complained of, was not a crime; (3) the search warrants were general warrants; and (4) the objects seized pursuant thereto were "fruits of the poisonous tree." PLDT filed a Consolidated Opposition to the motions to quash.

In the hearing of the motions to quash, the test calls alluded to by Gali in his Affidavit were shown to have passed the IGF of Eastern Telecommunications Philippines, Inc. and of Capital Wireless. Planet Internet explained that Eastern and Capwire both provided international direct dialing services, which Planet Internet marketed by virtue of a "Reseller Agreement." Planet Internet used PLDT lines for the first phase of the call; but for the second phase, it used the IGF of either Eastern or Capwire. Planet Internet religiously paid PLDT for its domestic phone bills and Eastern and Capwire for its IGF usage. None of these contentions were refuted by PLDT.

The RTC granted the motions to quash on the ground that the warrants issued were in the nature of general warrants. Thus, the properties seized under the said warrants were ordered released to petitioners.

PLDT moved for reconsideration, but its motion was denied on the ground that it had failed to get the conformity of the City Prosecutor prior to filing the motion, as required under Section 5, Rule 110 of the Rules on Criminal Procedure. PLDT appealed to the CA and the appellate court reversed and set aside the RTC Resolutions and declared the search warrants valid and effective.

Petitioners separately moved for reconsideration of the CA ruling. Among the points raised was that PLDT should have filed a petition for certiorari rather than an appeal when it questioned the RTC Resolution before the CA. The appellate court denied the Motions for Reconsideration.

Hence, this petition.

ISSUES:

1. Whether or not conformity of the public prosecutor is necessary prior filing a motion for reconsideration to question an order quashing search warrants
2. Whether or not an order quashing a search warrant issued independently prior to the filing of a criminal action is deemed a final order that can be the subject of an appeal
3. Whether or not the assailed search warrants were issued upon probable cause, considering that the acts complained of allegedly do not constitute theft
4. Whether or not the assailed search warrants were general warrants

HELD:

1. No. An application for a search warrant is not a criminal action, therefore, conformity of the public prosecutor is not necessary to give PLDT personality to question the motion to quash granted by the RTC.

SEC. 5. Who must prosecute criminal actions. — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor.

The above provision states the general rule that the public prosecutor has direction and control of the prosecution of all criminal actions commenced by a complaint or information. However, a search warrant is obtained, not by the filing of a complaint or an information, but by the filing of an application therefor.

An application for a search warrant is a special criminal process, rather than a criminal action. The application for and the obtention of a search warrant cannot be equated with the institution and prosecution of a criminal action in a trial court. It would thus categorize what is only a special criminal process, the power to issue which is inherent in all courts, as equivalent to a criminal action, jurisdiction over which is reposed in specific courts of indicated competence. The requisites, procedure and purpose for the issuance of a search warrant are completely different from those for the institution of a criminal action.

A warrant, such as a warrant of arrest or a search warrant, merely constitutes process. A search warrant is defined in our jurisdiction as an order in writing issued in the name of the People of the Philippines signed by a judge and directed to a peace officer, commanding him to search for personal property and bring it before the court. A search warrant is in the nature of a criminal process akin to a writ of discovery. It is a special and peculiar remedy, drastic in its nature, and made necessary because of a public necessity.

A search warrant is definitively considered merely as a process, generally issued by a court in the exercise of its ancillary jurisdiction, and not a criminal action to be entertained by a court pursuant to its original jurisdiction.

Therefore, an application for a search warrant is not a criminal action. The Supreme Court consistently recognizes the right of parties to question orders quashing those warrants. The CA's ruling that the conformity of the public prosecutor is not necessary before an aggrieved party moves for reconsideration of an order granting a motion to quash search warrants is sustained.

2. Yes. An order quashing a search warrant, which was issued independently prior to the filing of a criminal action, is not merely an interlocutory order. It partakes of a final order and can be the

proper subject of an appeal. Therefore, PLDT was correct when they assailed the quashal orders via an appeal rather than a petition for certiorari.

A final order is defined as one which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined; on the other hand an order is interlocutory if it does not dispose of a case completely, but leaves something more to be done upon its merits.

An application for a search warrant is a judicial process conducted either as an incident in a main criminal case already filed in court or in anticipation of one yet to be filed. Whether the criminal case (of which the search warrant is an incident) has already been filed before the trial court is significant for the purpose of determining the proper remedy from a grant or denial of a motion to quash a search warrant.

Where the search warrant is issued as an incident in a pending criminal case, the quashal of a search warrant is merely interlocutory. There is still something more to be done in the said criminal case, i.e., the determination of the guilt of the accused therein.

In contrast, where a search warrant is applied for and issued in anticipation of a criminal case yet to be filed, the order quashing the warrant (and denial of a motion for reconsideration of the grant) ends the judicial process. There is nothing more to be done thereafter.

Thus, the CA correctly ruled that is this case, the applications for search warrants were instituted as principal proceedings and not as incidents to pending criminal actions. When the search warrants issued were subsequently quashed by the RTC, there was nothing left to be done by the trial court. Thus, the quashal of the search warrants were final orders, not interlocutory, and an appeal may be properly taken therefrom.

3. Yes. The assailed search warrants were issued upon probable cause. Trial judges determine probable cause in the exercise of their judicial functions. A trial judge's finding of probable cause for the issuance of a search warrant is accorded respect by reviewing courts when the finding has substantial basis.

The rules pertaining to the issuance of search warrants are enshrined in Section 2, Article III of the 1987 Constitution:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In the issuance of a search warrant, probable cause requires such facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and the objects sought in connection with that offense are in the place to be searched.

There is no exact test for the determination of probable cause in the issuance of search warrants. It is a matter wholly dependent on the finding of trial judges in the process of exercising their judicial

function. They determine probable cause based on evidence showing that, more likely than not, a crime has been committed and that it was committed by the offender.

When a finding of probable cause for the issuance of a search warrant is made by a trial judge, the finding is accorded respect by reviewing courts.

It is presumed that a judicial function has been regularly performed, absent a showing to the contrary. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination. Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.

Petitioners insist that the determination of the existence of probable cause necessitates the prior determination of whether a crime or an offense was committed in the first place. They argue that there is no law punishing toll bypass, the act complained of by PLDT. Thus, no offense was committed that would justify the issuance of the search warrants.

According to PLDT, toll bypass enables international calls to appear as local calls and not overseas calls, thus effectively evading payment to the PLDT of access, termination or bypass charges, and accounting rates; payment to the government of taxes; and compliance with NTC regulatory requirements. PLDT concludes that toll bypass is prohibited, because it deprives legitimate telephone operators, of the compensation which it is entitled to had the call been properly routed through its network. As such, toll bypass operations constitute theft, because all of the elements of the crime are present therein.

Petitioners argue that there is no theft to speak of, because the properties allegedly taken from PLDT partake of the nature of future earnings and lost business opportunities and, as such, are uncertain, anticipative, speculative, contingent, and conditional. PLDT cannot be deprived of such unrealized earnings and opportunities because these do not belong to it in the first place.

However, it is to be noted that the affidavits of Rivera and Gali that accompanied the applications for the search warrants charge petitioners with the crime, not of toll bypass per se, but of theft of PLDT's international long distance call business committed by means of the alleged toll bypass operations.

For theft to be committed in this case, the following elements must be shown to exist: (1) the taking by petitioners (2) of PLDT's personal property (3) with intent to gain (4) without the consent of PLDT (5) accomplished without the use of violence against or intimidation of persons or the use of force upon things.

It is the use of these communications facilities without the consent of PLDT that constitutes the crime of theft, which is the unlawful taking of the telephone services and business.

Furthermore, toll bypass operations could not have been accomplished without the installation of telecommunications equipment to the PLDT telephone lines. Thus, petitioners may also be held liable for violation of P.D. 401, to wit:

Section 1. Any person who installs any water, electrical, telephone or piped gas connection without previous authority from the Metropolitan Waterworks and Sewerage System, the Manila Electric Company, the Philippine Long Distance Telephone Company , or the Manila Gas Corporation, as the case may be, tampers and/or uses tampered water, electrical or gas meters, jumpers or other devices whereby water, electricity or piped gas is stolen; steals or pilfers water, electric or piped gas meters, or water, electric and/or telephone wires, or piped gas pipes or conduits; knowingly possesses stolen or pilfered water, electrical or gas meters as well as stolen or pilfered water, electrical and/or telephone wires, or piped gas pipes and conduits, shall, upon conviction, be punished with prision correccional in its minimum period or a fine ranging from two thousand to six thousand pesos, or both.

It must be noted that the trial judge did not quash the warrants in this case based on lack of probable cause. The RTC granted the motions to quash on the ground that the warrants issued were in the nature of general warrants, which was reversed by the CA.

4. No. The assailed search warrants are not general warrants. The requirement of particularity in the description of things to be seized is fulfilled when the items described in the search warrant bear a direct relation to the offense for which the warrant is sought.

A general warrant is defined as a search or arrest warrant that is not particular as to the person to be arrested or the property to be seized. It is one that allows the seizure of one thing under a warrant describing another and gives the officer executing the warrant the discretion over which items to take.

Such discretion is abhorrent, as it makes the person, against whom the warrant is issued, vulnerable to abuses. Our Constitution guarantees our right against unreasonable searches and seizures, and safeguards have been put in place to ensure that people and their properties are searched only for the most compelling and lawful reasons.

Section 2, Article III of the 1987 Constitution provides:

Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no such search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In furtherance of this constitutional provision, Sections 3 and 4, Rule 126 of the Rules of Court, amplify the rules regarding the following places and items to be searched under a search warrant:

SEC. 3. Personal property to be seized. — A search warrant may be issued for the search and seizure of personal property:

a) Subject of the offense;

b) Stolen or embezzled and other proceeds, or fruits of the offense;

c) Used or intended to be used as the means of committing an offense

SEC. 4. Requisites for issuing search warrant. — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Within the context of the above legal requirements for valid search warrants, the Court has been mindful of the difficulty faced by law enforcement officers in describing the items to be searched, especially when these items are technical in nature, and when the extent of the illegal operation is largely unknown to them.

The things to be seized must be described with particularity. Technical precision of description is not required. It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission. Indeed, the law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. If this were the rule, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things to look for. Any description of the place or thing to be searched that will enable the officer making the search with reasonable certainty to locate such place or thing is sufficient.

The particularity of the description of the place to be searched and the things to be seized is required wherever and whenever it is feasible. A search warrant need not describe the items to be seized in precise and minute detail. The warrant is valid when it enables the police officers to readily identify the properties to be seized and leaves them with no discretion regarding the articles to be seized.

A search warrant fulfills the requirement of particularity in the description of the things to be seized when the things described are limited to those that bear a direct relation to the offense for which the warrant is being issued.

PLDT was able to establish the connection between the items to be searched as identified in the warrants and the crime of theft of its telephone services and business. Prior to the application for the search warrants, Rivera conducted ocular inspection of the premises of petitioners and was able to confirm that they had utilized various telecommunications equipment consisting of computers, lines, cables, antennas, modems, or routers, multiplexers, PABX or switching equipment, a d support equipment such as software, diskettes, tapes, manuals and other documentary records to support the illegal toll bypass operations.

The petitions were DENIED. The Court of Appeals decision were AFFIRMED.

LAND BANK OF THE PHILIPPINES, v. YATCO AGRICULTURAL ENTERPRISES, G.R. NO. 172551, JANUARY 15, 2014

Respondent Yatco Agricultural Enterprises (Yatco) was the registered of owner of a 27-hectare parcel of agricultural land (property) in Calamba, Laguna. On April 30, 1999, the government placed the property under the coverage if its Comprehensive Agrarian Reform Program (CARP).

Land Bank of the Philippines (LBP) valued the property at P1,126,132.89. Yatco did not find the valuation acceptable and thus elevated the matter to the Department of Agrarian Reform (DAR) Provincial Agrarian Reform Adjudicator (PARAD), which then conducted summary administrative proceedings for the determination of just compensation.

The PARAD valued the property at P16,543,800.00, using the property current market value. LBP did not move to reconsider the PARAD ruling. Instead it filed with the RTC-SAC a petition for the judicial determination of just compensation.

RTC-SAC fixed the just compensation for the property at P200 per square meter based on the RTC branch 35 and 36. RTC-SAC did not give weight to the LBP evidence in justifying its valuation, pointing out that the LBP failed to prove that it complied with the prescribed procedure and failed to consider the valuation in the Comprehensive Agrarian Reform Law (CARL).

The CA dismissed LBP appeal.

ISSUE:

Whether or not the RTC-SAC determination of just compensation for the property was proper?

HELD:

The RTC-SAC determination of just compensation for the property was not proper.

Determination of just compensation under the DAR

The determination of just compensation is fundamentally a judicial function. Section 57 of R.A. No. 6657 explicitly vests the RTC-SAC the original and exclusive power to determine just compensation for lands under CARP coverage. To guide the RTC-SAC in the exercise of its function, Section 17 of R.A. No. 6657 enumerates the factors required to be taken into account to correctly determine just compensation.The law (under Section 49 of R.A. No. 6657) likewise empowers the DAR to issue rules for its implementation.The DAR thus issued DAR AO 5-98incorporating the law listed factors in determining just compensation into a basic formula that contains the details that take these factors into account.

That the RTC-SAC must consider the factors mentioned by the law (and consequently the DAR implementing formula) is not a novel concept. In Land Bank of the Philippines v. Sps. Banal, we said that the RTC-SAC must consider the factors enumerated under Section 17 of R.A. No. 6657, as translated into a basic formula by the DAR, in determining just compensation.

In the recent case of Land Bank of the Philippines v. Honeycomb Farms Corporation, we again affirmed the need to apply Section 17 of R.A. No. 6657 and DAR AO5-98 in just compensation cases. There, we considered the CA and the RTC in grave error when they opted to come up with their own basis for valuation and completely disregarded the DAR formula. The need to apply the parameters required by the law cannot be doubted; the DAR administrative issuances, on the other hand, partake of the nature of statutes and have in their favor a presumption of legality. Unless administrative orders are declared invalid or unless the cases before them involve situations these administrative issuances do not cover, the courts must apply them.

The RTC-SAC adopted Branch 36 valuation without any qualification or condition. Yet, in disposing of the present case, the just compensation that it fixed for the property largely differed from the former. Note that Branch 36 fixed a valuation of P20.00 per square meter; while the RTC-SAC, in the present case, valued the property at P200.00 per square meter. Strangely, the RTC-SAC did not offer any explanation nor point to any evidence, fact or particular that justified the obvious discrepancy between these amounts.

In ascertaining just compensation, the fair market value of the expropriated property is determined as of the time of taking. The time of taking refers to that time when the State deprived the landowner of the use and benefit of his property, as when the State acquires title to the property or as of the filing of the complaint, per Section 4, Rule 67 of the Rules of Court.

As a final note and clarificatory reminder, we agree that the LBP is primarily charged with determining land valuation and compensation for all private lands acquired for agrarian reform purposes. But this determination is only preliminary. The landowner may still take the matter of just compensation to the court for final adjudication.

RALPH P. TUA v. HON. CESAR MANGROBANG, et al.
G.R. NO. 170701, JANUARY 22, 2014

Rossana Honrado-Tua filed before the Regional Trial Court (RTC) for the issuance of temporary protection order (TPO) pursuant to R.A. 9262, also known as Violence against Women and their Children (VAWC) Act of 2004 against her husband Ralph Tua. In praying for the issuance of the TPO, she alleged that her husband abused her and her children by threatening them harm and withdrawal of financial support. Three days later RTC issued TPO, which mandated Ralph Tua to stay away from his wife and their children and to refrain from communicating with them. Thereafter, he filed a comment opposing his wife's petition for the issuance of the TPO.

According to him, the issuance of the TPO was unconstitutional because it violated his right to due process. He contends that the ex parte issuance of the TPO prevented him to properly present his side. In addition, he argues that section 15 of R.A. 9262 encourages arbitrary repulsive to the basic constitutional rights which affects his life, liberty and property. Lastly, he argues that R.A. 9262 invalidly delegated to the courts and to the barangay officials the issuance of TPOs.

ISSUES:

1. Does Section 15 of R.A. 9262 violates the Due Process Clause?
2. Is there undue delegation?

HELD:

1. No. Section 15 of R.A. 9262 did not violate the Due Process Clause. In Garcia v. Drilon, the court struck down the challenge and held: The rules require that petitions for protection order be in writing, signed and verified by the petitioner thereby undertaking full responsibility, criminal or civil, for every allegations therein. Since, "time is of the essence in cases of VAWC if further violence is to be prevented," the court is authorized to issue ex parte a TPO after raffle but before notice and hearing when the life, limb, or property of the victim is in jeopardy and there is reasonable ground to believe that the order is necessary to protect the victim from the imminent and immediate danger of VAWC or, to prevent such violence, which is about to recur. There need not be any fear that the judge may have no rational basis to issue an ex parte order. The victim is required not only to verify the allegations in the petition, but also to attach her witnesses' affidavit's to the petition.

The grant of TPO ex parte cannot, therefore, be challenged as violative of the due process clause. Just like a writ of preliminary attachment which is issued without notice and hearing because the time in which the hearing will take could be enough to enable the defendant to abscond or dispose of his property, in the same way the victim of VAWC, may have already suffered harrowing experiences in the hands of the tormentor, and possibly even death, if notice and hearing were required before such acts could be prevented. It is a constitutional common place that the ordinary requirements of procedural due process must yield to the necessities of protecting vital public interests, among which is the protection of women and their children from violence and threats to their personal safety and security.

It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one

may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

2. No. There is no undue delegation to the courts and to the barangay officials.

Section 2 of Article VIII of the 1987 Constitution provides that the "Congress shall have the power to define, prescribe and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof." Hence, the primary judge of the necessity, adequacy, wisdom, reasonableness and expediency of any law is primarily the function of the legislature. The act of congress entrusting to the courts the issuance of Protection Orders is in pursuance of the court's authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violation of such rights. As to the issuance of protection order by the Punong Barangay, the issuance of Barangay protection order (BPO) by the punong barangay or, in his unavailability, by any available barangay kagawad, merely orders the perpetrator to desist from (a) causing physical harm to the woman or her children; and (b) threatening to cause the woman or her child physical harm. Such function of the punong barangay is, thus, purely executive in nature in pursuance of his duty under the local government code to "enforce all laws or ordinances" and "to maintain public order in the barangay."

EMILIO A. GONZALES III v. OFFICE OF THE PRESIDENT OF THE PHILIPPINES
G.R. No. 196231, September 4, 2012

These two petitions have been because they raise a common thread of issues relating to the President's exercise of the power to remove from office herein petitioners who claim the protective cloak of independence of the constitutionally-created office to which they belong - the Office of the Ombudsman.

The cases, G.R. No. 196231 and G.R. No. 196232 primarily seeks to declare as unconstitutional Section 8(2) of Republic Act (R.A.) No. 6770, otherwise known as the Ombudsman Act of 1989, which gives the President the power to dismiss a Deputy Ombudsman of the Office of the Ombudsman.

G.R. No. 196231: A formal charge for Grave Misconduct (robbery, grave threats, robbery extortion and physical injuries) was filed before PNP-NCR against Manila Police District Senior Inspector (P/S Insp.) Rolando Mendoza and four others. Private complainant, Christian M. Kalaw, before the Office of the City Prosecutor, filed a similar charge. While said cases were still pending, the Office of the Regional Director of the National Police Commission (NPC) turned over, upon the request of petitioner Gonzales III, all relevant documents and evidence in relation to said case to the Office of the Deputy Ombudsman for appropriate administrative adjudication. Subsequently a case for Grave Misconduct was lodged against P/S Insp. Rolando Mendoza and his fellow police officers in the Office of the Ombudsman. Meanwhile, the case filed before the Office of the city Prosecutor was dismissed upon a finding that the material allegations made by the complainant had not been substantiated "by any evidence at all to warrant the indictment of respondents of the offenses charged." Similarly, the Internal Affairs Service of the PNP issued a Resolution recommending the dismissal without prejudice of the administrative case against the same police officers, for failure of the complainant to appear in three (3) consecutive hearings despite due notice. However, upon the recommendation of petitioner Gonzales III, a Decision finding P/S Insp. Rolando Mendoza and his fellow police officers guilty of Grave Misconduct was approved by the Ombudsman. Mendoza and his colleagues filed for a motion for reconsideration which was forwarded to Ombudsman Gutierrez for final approval, in whose office it remained pending for final review and action when P/S Insp. Mendoza hijacked a bus-load of foreign tourists on that fateful day of August 23, 2010 in a desperate attempt to have himself reinstated in the police service.

In the aftermath of the hostage-taking incident, which ended in the tragic murder of eight HongKong Chinese nationals, the injury of seven others and the death of P/S Insp. Rolando Mendoza, a public outcry against the blundering of government officials prompted the creation of the Incident Investigation and Review Committee (IIRC). It was tasked to determine accountability for the incident through the conduct of public hearings and executive sessions. The IIRC found Deputy Ombudsman Gonzales committed serious and inexcusable negligence and gross violation of their own rules of procedure by allowing Mendoza's motion for reconsideration to languish for more than nine (9) months without any justification, in violation of the Ombudsman prescribed rules to resolve motions for reconsideration in administrative disciplinary cases within five (5) days from submission. The inaction is gross, considering there is no opposition thereto. The prolonged inaction precipitated the desperate resort to hostage-taking. Petitioner was dismissed from service. Hence the petition.

G.R. No. 196232: Acting Deputy Special Prosecutor of the Office of the Ombudsman charged Major General Carlos F. Garcia, his wife Clarita D. Garcia, their sons Ian Carl Garcia, Juan Paulo Garcia and Timothy Mark Garcia and several unknown persons with Plunder and Money Laundering before the Sandiganbayan. The Sandiganbayan denied Major General Garcia's urgent petition for bail holding that

strong prosecution evidence militated against the grant of bail. However, the government, represented by petitioner, Special Prosecutor Barreras-Sulit and sought the Sandiganbayan's approval of a Plea Bargaining Agreement ("PLEBARA") entered into with the accused. The Sandiganbayan issued a Resolution finding the change of plea warranted and the PLEBARA compliant with jurisprudential guidelines.

Outraged by the backroom deal that could allow Major General Garcia to get off the hook with nothing but a slap on the hand notwithstanding the prosecution's apparently strong evidence of his culpability for serious public offenses, the House of Representatives' Committee on Justice conducted public hearings on the PLEBARA. At the conclusion of these public hearings, the Committee on Justice passed and adopted Committee Resolution No. 3, recommending to the President the dismissal of petitioner Barreras-Sulit from the service and the filing of appropriate charges against her Deputies and Assistants before the appropriate government office for having committed acts and/or omissions tantamount to culpable violations of the Constitution and betrayal of public trust, which are violations under the Anti-Graft and Corrupt Practices Act and grounds for removal from office under the Ombudsman Act. Hence the petition.

ISSUE:

Whether the Office of the President has jurisdiction to exercise administrative disciplinary power over a Deputy Ombudsman and a Special Prosecutor who belong to the constitutionally-created Office of the Ombudsman.

HELD:

Yes. The Ombudsman's administrative disciplinary power over a Deputy Ombudsman and Special Prosecutor is not exclusive. While the Ombudsman's authority to discipline administratively is extensive and covers all government officials, whether appointive or elective, with the exception only of those officials removable by impeachment such authority is by no means exclusive. Petitioners cannot insist that they should be solely and directly subject to the disciplinary authority of the Ombudsman. For, while Section 21 of R.A. 6770 declares the Ombudsman's disciplinary authority over all government officials, Section 8(2), on the other hand, grants the President express power of removal over a Deputy Ombudsman and a Special Prosecutor. A harmonious construction of these two apparently conflicting provisions in R.A. No. 6770 leads to the inevitable conclusion that Congress had intended the Ombudsman and the President to exercise concurrent disciplinary jurisdiction over petitioners as Deputy Ombudsman and Special Prosecutor, respectively. Indubitably, the manifest intent of Congress in enacting both provisions - Section 8(2) and Section 21 - in the same Organic Act was to provide for an external authority, through the person of the President, that would exercise the power of administrative discipline over the Deputy Ombudsman and Special Prosecutor without in the least diminishing the constitutional and plenary authority of the Ombudsman over all government officials and employees. Such legislative design is simply a measure of "check and balance" intended to address the lawmakers' real and valid concern that the Ombudsman and his Deputy may try to protect one another from administrative liabilities.

By granting express statutory power to the President to remove a Deputy Ombudsman and a Special Prosecutor, Congress merely filled an obvious gap in the law. While the removal of the Ombudsman himself is also expressly provided for in the Constitution, which is by impeachment under Section 2 of the same Article, there is, however, no constitutional provision similarly dealing with the removal from office of a Deputy Ombudsman, or a Special Prosecutor, for that matter. By enacting

Section 8(2) of R.A. 6770, Congress simply filled a gap in the law without running afoul of any provision in the Constitution or existing statutes. In fact, the Constitution itself, under Section 2, authorizes Congress to provide for the removal of all other public officers, including the Deputy Ombudsman and Special Prosecutor, who are not subject to impeachment.

The Power of the President to Remove a Deputy Ombudsman and a Special Prosecutor is implied from his Power to Appoint. In giving the President the power to remove a Deputy Ombudsman and Special Prosecutor, Congress simply laid down in express terms an authority that is already implied from the President's constitutional authority to appoint the aforesaid officials in the Office of the Ombudsman. The integrity and effectiveness of the Deputy Ombudsman for the MOLEO as a military watchdog looking into abuses and irregularities that affect the general morale and professionalism in the military is certainly of primordial importance in relation to the President's own role as Commander-in-Chief of the Armed Forces. It would not be incongruous for Congress, therefore, to grant the President concurrent disciplinary authority over the Deputy Ombudsman for the military and other law enforcement offices.

Granting the President the Power to Remove a Deputy Ombudsman does not diminish the Independence of the Office of the Ombudsman. he claim that Section 8(2) of R.A. No. 6770 granting the President the power to remove a Deputy Ombudsman from office totally frustrates, if not resultantly negates the independence of the Office of the Ombudsman is tenuous. The independence which the Office of the Ombudsman is vested with was intended to free it from political considerations in pursuing its constitutional mandate to be a protector of the people. What the Constitution secures for the Office of the Ombudsman is, essentially, political independence. This means nothing more than that "the terms of office, the salary, the appointments and discipline of all persons under the office" are "reasonably insulated from the whims of politicians."

Petitioner Gonzales may not be removed from office where the questioned acts, falling short of constitutional standards, do not constitute betrayal of public trust. Petitioner's act of directing the PNP-IAS to endorse P/S Insp. Mendoza's case to the Ombudsman without citing any reason therefor cannot, by itself, be considered a manifestation of his undue interest in the case that would amount to wrongful or unlawful conduct. After all, taking cognizance of cases upon the request of concerned agencies or private parties is part and parcel of the constitutional mandate of the Office of the Ombudsman to be the "champion of the people." The factual circumstances that the case was turned over to the Office of the Ombudsman upon petitioner's request; that administrative liability was pronounced against P/S Insp. Mendoza even without the private complainant verifying the truth of his statements; that the decision was immediately implemented; or that the motion for reconsideration thereof remained pending for more than nine months cannot be simply taken as evidence of petitioner's undue interest in the case considering the lack of evidence of any personal grudge, social ties or business affiliation with any of the parties to the case that could have impelled him to act as he did. There was likewise no evidence at all of any bribery that took place, or of any corrupt intention or questionable motivation. The OP's pronouncement of administrative accountability against petitioner and the imposition upon him of the corresponding penalty of dismissal must be reversed and set aside, as the findings of neglect of duty or misconduct in office do not amount to a betrayal of public trust. Hence, the President, while he may be vested with authority, cannot order the removal of petitioner as Deputy Ombudsman, there being no intentional wrongdoing of the grave and serious kind amounting to a betrayal of public trust.

The Office of the President is vested with statutory authority to proceed administratively against petitioner Barreras-Sulit to determine the existence of any of the grounds for her removal from office as provided for under the Constitution and the Ombudsman Act.

REMMAN ENTERPRISES, INC. v. PROFESSIONAL REGULATORY BOARD OF REAL ESTATE SERVICE and PROFESSIONAL REGULATION COMMISSION
G.R. NO. 197676, FEBRUARY 4, 2014

Assailed in this petition for review under Rule 45 is the Decision dated July 12, 2011 of the Regional Trial Court (RTC) of Manila, Branch 42 denying the petition to declare as unconstitutional Sections 28(a), 29 and 32 of Republic Act (R.A.) No. 9646. R.A. No. 9646 (Real Estate Service Act of the Philippines) was signed aims to professionalize the real estate service sector under a regulatory scheme of licensing, registration and supervision of real estate service practitioners (real estate brokers, appraisers, assessors, consultants and salespersons) in the country. Prior to its enactment, real estate service practitioners were under the supervision of the Department of Trade and Industry (DTI) through the Bureau of Trade Regulation and Consumer Protection (BTRCP), in the exercise of its consumer regulation functions. Such authority is now transferred to the Professional Regulation Commission (PRC) through the Professional Regulatory Board of Real Estate Service (PRBRES) created under the new law. The implementing rules and regulations (IRR) of R.A. No. 9646 were promulgated by the PRC and PRBRES under Resolution No. 02, Series of 2010. Petitioners filed a petition in the Regional Trial Court of Manila, asking the court to declare as void and unconstitutional Sections 28 (a), 29 and 32, of R.A. 9646 that the trial court denied thus, this petition.

ISSUE:

Whether R.A. No. 9646 is unconstitutional for violating the "one title-one subject" rule under Section 26, Article VI of the Philippine Constitution

HELD:

NO. The Court has previously ruled that the one-subject requirement under the Constitution is satisfied if all the parts of the statute are related, and are germane to the subject matter expressed in the title, or as long as they are not inconsistent with or foreign to the general subject and title. It is also well-settled that the "one title-one subject" rule does not require the Congress to employ in the title of the enactment language of such precision as to mirror, fully index or catalogue all the contents and the minute details therein. The rule is sufficiently complied with if the title is comprehensive enough as to include the general object which the statute seeks to effect. R.A. No. 9646 is entitled "An Act Regulating the Practice of Real Estate Service in the Philippines, Creating for the Purpose a Professional Regulatory Board of Real Estate Service, Appropriating Funds Therefor and For Other Purposes." The new law extended its coverage to real estate developers with respect to their own properties. The inclusion of real estate developers is germane to the law's primary goal of developing "a corps of technically competent, responsible and respected professional real estate service practitioners whose standards of practice and service shall be globally competitive and will promote the growth of the real estate industry." R.A. No. 9646 does not violate the one-title, one-subject rule.

DENNIS A.B. FUNA, v. MANILA ECONOMIC AND CULTURAL OFFICE and the COMMISSION ON AUDIT
G.R. No. 193462, February 4, 2014,

The Philippines subscribes to the "One China Policy" of the Communist People's Republic of China (PROC) under the Joint Communique between RP and PROC. The Philippines ended its diplomatic relations with the government of Taiwan (nationalist Republic of China) on June 9 1975. Despite this the Philippines and Taiwan maintained an unofficial relationship facilitated by the Taipei Economic and Cultural Office for Taiwan and the MANILA ECONOMIC AND CULTURALOFFICE (MECO) for the Philippines.

MECO was organized on Dec 16 1997 as a non-stock non-profit corporation. from then on MECO became the corporate entity entrusted by the Philipine Government with maintaining the friendly and unofficial relations with the People of Taiwan. In order to carry out its functions, MECO was authorized by the Government to perform certain consular and other functions that relate to the promotion, protection and facilitation of Philippine interests in Taiwan. At present, MEco oversees the rights and interests of OFWs in Taiwan, promotes the Philippines as a tourist and investment destination for the Taiwanese and facilitatestravel of Filipinos and Taiwanese from Taiwan to thePhilippines and vice versa. Dennis AB Funa wrote to COA requesting for the latest financial and audit report of MECO. HE invoked his constitutional right to information on matters of public concern. He believed that MECOwas under the supervision of DTI and is a GOCC thus subject to theaudit jurisdiction of COA. COA asst. Commissioner Naranjo issued a memorandum which stated that MECO is not among the agencies audited by any of the three clusters of the Corporate Government Sector.

This prompted Funa to file this mandamus petition in his capacity as "taxpayer, concerned citizen, a member of the Philippine Bar and law book author" he alleged that COA neglected its duty under Sec. 2(1) Art IX-D of the Constitution. He claimed that MECO was a GOCC or at least a government instrumentality whose fundspartake the nature of public funds. To support his argument he presented the following points; It is a non-stock corporation vested with governmental functions relating to public needs; It is controlled by the government thru a board of directors appointed by the Philippine President; It is under the operational and policy supervision of DTI; He also compared MECO with the American Institute in Taiwan. AITis supposedly audited by the US Comptroller General. MECO: prayed for the dismissal of the mandamus petition on procedural and substantial grounds.; Procedural: prematurely filed. Funa never demanded forCOA to make an audit. The only action he took was to request for a copy of the financial and audit report of MECO. This request was not finally disposed of by the time the petition was filed ; Substantial: MECO is not a GOCC. The "desire letter" of the President sends to MECO is merely recommendatory andnot binding on the corporation (in relation to the election ofthe Board of MECO). In the end the members are the ones who elect the directors and these directors are private individuals and not government officials. MECO also argued that the government merely has a policy supervision over it. The government merely sees to it that the activities of MECO are in tune with the One China Policy under the PROC. The day-to-day operations of MECO are still underthe control of the Board. It also argued that for MECO to be considered a GOCC would be a violation of the One China Policy of the PROC.

ISSUE:

Whether MECO is a Governmental entity and is subject to the audit jurisdiction of COA.

HELD:

Under SEC 2(1) ART IX-D of the constitution, COA was vested with the power, authority and duty to examine, audit and settle the accounts(revenue," "receipts," "expenditures" and "uses of funds and property") of the following entitites: Government , or any of its subdivisions, agencies and GOCCs with original charters GOCCs without original charters Constitutional bodies, commissions and offices that have been Non-governmental entities receiving subsidy or equity, directly or Complementing the constitutional power of the COA to audit accounts of "non-governmental entities receiving subsidy or equity xxx from or through the government" is Section 29(1)80 of the Audit Code, which grants the COA visitorial authority over the following non-governmental entities:

1. Non-governmental entities "subsidized by the government";

2. Non-governmental entities "required to pay levy or government share";

3. Non-governmental entities that have "received counterpart funds from

The government"; and

4. Non-governmental entities "partly funded by donations through the Government."

The Administrative Code also empowers the COA to examine and audit "the books, records and accounts" of public utilities "in connection with the fixing of rates of every nature, or in relation to the proceedings of the proper regulatory agencies, for purposes of determining franchise tax." MECO is not a GOCC or Governmental Instrumentality Government instrumentalities are agencies of the national government that, by reason of some "special function or jurisdiction" they perform or exercise, are allotted "operational autonomy" and are "not integrated within the department framework. They include: regulatory agencies; 2.chartered institutions; 3.government corporate entities or government instrumentalities with corporate powers (GCE/GICP); and 4. GOCCs

GOCCs: "stock or non-stock" corporations "vested with functions relating to public needs" that are "owned by the Government directly or through its instrumentalities." By definition, three attributes thus make an entity a GOCC: first, its organization as stock or Non-stock Corporation; second, the public character of its function; and third, and government ownership over the same. Possession of all three attributes is necessary to deem an entity a GOCC. MECO is a non-stock corporation based on the records and based on the fact that its earnings are not distributed as dividends to its members MECO performs functions with a Public Aspect. MECO was "authorized" by the Philippine government to perform certain "consular and other functions" relating to the promotion, protection and facilitation of Philippine interests in Taiwan. The functions of the MECO are of the kind that would otherwise be performed by the Philippines' own diplomatic and consular organs, if not only for the government's acquiescence that they instead be exercised by the MECO. The MECO Is Not Owned or Controlled by the Government. The "desire letters" that the President transmits are merely recommendatory and not binding on it. Under its by-laws, the election of its directors are done by the members themselves, its officers are elected by the directors and members are admitted through a unanimous board resolution. None of the incorporators of MECO were government officials and up to this day, none of the members, directors or officers are government appointees or public officers designated by reason of their office. Since MECO is not a GOCC, it cannot also be either of the other government instrumentalities primarily because these instrumentalities are creatures of law while MECO was incorporated under the Corporation code. The reason behind it being under the supervision of the DTI is because its functions may result in it engaged in dealings or activities that can directly contradict the Philippines' commitment to the One China Policy. This scenario can be avoided if the Executive

exercises some sort of supervision over it. But this aspect was not questioned by the petitioner, so this was deemed irrelevant to the issue by the SC. Certain accounts may be audited by the COA. MECO should be subjected to the auditing of COA as regards its collection of verification and consular fees. Pertinent is the provision of the Administrative Code, Section 14(1), Book Vthereof, which authorizes the COA to audit accounts of non–governmental entities "required to pay xxx or have government share" but only with respect to "funds xxx coming from or through the government." The said fees collected by MECO are receivables of DOLE. As to the verification fees ("service fee for the verification of overseas employment contracts, recruitment agreement or special powers of attorney"): Under Section 7 of EO No. 1022, DOLE has the authority to collect verification fees. But it entered into a series of MoA with MECO. MECO is a non-stock corporation based on the records and based on the fact that its earnings are not distributed as dividends

To its members MECO performs functions with a Public Aspect. MECO was "authorized" by the Philippine government to perform certain "consular and other functions" relating to the promotion, protection and facilitation of Philippine interests in Taiwan. The functions of the MECO are of the kind that would otherwise be performed by the Philippines' own diplomatic and consular organs, if not only for the government's acquiescence that they instead be exercised by the MECO. The MECO Is Not Owned or Controlled by the Government. The "desire letters" that the President transmits are merely recommendatory and not binding on it. Under its by-laws, the election of its directors are done by the members themselves, its officers are elected by the directors and members are admitted through a unanimous board resolution. None of the incorporators of MECO were government officials and up to this day, none of the members, directors or officers are government appointees or public officers designated by reason of their office. It is a sui generis entity. Since MECO is not a GOCC, it cannot also be either of the other government instrumentalities primarily because these instrumentalities are creatures of law (meaning an actual law was passed for their creation) while MECO was incorporated under the Corporation code. The reason behind it being under the supervision of the DTI is because its functions may result in it engaged in dealings or activities that can directly contradict the Philippines' commitment to the One China Policy. This scenario can be avoided if the Executive exercises some sort of supervision over it. But this aspect was not questioned by the petitioner, so this was deemed irrelevant to the issue by the SC. Certain accounts may be audited by the COA. MECO should be subjected to the auditing of COA as regards its collection of verification and consular fees. Pertinent is the provision of the Administrative Code, Section 14(1), Book V thereof, which authorizes the COA to audit accounts of non–governmental entities "required to pay xxx or have government share" but only with respect to "funds xxx coming from or through the government." The said fees collected by MECO are receivables of DOLE. As to the verification fees("service fee for the verification of overseas employment contracts, recruitment agreement or special powers of attorney"): Under Section 7 of EO No. 1022, DOLE has the authority to collect verification fees. But it entered into a series of MoA with MECO. MECO is not a GOCC nor is it a Governmental entity, however, certain transactions of MECO are subject to the audit jurisdiction of COA (verification fees and consular fees)

P/SUPT. HANSEL M. MARANTAN, PETITIONER, v. ATTY. JOSE MANUEL DIOKNO AND MONIQUE CU-UNJIENG LA'O, RESPONDENTS.
G.R. No. 205956, February 12, 2014,

Monique is the mother of Anton Cu-Unjieng, who, along with Brian Anthony Dulay and Francis Xavier Manzano, were killed in Pasig City in an alleged shoot-out with a police team led by Supt. Hansel Marantan. A case for Homicide was filed against the police officers before the Pasig City Regional Trial Court. Monique, along with her lawyer, Atty. Jose Manuel Diokno, filed a petition before the Supreme Court in *G. R No. 199462*, to question the downgrading of the charge from Murder to Homicide. On January 6, 2013, Supt. Marantan, leading a police-military team, killed thirteen men in Bgy. Lumutan, Atimonan, Quezon, in what became known as the "Atimonan Massacre". On January 29, 2013, Atty. Diokno, Monique, and a certain Ernesto Manzano organized and conducted a televised/radio broadcasted press conference, during the press conference, the three made references to the delay in the resolution of G.R. 199642 and recalled the previous incident where their loved ones were killed by the same Supt. Marantan. Because of this, Supt. Marantan, attaching the transcript of the interviews, filed a petition to cite in contempt Atty. Diokno and Monique. He alleged that the two violated the sub judice rule by by making malicious comments about the inaction of the Court in *G.R. No. 199462*, as well as tended to influence the proceedings in the criminal case in Pasig City RTC by prematurely concluding that he and his co-accused were guilty of murder. The press conference was organized for the sole purpose of influencing the decision of the Court in the petition before it and the criminal case in Pasig City. On the other hand, Atty. Diokno and Monique argue otherwise, holding that their statements were legitimate expressions of their desires, hopes and opinions which were taken out of context and did not actually impede, obstruct or degrade the administration of justice in a concrete way; that no criminal intent was shown as the utterances were not on their face actionable being a fair comment of a matter of public interest and concern; and that this petition is intended to stifle legitimate speech.

ISSUE:

Whether or not the utterances made by respondents tends to impede the administration of justice?

HELD:

The sub judice rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of this rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court, which reads:

Section 3. Indirect contempt to be punished after charge and hearing. – x x x a person guilty of any of the following acts may be punished for indirect contempt:

x x x

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice.

The proceedings for punishment of indirect contempt are criminal in nature. This form of contempt is conduct that is directed against the dignity and authority of the court or a judge acting

judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect.

Intent is a necessary element in criminal contempt, and no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. For a comment to be considered as contempt of court "it must really appear" that such does impede, interfere with and embarrass the administration of justice. What is, thus, sought to be protected is the all-important duty of the court to administer justice in the decision of a pending case. The specific rationale for the sub judice rule is that courts, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.

The power of contempt is inherent in all courts in order to allow them to conduct their business unhampered by publications and comments which tend to impair the impartiality of their decisions or otherwise obstruct the administration of justice. As important as the maintenance of freedom of speech, is the maintenance of the independence of the Judiciary. The "clear and present danger" rule may serve as an aid in determining the proper constitutional boundary between these two rights.

The "clear and present danger" rule means that the evil consequence of the comment must be "extremely serious and the degree of imminence extremely high" before an utterance can be punished. There must exist a clear and present danger that the utterance will harm the administration of justice. Freedom of speech should not be impaired through the exercise of the power of contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice. It must constitute an imminent, not merely a likely, threat.

The contemptuous statements made by the respondents allegedly relate to the merits of the case, particularly the guilt of petitioner, and the conduct of the Court as to its failure to decide G.R. No. 199462.

As to the merits, the comments seem to be what the respondents claim to be an expression of their opinion that their loved ones were murdered by Marantan. This is merely a reiteration of their position in G.R. No. 199462, which precisely calls the Court to upgrade the charges from homicide to murder. The Court detects no malice on the face of the said statements. The mere restatement of their argument in their petition cannot actually, or does not even tend to, influence the Court.

As to the conduct of the Court, a review of the respondents' comments reveals that they were simply stating that it had not yet resolved their petition. There was no complaint, express or implied, that an inordinate amount of time had passed since the petition was filed without any action from the Court. There appears no attack or insult on the dignity of the Court either.

"A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case, it must necessarily tend to obstruct the orderly and fair administration of justice." By no stretch of the imagination could the respondents' comments pose a serious and imminent threat to the administration of justice. No criminal intent to impede, obstruct, or degrade the administration of justice can be inferred from the comments of the respondents.

Freedom of public comment should, in borderline instances, weigh heavily against a possible tendency to influence pending cases. The power to punish for contempt, being drastic and extraordinary

in its nature, should not be resorted to unless necessary in the interest of justice. In the present case, such necessity is wanting.

SMART COMMUNICATIONS, INC. v. MUNICIPALITY OF MALVAR, BATANGAS
G.R. No. 204429, February 18, 2014

In the course of its business, Smart constructed a telecommunications tower within the territorial jurisdiction of the Municipality. The construction of the tower was for the purpose of receiving and transmitting cellular communications within the covered area. On 30 July 2003, the Municipality passed Ordinance No. 18, series of 2003, entitled "An Ordinance Regulating the Establishment of Special Projects." On 24 August 2004, Smart received from the Permit and Licensing Division of the Office of the Mayor of the Municipality an assessment letter with a schedule of payment for the total amount of ₱389,950.00 for Smart's telecommunications tower.

Smart challenged the validity of Ordinance No. 18 on which the assessment was based. However the RTC did not rule on the constitutionality of Ordinance no. 18 but confined on the validity of assessment. The petitioner subsequently filed its petition for review before the CTA First Division but the latter denied it in its resolution. Likewise, the CTA en banc dismissed the petition on the ground of lack of jurisdiction. Hence, this petition.

ISSUE:

Whether the decision of the CTA en banc is contrary to law and jurisprudence considering that the respondent has no authority to impose the so-called "fees" on the basis of the void ordinance.

HELD:

The Court finds that the fees imposed under Ordinance No. 18 are not taxes.

Section 5, Article X of the 1987 Constitution provides that "each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government."

Consistent with this constitutional mandate, the LGC grants the taxing powers to each local government unit. Specifically, Section 142 of the LGC grants municipalities the power to levy taxes, fees, and charges not otherwise levied by provinces. Section 143 of the LGC provides for the scale of taxes on business that may be imposed by municipalities[17] while Section 147 of the same law provides for the fees and charges that may be imposed by municipalities on business and occupation.

The LGC defines the term "charges" as referring to pecuniary liability, as rents or fees against persons or property, while the term "fee" means "a charge fixed by law or ordinance for the regulation or inspection of a business or activity."

In this case, the Municipality issued Ordinance No. 18, which is entitled "An Ordinance Regulating the Establishment of Special Projects," to regulate the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and

other apparatus, and provide for the correction, condemnation or removal of the same when found to be dangerous, defective or otherwise hazardous to the welfare of the inhabitant[s].It was also envisioned to address the foreseen "environmental depredation" to be brought about by these "special projects" to the Municipality. Pursuant to these objectives, the Municipality imposed fees on various structures, which included telecommunications towers.

As clearly stated in its whereas clauses, the primary purpose of Ordinance No. 18 is to regulate the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus" listed therein, which included Smart's telecommunications tower. Clearly, the purpose of the assailed Ordinance is to regulate the enumerated activities particularly related to the construction and maintenance of various structures. The fees in Ordinance No. 18 are not impositions on the building or structure itself; rather, they are impositions on the activity subject of government regulation, such as the installation and construction of the structures. Since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included "cell sites" or telecommunications towers, the fees imposed in Ordinance No. 18 are primarily regulatory in nature, and not primarily revenue-raising. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Thus, the fees imposed in Ordinance No. 18 are not taxes.

Settled is the rule that every law, in this case an ordinance, is presumed valid. To strike down a law as unconstitutional, Smart has the burden to prove a clear and unequivocal breach of the Constitution, which Smart miserably failed to do.

DISINI v. SECRETARY OF JUSTICE
G.R. No. 203335: February 11, 2014

Petitioners assail the validity of several provision of the Republic Act (R.A.) 10175, the Cybercrime Prevention Act of 2012.

Petitioners claim that the means adopted by the cybercrime law for regulating undesirable cyberspace activities violate certain of their constitutional rights. The government of course asserts that the law merely seeks to reasonably put order into cyberspace activities, punish wrongdoings, and prevent hurtful attacks on the system.

ISSUES:

Whether or not the following provisions are valid and constitutional.

a. Section 4(a)(1) on Illegal Access;
b. Section 4(a)(3) on Data Interference;
c. Section 4(a)(6) on Cyber-squatting;
d. Section 4(b)(3) on Identity Theft;
e. Section 4(c)(1) on Cybersex;
f. Section 4(c)(2) on Child Pornography;
g. Section 4(c)(3) on Unsolicited Commercial Communications;
h. Section 4(c)(4) on Libel;
i. Section 5 on Aiding or Abetting and Attempt in the Commission of Cybercrimes;
j. Section 6 on the Penalty of One Degree Higher;
k. Section 7 on the Prosecution under both the Revised Penal Code (RPC) and R.A. 10175;

l. Section 8 on Penalties;
m. Section 12 on Real-Time Collection of Traffic Data;
n. Section 13 on Preservation of Computer Data;
o. Section 14 on Disclosure of Computer Data;
p. Section 15 on Search, Seizure and Examination of Computer Data;
q. Section 17 on Destruction of Computer Data;
r. Section 19 on Restricting or Blocking Access to Computer Data;
s. Section 20 on Obstruction of Justice;
t. Section 24 on Cybercrime Investigation and Coordinating Center (CICC); and
u. Section 26(a) on CICCs Powers and Functions.

Some petitioners also raise the constitutionality of related Articles 353, 354, 361, and 362 of the RPC on the crime of libel.

HELD:

a. Valid and constitutional

Section 4(a)(1) provides:

> Section 4. Cybercrime Offenses. The following acts constitute the offense of cybercrime punishable under this Act:
>
> (a) Offenses against the confidentiality, integrity and availability of computer data and systems:
>
> (1) Illegal Access. The access to the whole or any part of a computer system without right.

Petitioners contend that Section 4(a)(1) fails to meet the strict scrutiny standard required of laws that interfere with the fundamental rights of the people and should thus be struck down.

The Court finds nothing in Section 4(a)(1) that calls for the application of the strict scrutiny standard since no fundamental freedom, like speech, is involved in punishing what is essentially a condemnable act accessing the computer system of another without right. It is a universally condemned conduct.

Besides, a clients engagement of an ethical hacker requires an agreement between them as to the extent of the search, the methods to be used, and the systems to be tested. Since the ethical hacker does his job with prior permission from the client, such permission would insulate him from the coverage of Section 4(a)(1).

b. Valid and constitutional.

Section 4(a)(3) provides:

> (3) Data Interference. The intentional or reckless alteration, damaging, deletion or deterioration of computer data, electronic document, or electronic data message, without right, including the introduction or transmission of viruses.

Petitioners claim that Section 4(a)(3) suffers from overbreadth in that, while it seeks to discourage data interference, it intrudes into the area of protected speech and expression, creating a chilling and deterrent effect on these guaranteed freedoms.

Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms. But Section 4(a)(3) does not encroach on these freedoms at all. It simply punishes what essentially is a form of vandalism, the act of willfully destroying without right the things that belong to others, in this case their computer data, electronic document, or electronic data message. Such act has no connection to guaranteed freedoms. There is no freedom to destroy other people's computer systems and private documents.

Besides, the overbreadth challenge places on petitioners the heavy burden of proving that under no set of circumstances will Section 4(a)(3) be valid.Petitioner has failed to discharge this burden.

c. Valid and constitutional

Section 4(a)(6) provides:

(6) Cyber-squatting. The acquisition of domain name over the internet in bad faith to profit, mislead, destroy the reputation, and deprive others from registering the same, if such a domain name is:

(i) Similar, identical, or confusingly similar to an existing trademark registered with the appropriate government agency at the time of the domain name registration;

(ii) Identical or in any way similar with the name of a person other than the registrant, in case of a personal name; and

(iii) Acquired without right or with intellectual property interests in it.

Petitioners claim that Section 4(a)(6) or cyber-squatting violates the equal protection clausein that, not being narrowly tailored, it will cause a user using his real name to suffer the same fate as those who use aliases or take the name of another in satire, parody, or any other literary device.

The law is reasonable in penalizing the offender for acquiring the domain name in bad faith to profit, mislead, destroy reputation, or deprive others who are not ill-motivated of the rightful opportunity of registering the same.

d. Valid and constitutional

Section 4(b)(3) provides:

b) Computer-related Offenses:

x x x x

(3) Computer-related Identity Theft. The intentional acquisition, use, misuse, transfer, possession, alteration, or deletion of identifying information belonging to another, whether

natural or juridical, without right: Provided: that if no damage has yet been caused, the penalty imposable shall be one (1) degree lower.

Petitioners claim that Section 4(b)(3) violates the constitutional rights to due process and to privacy and correspondence, and transgresses the freedom of the press.

In Morfe v. Mutuc,it ruled that the right to privacy exists independently of its identification with liberty; it is in itself fully deserving of constitutional protection.

Relevant to any discussion of the right to privacy is the concept known as the "Zones of Privacy."

Zones of privacy are recognized and protected in our laws. Within these zones, any form of intrusion is impermissible unless excused by law and in accordance with customary legal process. The meticulous regard we accord to these zones arises not only from our conviction that the right to privacy is a "constitutional right" and "the right most valued by civilized men," but also from our adherence to the Universal Declaration of Human Rights which mandates that, "no one shall be subjected to arbitrary interference with his privacy" and "everyone has the right to the protection of the law against such interference or attacks." In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon, 535 Phil. 687, 714-715 (2006).

Two constitutional guarantees create these zones of privacy: (a) the right against unreasonable searchesand seizures, which is the basis of the right to be let alone, and (b) the right to privacy of communication and correspondence.In assessing the challenge that the State has impermissibly intruded into these zones of privacy, a court must determine whether a person has exhibited a reasonable expectation of privacy and, if so, whether that expectation has been violated by unreasonable government intrusion.

Petitioners simply fail to show how government effort to curb computer-related identity theft violates the right to privacy and correspondence as well as the right to due process of law.

Clearly, what this section regulates are specific actions: the acquisition, use, misuse or deletion of personal identifying data of another. There is no fundamental right to acquire anothers personal data.

Further, petitioners fear that Section 4(b)(3) violates the freedom of the press in that journalists would be hindered from accessing the unrestricted user account of a person in the news to secure information about him that could be published.

The Court held, the press, whether in quest of news reporting or social investigation, has nothing to fear since a special circumstance is present to negate intent to gain which is required by this Section.

e. Valid and constitutional

Section 4(c)(1) provides:

(c) Content-related Offenses:

(1) Cybersex. The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.

Petitioners claim that the above violates the freedom of expression clause.They express fear that private communications of sexual character between husband and wife or consenting adults, which are not regarded as crimes under the penal code, would now be regarded as crimes when done "for favor" in cyberspace. In common usage, the term "favor" includes "gracious kindness," "a special privilege or right granted or conceded," or "a token of love (as a ribbon) usually worn conspicuously."This meaning given to the term "favor" embraces socially tolerated trysts. The law as written would invite law enforcement agencies into the bedrooms of married couples or consenting individuals.

The Act actually seeks to punish cyber prostitution, white slave trade, and pornography for favor and consideration. This includes interactive prostitution and pornography, i.e., by webcam.

Likewise, engaging in sexual acts privately through internet connection, perceived by some as a right, has to be balanced with the mandate of the State to eradicate white slavery and the exploitation of women.

f. Valid and constitutional

Section 4(c)(2) provides:

(2) Child Pornography. The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: Provided, That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.

The above merely expands the scope of the Anti-Child Pornography Act of 2009(ACPA) to cover identical activities in cyberspace. In theory, nothing prevents the government from invoking the ACPA when prosecuting persons who commit child pornography using a computer system. Actually, ACPAs definition of child pornography already embraces the use of "electronic, mechanical, digital, optical, magnetic or any other means."

Of course, the law makes the penalty higher by one degree when the crime is committed in cyberspace. But no one can complain since the intensity or duration of penalty is a legislative prerogative and there is rational basis for such higher penalty.The potential for uncontrolled proliferation of a particular piece of child pornography when uploaded in the cyberspace is incalculable.

g. void and unconstitutional

Section 4(c)(3) provides:

(3) Unsolicited Commercial Communications. The transmission of commercial electronic communication with the use of computer system which seeks to advertise, sell, or offer for sale products and services are prohibited unless:

(i) There is prior affirmative consent from the recipient; or

(ii) The primary intent of the communication is for service and/or administrative announcements from the sender to its existing users, subscribers or customers; or
(iii) The following conditions are present:

(aa) The commercial electronic communication contains a simple, valid, and reliable way for the recipient to reject receipt of further commercial electronic messages (opt-out) from the same source;

(bb) The commercial electronic communication does not purposely disguise the source of the electronic message; and

(cc) The commercial electronic communication does not purposely include misleading information in any part of the message in order to induce the recipients to read the message.

The above penalizes the transmission of unsolicited commercial communications, also known as "spam." The term "spam" surfaced in early internet chat rooms and interactive fantasy games. One who repeats the same sentence or comment was said to be making a "spam."

The Government, represented by the Solicitor General, points out that unsolicited commercial communications or spams are a nuisance that wastes the storage and network capacities of internet service providers, reduces the efficiency of commerce and technology, and interferes with the owners peaceful enjoyment of his property. Transmitting spams amounts to trespass to ones privacy since the person sending out spams enters the recipients domain without prior permission. The OSG contends that commercial speech enjoys less protection in law.

These have never been outlawed as nuisance since people might have interest in such ads. What matters is that the recipient has the option of not opening or reading these mail ads. That is true with spams. Their recipients always have the option to delete or not to read them.

To prohibit the transmission of unsolicited ads would deny a person the right to read his emails, even unsolicited commercial ads addressed to him. Unsolicited advertisements are legitimate forms of expression.

h. Section 4(c)(4) penalizing online libel is valid and constitutional with respect to the original author of the post; but void and unconstitutional with respect to others who simply receive the post and react to it Section 4(c)(4) of the Cyber Crime Law

The RPC provisions on libel read:

Art. 353. Definition of libel. A libel is public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

Art. 354. Requirement for publicity. Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

1. A private communication made by any person to another in the performance of any legal, moral or social duty; and

2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Art. 355. Libel means by writings or similar means. A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prision correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.

The libel provision of the cybercrime law, on the other hand, merely incorporates to form part of it the provisions of the RPC on libel. Thus Section 4(c)(4) reads:

Sec. 4. Cybercrime Offenses. The following acts constitute the offense of cybercrime punishable under this Act:

x x x x

(c) Content-related Offenses:

x x x x

(4) Libel. The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

Petitioners lament that libel provisions of the penal codeand, in effect, the libel provisions of the cybercrime law carry with them the requirement of "presumed malice" even when the latest jurisprudence already replaces it with the higher standard of "actual malice" as a basis for conviction.Petitioners argue that inferring "presumed malice" from the accuseds defamatory statement by virtue of Article 354 of the penal code infringes on his constitutionally guaranteed freedom of expression.

Libel is not a constitutionally protected speech and that the government has an obligation to protect private individuals from defamation. Indeed, cyberlibel is actually not a new crime since Article 353, in relation to Article 355 of the penal code, already punishes it. In effect, Section 4(c)(4) above merely affirms that online defamation constitutes "similar means" for committing libel.

But the Courts acquiescence goes only insofar as the cybercrime law penalizes the author of the libelous statement or article. Cyberlibel brings with it certain intricacies, unheard of when the penal code provisions on libel were enacted. The culture associated with internet media is distinct from that of print.

The internet is characterized as encouraging a freewheeling, anything-goes writing style. In a sense, they are a world apart in terms of quickness of the readers reaction to defamatory statements

posted in cyberspace, facilitated by one-click reply options offered by the networking site as well as by the speed with which such reactions are disseminated down the line to other internet users.

i. Section 5 of the cybercrime law that punishes "aiding or abetting" libel on the cyberspace is a nullity.

Section 5 provides:

Sec. 5. Other Offenses. The following acts shall also constitute an offense:

(a) Aiding or Abetting in the Commission of Cybercrime. Any person who willfully abets or aids in the commission of any of the offenses enumerated in this Act shall be held liable.

(b) Attempt in the Commission of Cybercrime. Any person who willfully attempts to commit any of the offenses enumerated in this Act shall be held liable.

Petitioners assail the constitutionality of Section 5 that renders criminally liable any person who willfully abets or aids in the commission or attempts to commit any of the offenses enumerated as cybercrimes. It suffers from overbreadth, creating a chilling and deterrent effect on protected expression.

The Solicitor General contends, however, that the current body of jurisprudence and laws on aiding and abetting sufficiently protects the freedom of expression of "netizens," the multitude that avail themselves of the services of the internet. He points out that existing laws and jurisprudence sufficiently delineate the meaning of "aiding or abetting" a crime as to protect the innocent. The Solicitor General argues that plain, ordinary, and common usage is at times sufficient to guide law enforcement agencies in enforcing the law.

Libel in the cyberspace can of course stain a persons image with just one click of the mouse. Scurrilous statements can spread and travel fast across the globe like bad news. Moreover, cyberlibel often goes hand in hand with cyberbullying that oppresses the victim, his relatives, and friends, evoking from mild to disastrous reactions. Still, a governmental purpose, which seeks to regulate the use of this cyberspace communication technology to protect a persons reputation and peace of mind, cannot adopt means that will unnecessarily and broadly sweep, invading the area of protected freedoms. Griswold v. Connecticut, 381 U.S. 479 (1965).

If such means are adopted, self-inhibition borne of fear of what sinister predicaments await internet users will suppress otherwise robust discussion of public issues. Democracy will be threatened and with it, all liberties. Penal laws should provide reasonably clear guidelines for law enforcement officials and triers of facts to prevent arbitrary and discriminatory enforcement. (Adonis) G.R. No. 203378The terms "aiding or abetting" constitute broad sweep that generates chilling effect on those who express themselves through cyberspace posts, comments, and other messages.

Section 5 of the cybercrime law that punishes "aiding or abetting" libel on the cyberspace is a nullity. As already stated, the cyberspace is an incomparable, pervasive medium of communication. It is inevitable that any government threat of punishment regarding certain uses of the medium creates a chilling effect on the constitutionally-protected freedom of expression of the great masses that use it. In this case, the particularly complex web of interaction on social media websites would give law enforcers such latitude that they could arbitrarily or selectively enforce the law.

Section 5 with respect to Section 4(c)(4) is unconstitutional. Its vagueness raises apprehension on the part of internet users because of its obvious chilling effect on the freedom of expression, especially since the crime of aiding or abetting ensnares all the actors in the cyberspace front in a fuzzy way.In the absence of legislation tracing the interaction of netizens and their level of responsibility such as in other countries, Section 5, in relation to Section 4(c)(4) on Libel, Section 4(c)(3) on Unsolicited Commercial Communications, and Section 4(c)(2) on Child Pornography, cannot stand scrutiny.

But the crime of aiding or abetting the commission of cybercrimes under Section 5 should be permitted to apply to Section 4(a)(1) on Illegal Access, Section 4(a)(2) on Illegal Interception, Section 4(a)(3) on Data Interference, Section 4(a)(4) on System Interference, Section 4(a)(5) on Misuse of Devices, Section 4(a)(6) on Cyber-squatting, Section 4(b)(1) on Computer-related Forgery, Section 4(b)(2) on Computer-related Fraud, Section 4(b)(3) on Computer-related Identity Theft, and Section 4(c)(1) on Cybersex. None of these offenses borders on the exercise of the freedom of expression.

j. valid and constitutional

Section 6 provides:

> Sec. 6. All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: Provided, That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

Section 6 merely makes commission of existing crimes through the internet a qualifying circumstance. As the Solicitor General points out, there exists a substantial distinction between crimes committed through the use of information and communications technology and similar crimes committed using other means. In using the technology in question, the offender often evades identification and is able to reach far more victims or cause greater harm. The distinction, therefore, creates a basis for higher penalties for cybercrimes.

k. valid and constitutional

Section 7 provides:

> Sec. 7. Liability under Other Laws. A prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code, as amended, or special laws.

Online libel is different. There should be no question that if the published material on print, said to be libelous, is again posted online or vice versa, that identical material cannot be the subject of two separate libels. The two offenses, one a violation of Article 353 of the Revised Penal Code and the other a violation of Section 4(c)(4) of R.A. 10175 involve essentially the same elements and are in fact one and the same offense. Indeed, the OSG itself claims that online libel under Section 4(c)(4) is not a new crime but is one already punished under Article 353. Section 4(c)(4) merely establishes the computer system as another means of publication. Charging the offender under both laws would be a blatant violation of the proscription against double jeopardy.

The Court RESOLVES to LEAVE THE DETERMINATION of the correct application of Section 7 that authorizes prosecution of the offender under both the Revised Penal Code and Republic Act 10175 to actual cases, WITH THE EXCEPTION of the crimes of:

1. Online libel as to which, charging the offender under both Section 4(c)(4) of Republic Act 10175 and Article 353 of the Revised Penal Code constitutes a violation of the proscription against double jeopardy; as well as

2. Child pornography committed online as to which, charging the offender under both Section 4(c)(2) of Republic Act 10175 and Republic Act 9775 or the Anti-Child Pornography Act of 2009 also constitutes a violation of the same proscription, and, in respect to these, is void and unconstitutional.

l. valid and cosntitutional

Section 8 provides:

> Sec. 8. Penalties. Any person found guilty of any of the punishable acts enumerated in Sections 4(a) and 4(b) of this Act shall be punished with imprisonment of prision mayor or a fine of at least Two hundred thousand pesos (PhP200,000.00) up to a maximum amount commensurate to the damage incurred or both.
>
> Any person found guilty of the punishable act under Section 4(a)(5) shall be punished with imprisonment of prision mayor or a fine of not more than Five hundred thousand pesos (PhP500,000.00) or both.
>
> If punishable acts in Section 4(a) are committed against critical infrastructure, the penalty of reclusion temporal or a fine of at least Five hundred thousand pesos (PhP500,000.00) up to maximum amount commensurate to the damage incurred or both, shall be imposed.
>
> Any person found guilty of any of the punishable acts enumerated in Section 4(c)(1) of this Act shall be punished with imprisonment of prision mayor or a fine of at least Two hundred thousand pesos (PhP200,000.00) but not exceeding One million pesos (PhP1,000,000.00) or both.
>
> Any person found guilty of any of the punishable acts enumerated in Section 4(c)(2) of this Act shall be punished with the penalties as enumerated in Republic Act No. 9775 or the "Anti-Child Pornography Act of 2009:" Provided, That the penalty to be imposed shall be one (1) degree higher than that provided for in Republic Act No. 9775, if committed through a computer system.
>
> Any person found guilty of any of the punishable acts enumerated in Section 4(c)(3) shall be punished with imprisonment of arresto mayor or a fine of at least Fifty thousand pesos (PhP50,000.00) but not exceeding Two hundred fifty thousand pesos (PhP250,000.00) or both.
>
> Any person found guilty of any of the punishable acts enumerated in Section 5 shall be punished with imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (PhP100,000.00) but not exceeding Five hundred thousand pesos (PhP500,000.00) or both.

The matter of fixing penalties for the commission of crimes is as a rule a legislative prerogative. Here the legislature prescribed a measure of severe penalties for what it regards as deleterious cybercrimes. Judges and magistrates can only interpret and apply them and have no authority to modify or revise their range as determined by the legislative department.

The courts should not encroach on this prerogative of the lawmaking body.

m. void and unconstitutional

Section 12 provides:

> Sec. 12. Real-Time Collection of Traffic Data. Law enforcement authorities, with due cause, shall be authorized to collect or record by technical or electronic means traffic data in real-time associated with specified communications transmitted by means of a computer system.
>
> Traffic data refer only to the communications origin, destination, route, time, date, size, duration, or type of underlying service, but not content, nor identities.
>
> All other data to be collected or seized or disclosed will require a court warrant.
>
> Service providers are required to cooperate and assist law enforcement authorities in the collection or recording of the above-stated information.
>
> The court warrant required under this section shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and the showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed, or is being committed, or is about to be committed; (2) that there are reasonable grounds to believe that evidence that will be obtained is essential to the conviction of any person for, or to the solution of, or to the prevention of, any such crimes; and (3) that there are no other means readily available for obtaining such evidence.

Petitioners assail the grant to law enforcement agencies of the power to collect or record traffic data in real time as tending to curtail civil liberties or provide opportunities for official abuse. They claim that data showing where digital messages come from, what kind they are, and where they are destined need not be incriminating to their senders or recipients before they are to be protected. Petitioners invoke the right of every individual to privacy and to be protected from government snooping into the messages or information that they send to one another.

Undoubtedly, the State has a compelling interest in enacting the cybercrime law for there is a need to put order to the tremendous activities in cyberspace for public good. To do this, it is within the realm of reason that the government should be able to monitor traffic data to enhance its ability to combat all sorts of cybercrimes.

Informational privacy has two aspects: the right not to have private information disclosed, and the right to live freely without surveillance and intrusion. In determining whether or not a matter is entitled to the right to privacy, this Court has laid down a two-fold test. The first is a subjective test, where one claiming the right must have an actual or legitimate expectation of privacy over a certain matter. The second is an objective test, where his or her expectation of privacy must be one society is prepared to accept as objectively reasonable. 429 U.S. 589 (1977)

Since the validity of the cybercrime law is being challenged, not in relation to its application to a particular person or group, petitioners challenge to Section 12 applies to all information and communications technology (ICT) users, meaning the large segment of the population who use all sorts of electronic devices to communicate with one another. Consequently, the expectation of privacy is to be measured from the general publics point of view. Without reasonable expectation of privacy, the right to it would have no basis in fact.

In Whalen v. Roe, 429 U.S. 589 (1977)the United States Supreme Court classified privacy into two categories: decisional privacy and informational privacy. Decisional privacy involves the right to independence in making certain important decisions, while informational privacy refers to the interest in avoiding disclosure of personal matters. It is the latter rightthe right to informational privacythat those who oppose government collection or recording of traffic data in real-time seek to protect.

Section 12 does not permit law enforcement authorities to look into the contents of the messages and uncover the identities of the sender and the recipient.

Section 12, of course, limits the collection of traffic data to those "associated with specified communications." But this supposed limitation is no limitation at all since, evidently, it is the law enforcement agencies that would specify the target communications. The power is virtually limitless, enabling law enforcement authorities to engage in "fishing expedition," choosing whatever specified communication they want. This evidently threatens the right of individuals to privacy.

The Court must ensure that laws seeking to take advantage of these technologies be written with specificity and definiteness as to ensure respect for the rights that the Constitution guarantees.

n. valid and constitutional

Section 13 provides:

> Sec. 13. Preservation of Computer Data. The integrity of traffic data and subscriber information relating to communication services provided by a service provider shall be preserved for a minimum period of six (6) months from the date of the transaction. Content data shall be similarly preserved for six (6) months from the date of receipt of the order from law enforcement authorities requiring its preservation.
>
> Law enforcement authorities may order a one-time extension for another six (6) months: Provided, That once computer data preserved, transmitted or stored by a service provider is used as evidence in a case, the mere furnishing to such service provider of the transmittal document to the Office of the Prosecutor shall be deemed a notification to preserve the computer data until the termination of the case.
>
> The service provider ordered to preserve computer data shall keep confidential the order and its compliance.

Petitioners in G.R. No. 203391 (Palatino v. Ochoa)claim that Section 13 constitutes an undue deprivation of the right to property. They liken the data preservation order that law enforcement authorities are to issue as a form of garnishment of personal property in civil forfeiture proceedings. Such order prevents internet users from accessing and disposing of traffic data that essentially belong to them.

No doubt, the contents of materials sent or received through the internet belong to their authors or recipients and are to be considered private communications. But it is not clear that a service provider has an obligation to indefinitely keep a copy of the same as they pass its system for the benefit of users. By virtue of Section 13, however, the law now requires service providers to keep traffic data and subscriber information relating to communication services for at least six months from the date of the transaction and those relating to content data for at least six months from receipt of the order for their preservation.

At any rate, as the Solicitor General correctly points out, the data that service providers preserve on orders of law enforcement authorities are not made inaccessible to users by reason of the issuance of such orders. The process of preserving data will not unduly hamper the normal transmission or use of the same.

m. valid and constitutional

Section 14 provides:

> Sec. 14. Disclosure of Computer Data. Law enforcement authorities, upon securing a court warrant, shall issue an order requiring any person or service provider to disclose or submit subscribers information, traffic data or relevant data in his/its possession or control within seventy-two (72) hours from receipt of the order in relation to a valid complaint officially docketed and assigned for investigation and the disclosure is necessary and relevant for the purpose of investigation.

The process envisioned in Section 14 is being likened to the issuance of a subpoena.

Besides, what Section 14 envisions is merely the enforcement of a duly issued court warrant, a function usually lodged in the hands of law enforcers to enable them to carry out their executive functions. The prescribed procedure for disclosure would not constitute an unlawful search or seizure nor would it violate the privacy of communications and correspondence. Disclosure can be made only after judicial intervention.

n. valid and constitutional

Section 15 provides:

> Sec. 15. Search, Seizure and Examination of Computer Data. Where a search and seizure warrant is properly issued, the law enforcement authorities shall likewise have the following powers and duties.
>
> Within the time period specified in the warrant, to conduct interception, as defined in this Act, and:
>
> (a) To secure a computer system or a computer data storage medium;
>
> (b) To make and retain a copy of those computer data secured;
>
> (c) To maintain the integrity of the relevant stored computer data;

(d) To conduct forensic analysis or examination of the computer data storage medium; and

(e) To render inaccessible or remove those computer data in the accessed computer or computer and communications network.

Pursuant thereof, the law enforcement authorities may order any person who has knowledge about the functioning of the computer system and the measures to protect and preserve the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the search, seizure and examination.

Law enforcement authorities may request for an extension of time to complete the examination of the computer data storage medium and to make a return thereon but in no case for a period longer than thirty (30) days from date of approval by the court.

Petitioners challenge Section 15 on the assumption that it will supplant established search and seizure procedures.

The exercise of these duties do not pose any threat on the rights of the person from whom they were taken. Section 15 does not appear to supersede existing search and seizure rules but merely supplements them.

o. valid and constitutional

Section 17 provides:

Sec. 17. Destruction of Computer Data. Upon expiration of the periods as provided in Sections 13 and 15, service providers and law enforcement authorities, as the case may be, shall immediately and completely destroy the computer data subject of a preservation and examination.

Petitioners claim that such destruction of computer data subject of previous preservation or examination violates the users right against deprivation of property without due process of law. But, as already stated, it is unclear that the user has a demandable right to require the service provider to have that copy of the data saved indefinitely for him in its storage system. If he wanted them preserved, he should have saved them in his computer when he generated the data or received it. He could also request the service provider for a copy before it is deleted.

p. The Court is therefore compelled to strike down Section 19 for being violative of the constitutional guarantees to freedom of expression and against unreasonable searches and seizures.

Section 19 empowers the Department of Justice to restrict or block access to computer data:

Sec. 19. Restricting or Blocking Access to Computer Data. When a computer data is prima facie found to be in violation of the provisions of this Act, the DOJ shall issue an order to restrict or block access to such computer data.

Petitioners contest Section 19 in that it stifles freedom of expression and violates the right against unreasonable searches and seizures. The Solicitor General concedes that this provision may be

unconstitutional. But since laws enjoy a presumption of constitutionality, the Court must satisfy itself that Section 19 indeed violates the freedom and right mentioned.

Not only does Section 19 preclude any judicial intervention, but it also disregards jurisprudential guidelines established to determine the validity of restrictions on speech. Restraints on free speech are generally evaluated on one of or a combination of three tests: the dangerous tendency doctrine, the balancing of interest test, and the clear and present danger rule. Section 19, however, merely requires that the data to be blocked be found prima facie in violation of any provision of the cybercrime law. Taking Section 6 into consideration, this can actually be made to apply in relation to any penal provision. It does not take into consideration any of the three tests mentioned above.

q. valid and constitutional

Section 20 provides:

> Sec. 20. Noncompliance. Failure to comply with the provisions of Chapter IV hereof specifically the orders from law enforcement authorities shall be punished as a violation of Presidential Decree No. 1829 with imprisonment of prision correctional in its maximum period or a fine of One hundred thousand pesos (Php100,000.00) or both, for each and every noncompliance with an order issued by law enforcement authorities.

Petitioners challenge Section 20, alleging that it is a bill of attainder. The argument is that the mere failure to comply constitutes a legislative finding of guilt, without regard to situations where non-compliance would be reasonable or valid.

But since the non-compliance would be punished as a violation of Presidential Decree (P.D.) 1829, PENALIZING OBSTRUCTION OF APPREHENSION AND PROSECUTION OF CRIMINAL OFFENDERS. Section 20 necessarily incorporates elements of the offense which are defined therein.

Thus, the act of non-compliance, for it to be punishable, must still be done "knowingly or willfully." There must still be a judicial determination of guilt, during which, as the Solicitor General assumes, defense and justifications for non-compliance may be raised. Thus, Section 20 is valid insofar as it applies to the provisions of Chapter IV which are not struck down by the Court.

r. Sections 24 and 26(a) of the Cybercrime Law are valid and constitutional

Sections 24 and 26(a) provide:

> Sec. 24. Cybercrime Investigation and Coordinating Center. There is hereby created, within thirty (30) days from the effectivity of this Act, an inter-agency body to be known as the Cybercrime Investigation and Coordinating Center (CICC), under the administrative supervision of the Office of the President, for policy coordination among concerned agencies and for the formulation and enforcement of the national cybersecurity plan.
>
> Sec. 26. Powers and Functions. The CICC shall have the following powers and functions:

(a) To formulate a national cybersecurity plan and extend immediate assistance of real time commission of cybercrime offenses through a computer emergency response team (CERT); x x x.

Petitioners mainly contend that Congress invalidly delegated its power when it gave the Cybercrime Investigation and Coordinating Center (CICC) the power to formulate a national cybersecurity plan without any sufficient standards or parameters for it to follow.

In order to determine whether there is undue delegation of legislative power, the Court has adopted two tests: the completeness test and the sufficient standard test. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it.1avvphi1The second test mandates adequate guidelines or limitations in the law to determine the boundaries of the delegates authority and prevent the delegation from running riot. Gerochi v. Department of Energy, 554 Phil. 563 (2007).

Here, the cybercrime law is complete in itself when it directed the CICC to formulate and implement a national cybersecurity plan. Also, contrary to the position of the petitioners, the law gave sufficient standards for the CICC to follow when it provided a definition of cybersecurity.

Cybersecurity refers to the collection of tools, policies, risk management approaches, actions, training, best practices, assurance and technologies that can be used to protect cyber environment and organization and users assets.This definition serves as the parameters within which CICC should work in formulating the cybersecurity plan.

Further, the formulation of the cybersecurity plan is consistent with the policy of the law to "prevent and combat such [cyber] offenses by facilitating their detection, investigation, and prosecution at both the domestic and international levels, and by providing arrangements for fast and reliable international cooperation." This policy is clearly adopted in the interest of law and order, which has been considered as sufficient standard.

LUCENA D. DEMAALA *v.* SANDIGANBAYAN (THIRD DIVISION) AND OMBUDSMAN
G.R. No. 173523, February 19, 2014

Petitioner Lucena D. Demaala is the Municipal Mayor of Narra, Palawan, and is the accused in Criminal Case Nos. 27208, 27210, 27212, 27214, 27216-27219, and 27223-27228 for violations of Section 3(h) of Republic Act No. 3019[4] (RA 3019), which cases are pending before the *Sandiganbayan*.

On January 9, 2006, the Office of the Special Prosecutor filed before the *Sandiganbayan* a Motion to Suspend the Accused Pursuant to Section 13, RA 3019[5] arguing that under Section 13 of RA 3019,[6] petitioner's suspension from office was mandatory. Petitioner opposed[7] the motion claiming that there is no proof that the evidence against her was strong; that her continuance in office does not prejudice the cases against her nor pose a threat to the safety and integrity of the evidence and records in her office; and that her re-election to office justifies the denial of suspension

ISSUE:

Petitioner claims that she was denied due process when the *Sandiganbayan* issued its May 23, 2006 Resolution denying her Motion for Reconsideration even before the same could be heard on the scheduled August 2 and 3, 2006 hearings.

HELD:

The Court dismisses the Petition.

The only issue is whether petitioner was denied due process when the *Sandiganbayan* issued its May 23, 2006 Resolution denying the Motion for Reconsideration without conducting a hearing thereon.

Petitioner's cause of action lies in the argument that her Motion for Reconsideration, which was originally set for hearing on April 26, 2006, was reset to August 2 and 3, 2006 via the *Sandiganbayan*'s April 21, 2006 Order. Nonetheless, before the said date could arrive, the anti-graft court supposedly precipitately issued the assailed May 23, 2006 Resolution denying her Motion for Reconsideration, thus depriving her of the opportunity to be heard.

The above premise, however, is grossly erroneous.

A reading and understanding of the April 21, 2006 Order of the *Sandiganbayan* indicates that what it referred to were the two hearing dates of April 26 and 27, 2006 covering the continuation of the trial proper - the ongoing presentation of the prosecution's evidence - and *not* the single hearing date of April 26, 2006 for the determination of petitioner's Motion for Reconsideration. The prosecution's manifestation and motion to reset trial itself unmistakably specified that what was being reset was the trial proper which was scheduled on April 26 and 27, 2006 *pursuant to the court's previous January 19, 2006 Order*; it had nothing at all to do with petitioner's Motion for Reconsideration.

If petitioner truly believed that the prosecution's manifestation and motion to reset trial referred to the April 26, 2006 hearing of her Motion for Reconsideration, then she should have attended the scheduled April 21, 2006 hearing thereof to reiterate her motion or object to a resetting. Her failure to attend said hearing is a strong indication that she did not consider the manifestation and motion to reset

trial as covering or pertaining to her Motion for Reconsideration which she set for hearing on April 26, 2006.

On the other hand, petitioner's failure to attend the scheduled April 26, 2006 hearing of her own Motion for Reconsideration is fatal to her cause. Her excuse - that she no longer bothered to go to court on April 26, 2006 since "she had no business to be there" - is unavailing. By being absent at the April 21, 2006 hearing, petitioner did not consider the prosecution's manifestation and motion to reset trial as related to her pending Motion for Reconsideration. Thus, it was incumbent upon her to have attended the hearing of her own motion on April 26, 2006. Her absence at said hearing was inexcusable, and the *Sandiganbayan* was therefore justified in considering the matter submitted for resolution based on the pleadings submitted.

Consequently, there was nothing procedurally irregular in the issuance of the assailed May 23, 2006 Resolution by the *Sandiganbayan*. The contention that petitioner was deprived of her day in court is plainly specious; it simply does not follow. Where a party was afforded the opportunity to participate in the proceedings, yet he failed to do so, he cannot be allowed later on to claim that he was deprived of his day in court. It should be said that petitioner was accorded ample opportunity to be heard through her pleadings, such conclusion being consistent with the Court's ruling in *Batul v. Bayron*, later reiterated in *De La Salle University, Inc. v. Court of Appeals*,[24] thus -

Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. Notice and hearing is the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings. The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. So long as the party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process.

A formal trial-type hearing is not, at all times and in all instances, essential to due process - it is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based. "To be heard" does not only mean presentation of testimonial evidence in court - one may also be heard through pleadings and where the opportunity to be heard through pleadings is accorded, there is no denial of due process.[25]crallawlibrary

LUIS R. VILLAFUERTE *v.* COMMISSION ON ELECTIONS and MIGUEL R. HOLYVILLAFUERTE
G.R. No. 206698, 25 February, 2014

Luis Villafuerte and Miguel Villafuerte were both candidates for the Gubernatorial position of the province of Camarines Sur in the May 2013 local elections. Luis filed with the Commission on Elections (COMELEC) a verified petition to deny due course or cancel the certificate of candidacy (COC) of Miguel alleging that the latter intentionally misrepresented a false and deceptive name that would mislead the voters when he declared under oath in his COC that Lray Jr. Migz was his nickname or stage name and that the name he intended to appear on the official ballot was Villafuerte, LRay Jr. Migz Np; that Miguel deliberately omitted his first name "Miguel" and inserted, instead "LRay Jr.", which is the nickname of his father, the incumbent Governor of Camarines Sur, LRay Villafuerte, Jr.

COMELEC's First Division and COMELEC *En Banc* ruled that there is no reason to cancel the COC of Miguel as matters of material misrepresentation in the COC pertains only to qualifications of a candidate and nothing is mentioned about a candidates name.

ISSUE:

Did Miguel committed a material misrepresentation under Section 78 of the Omnibus Election Code so as to justify the cancellation of his COC?

HELD:

NO. The material misrepresentation contemplated by Sec. 78 of the Omnibus Election Code refers to qualifications for elective office. In order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertains to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate the right to run for the elective post for which he filed the certificate of candidacy.

Aside from the requirement of materiality, a false representation under Section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible. In other words, it must be made with an intention to deceive the electorate as to ones qualifications for public office. The use of surname, when not intended to mislead, or deceive the public as to ones identity is not within the scope of the provision. Respondents nickname is not considered a material fact, and there is no substantial evidence showing that in writing the nickname LRAY JR. MIGZ in his COC, respondent had the intention to deceive the voters as to his identity, which has an effect on his eligibility or qualification for the office, he seeks to assume.

Notably, respondent is known to the voters of the Province of Camarines Sur as the son of the then incumbent Governor of the province, popularly known as LRay. Their relationship is shown by the posters, streamers and billboards displayed in the province with the faces of both the father and son on them. Thus, the voters of the Province of Camarines Sur know who respondent is. Moreover, it was established by the affidavits of respondent witnesses that as the father and son have striking similarities, such as their looks and mannerisms, which remained unrebutted, the appellation of Lray Jr. has been used to refer to respondent. Hence, the appellation Lray Jr., accompanied by the name MIGZ16 written as respondents nickname in his COC, is not at all misleading to the voters, as in fact, such name

distinguishes respondent from his father, the then incumbent Governor Lray, who was running for a Congressional seat in the 2nd District of Camarines Sur.

REPUBLIC OF THE PHILIPPINES *v.* ORTIGAS AND COMPANY LIMITED PARTNERSHIP
G.R. No.171496, 3 March, 2014

Ortigas and Company Limited Partnership (Ortigas) is the owner of a parcel of land in Pasig City. Upon the request of the Department of Public Works and Highways (DPWH), Ortigas caused the segregation of its property into five lots and reserved one portion for road widening for the C-5 flyover project. The C-5-Ortigas Avenue flyover was completed in 1999, utilizing only 396 square meters of the 1,445-square-meter allotment for the project. Consequently, respondent further subdivided the lot into the portion actually used for road widening, and the unutilized portion, and filed with the Regional Trial Court (RTC) of Pasig a petition for authority to sell to the government the portion of the lot actually used for the road widening. The RTC issued an order authorizing the sale but Republic of the Philippines (republic), through the Office of the Solicitor General (OSG) alleed that Ortigas' property can only be conveyed by way of donation to the government, citing Section 50 of Presidential Decree (P.D.) No. 1529, also known as the Property Registration Decree. Republic filed a motion for reconsideration which was denied by the RTC. Republic's appeal was also dismissed by the Court of Appeals (CA).

ISSUE:

Did the CA gravely err in dismissing the appeal from the trial court order granting Ortigas authority to sell the land to the Republic of the Philippines?

HELD:

NO. The owner of a property taken is entitled to be compensated when there is taking of private property for some public purpose. Taking occurs when the following elements are present:

1. The government must enter the private property;
2. The entrance into the private property must be indefinite or permanent;
3. There is color of legal authority in the entry into the property;
4. The property is devoted to public use or purpose;
5. The use of property for public use removed from the owner all beneficial enjoyment of the property.

All of the above elements are present in this case. Moreover, since the Constitution proscribes taking of private property without just compensation, any taking must entail a corresponding appropriation for that purpose. When the road or street was delineated upon government request and taken for public use, as in this case, the government has no choice but to compensate the owner for his or her sacrifice, lest it violates the constitutional provision against taking without just compensation

Hence, Ortigas' property should be conveyed to the Republic of the Philippines with just compensation.

REPUBLIC OF THE PHILIPPINES *v.* DRUGMAKER'S LABORATORIES, INC. and TERRAMEDIC, INC.
G.R. No. 190837, 5 March, 2014

The Department of Health (DOH) issued Administrative Order No. (AO) 67, entitled "Revised Rules and Regulations on Registration of Pharmaceutical Products" requiring drug manufacturers to register certain drug and medicine products with the Food and Drug Administration (FDA), a government instrumentality in charge to establish safety or efficacy standards and quality measures for foods, drugs and devices, and cosmetic product, before they may release the same to the market for sale. A satisfactory bioavailability/bioequivalence (BA/BE) test is needed for a manufacturer to secure a CPR for these products. However, the implementation of the BA/BE testing requirement was put on hold because there was no local facility capable of conducting the same. The issuance of Circular No. 1, s. 1997 resumed the FDA's implementation of the BA/BE testing requirement with the establishment of BA/BE testing facilities in the country. Thereafter, the FDA issued Circular No. 8, s. 1997 which provided additional implementation details concerning the BA/BE testing requirement on drug products.

Drugmaker's Laboratories, Inc. and Terramedic, Inc. manufacture and trade a "multisource pharmaceutical product" with the generic name of rifampicin – branded as "Refam 200mg/5mL Suspension" (Refam) for the treatment of adults and children suffering from pulmonary and extra-pulmonary tuberculosis. Drugmaker's and Terramedic applied for and were issued a CPR for such drug. Upon CPR's issuance, Refam did not undergo BA/BE testing since there was still no facility capable of conducting BA/BE testing. Sometime in 2001, Drugmaker's and Terramedic applied for and were granted numerous yearly renewals of their CPR for Refam.

The results of BA/BE testing on Refam were submitted to the FDA. In turn, the FDA sent a letter Drugmaker's and Terramedic, stating that Refam is "not bioequivalent with the reference drug" and made a warning that no more further revalidations shall be granted until Drugmaker's and Terramedic submit satisfactory BA/BE test results for Refam.

Instead of submitting satisfactory BA/BE test results for Refam, Drugmaker's and Terramedic filed a petition for prohibition and annulment of Circular Nos. 1 and 8, s. 1997 before the Regional Trial Court (RTC), alleging that it is the DOH, and not the FDA, which was granted the authority to issue and implement rules concerning RA 3720.

The RTC declared Circular Nos. 1 and 8, s. 1997 null and void and held that there is nothing in RA 3720 which granted either the FDA the authority to issue and implement the subject circulars, or the Secretary of Health the authority to delegate his powers to the FDA. The issuance of Circular Nos. 1 and 8, s. 1997 constituted an illegal exercise of legislative and administrative powers and, hence, must be struck down.

ISSUE:

Was he issuance of Circular Nos. 1 and 8, s. 1997 constituted an illegal exercise of legislative and administrative powers?

HELD:

NO. Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.

In the case at bar, it is undisputed that RA 3720, as amended by Executive Order No. 175, s. 1987 prohibits, inter alia, the manufacture and sale of pharmaceutical products without obtaining the proper CPR from the FDA. In this regard, the FDA has been deputized by the same law to accept applications for registration of pharmaceuticals and, after due course, grant or reject such applications. To this end, the said law expressly authorized the Secretary of Health, upon the recommendation of the FDA Director, to issue rules and regulations that pertain to the registration of pharmaceutical products.

A careful scrutiny of the foregoing issuances would reveal that AO 67, s. 1989 is actually the rule that originally introduced the BA/BE testing requirement as a component of applications for the issuance of CPRs covering certain pharmaceutical products. As such, it is considered an administrative regulation – a legislative rule to be exact – issued by the Secretary of Health in consonance with the express authority granted to him by RA 3720 to implement the statutory mandate that all drugs and devices should first be registered with the FDA prior to their manufacture and sale. Considering that neither party contested the validity of its issuance, the Court deems that AO 67, s. 1989 complied with the requirements of prior hearing, notice, and publication pursuant to the presumption of regularity accorded to the government in the exercise of its official duties.

On the other hand, Circular Nos. 1 and 8, s. 1997 cannot be considered as administrative regulations because they do not: (a) implement a primary legislation by providing the details thereof; (b) interpret, clarify, or explain existing statutory regulations under which the FDA operates; and/or (c) ascertain the existence of certain facts or things upon which the enforcement of RA 3720 depends. In fact, the only purpose of these circulars is for the FDA to administer and supervise the implementation of the provisions of AO 67, s. 1989, including those covering the BA/BE testing requirement, consistent with and pursuant to RA 3720.Therefore, the FDA has sufficient authority to issue the said circulars and since they would not affect the substantive rights of the parties that they seek to govern – as they are not, strictly speaking, administrative regulations in the first place – no prior hearing, consultation, and publication are needed for their validity.

In sum, the Court holds that Circular Nos. 1 and 8, s. 1997 are valid issuances and binding to all concerned parties, including the Drugmaker's and Terramedic in this case.

TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA) *v.* THE COMMISSION ON AUDIT (COA)
G.R. No. 204869, 11 March, 2014

Technical Education and Skills Development Authority (TESDA) discovered that for the years 2004-2007, it paid Extraordinary and Miscellaneous Expenses (EME) twice each year from two sources: (1) the General Fund for locally-funded projects, and (2) the Technical Education and Skills Development Project (TESDP) Fund for the foreign-assisted projects. The payment of EME was authorized under the General Provisions of the General Appropriations Acts of 2004, 2005, 2006 and 2007 (2004-2007 GAAs).

The audit team issued Notice of Disallowance disallowing the payment of EME for being in excess of the amount allowed in the 2004-2007 GAAs. In addition, the Department of Budget and Management (DBM), contrary to the provisions of the 2004-2007 GAAs, disbursed the EME to TESDA officials whose positions were not of equivalent ranks as authorized. Notice of Disallowance indicated the persons liable for the excessive payment of EME: the approving officers, payees and the accountants.

TESDA filed an appeal arguing that the 2004-2007 GAAs and the Government Accounting and Auditing Manual allowed the grant of EME from both the General Fund and the TESDP Fund provided the legal ceiling was not exceeded for each fund. It alleged that the General Fund and the TESDP Fund are distinct from each other, and TESDA officials who were designated as project officers concurrently with their regular functions were entitled to separate EME from both funds.

The Commission on Audit (COA) denied the appeal and stated that the GAA provision on EME is very clear to the effect that payment of EME may be taken from any authorized appropriation but shall not exceed the ceiling stated therein.

ISSUE:

Did COA gravely erred in disallowing the payments made by TESDA to its officials of their EME from both General Fund and TESDA Fund?

HELD:

NO. The Constitution vests COA, as guardian of public funds, with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. The COA is generally accorded complete discretion in the exercise of its constitutional duty and the Court generally sustains its decisions in recognition of its expertise in the laws it is entrusted to enforce.

Only when COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the Court grant a petition assailing COA's actions. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.

The Court did not find any grave abuse of discretion when COA disallowed the disbursement of EME to TESDA officials for being excessive and unauthorized by law, specifically the 2004-2007 GAAs, to wit:

> x x x Extraordinary and Miscellaneous Expenses.– Appropriations authorized herein may be used for extraordinary expenses of the following officials and those of equivalent rank as may be authorized by the DBM, not exceeding:
>
> (a)P180,000 for each Department Secretary;
> (b)P65,000 for each Department Undersecretary;
> (c)P35,000 for each Department Assistant Secretary;
> (d)P30,000 for each head of bureau or organization of equal rank to a bureau and for each Department Regional Director;
> (e)P18,000 for each Bureau Regional Director; and
> (f)P13,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Fifty Thousand Pesos (P50,000) for each of the offices under the above named officials are authorized.

The GAA provisions are clear that the EME shall not exceed the amounts fixed in the GAA. The GAA provisions are also clear that only the officials named in the GAA, the officers of equivalent rank as may be authorized by the DBM, and the offices under them are entitled to claim EME not exceeding the amount provided in the GAA.

The COA faithfully implemented the GAA provisions. COA Circular No. 2012-001 states that the amount fixed under the GAA for the National Government offices and officials shall be the ceiling in the disbursement of EME. COA Circular No. 89-300, prescribing the guidelines in the disbursement of EME, likewise states that the amount fixed by the GAA shall be the basis for the control in the disbursement of these funds.

The COA merely complied with its mandate when it disallowed the EME that were reimbursed to officers who were not entitled to the EME, or who received EME in excess of the allowable amount. When the law is clear, plain and free from ambiguity, there should be no room for interpretation but only its application.

REPUBLIC OF THE PHILIPPINES *v.* ASIA PACIFIC INTEGRATED STEEL CORPORATION
G.R. No. 192100, 12 March, 2014

Asia Pacific Integrated Steel Corporation (Asia Pacific) is the registered owner of a property situated in San Simon, Pampanga. The Republic through the Toll Regulatory Board (TRB) instituted expropriation proceedings against the Asia Pacific over a portion of their property to be used for the NLEX project.

During the pre-trial conference, the parties agreed on TRB's authority to expropriate the subject property but disagreed as to the amount of just compensation. Department f Public Works nd Highways (DPWH) offered to pay P607,200.00 for the portion taken but Asia Pacific made a counter-offer of P1,821,600.00. The parties eventually agreed to submit the issue of just compensation to three Commissioners composed of the Municipal Assessor of San Simon as Chairman, and the RTC Branch Clerk of Court and the Register of Deeds for the Province of Pampanga as Members.

In the absence of bona fide sales transaction in the area, the Assessor's Office being aware of the actual conditions of subject property decided to use opinion values stated by real estate brokers and banks in the determination of the current and fair market value for the purpose of payment of just compensation. The amount of P1,000.00 to P1,500.00 was arrived at by the commissioners due to the conversion of the subject property from agricultural to industrial use.

Although there was no documentary evidence attached to substantiate the opinions of the banks and the realtors indicated in the Commissioners' Report, the Court finds the commissioners' recommendation of the valuation of industrial lands at P1,000.00 to P1,500.00 to be fair, and the Republic's offer of P300 per square meter to be very low.

CA upheld RTC's decision.

ISSUE:

Did the Court judiciously determined the fair market value of the subject property?

HELD:

NO. The Court held that the trial court did not judiciously determine the fair market value of the subject property as it failed to consider other relevant factors such as the zonal valuation, tax declarations and current selling price supported by documentary evidence.

Section 5 of R.A. 8974 enumerates the standards for assessing the value of expropriated land taken for national government infrastructure projects, thus:

> SECTION 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. – In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:
>
> (a) The classification and use for which the property is suited;
> (b) The developmental costs for improving the land;
> (c) The value declared by the owners;
> (d) The current selling price of similar lands in the vicinity;

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

In this case, the trial court considered only (a) and (d): (1) the classification of the subject property which is located in an area with mixed land use (commercial, residential and industrial) and the property's conversion from agricultural to industrial land, and (2) the current selling price of similar lands in the vicinity – the only factors which the commissioners included in their Report. It also found the commissioners' recommended valuation of P1,000.00 to P1,500.00 per square to be fair and just despite the absence of documentary substantiation as said prices were based merely on the opinions of bankers and realtors.

Nonetheless, the Court did not subscribe to petitioner's argument that just compensation for the subject property should not exceed the zonal valuation (P300.00 per square meter). Zonal valuation is just one of the indices of the fair market value of real estate. By itself, this index cannot be the sole basis of "just compensation" in expropriation cases.

RAUL H. SESBREÑO v. HONORABLE COURT OF APPEALS, et al.
G.R. No. 160689, 26 March 2014, First Division (BERSAMIN, *J.*)

VECO engaged in the sale and distribution of electricity within Metropolitan Cebu. Sesbreño was one of VECO's customers under the metered service contract they had entered into on March 2, 1982. To ensure that its electric meters were properly functioning, and that none of it meters had been tampered with, the Violation of Contracts (VOC) Team of conducted a routine inspection of the houses at La Paloma Village, Labangon, Cebu City, including that of plaintiff-appellant Sesbreño. Respondent Sgt. Demetrio Balicha, who belonged to the 341st Constabulary Company, Cebu Metropolitan Command, Camp Sotero Cabahug, Cebu City, accompanied and escorted the VOC inspectors during their inspection of the households of its customers on May 11, 1989 pursuant to a mission order issued to him.

The VOC inspected the electric meter in the plaintiff's garage and found that it had been turned upside down. Defendant-appellant Arcilla took photographs of the upturned electric meter. With Chuchie Garcia, Peter Sesbreño and one of the maids present, they removed said meter and replaced it with a new one. At that time, plaintiff-appellant Sesbreño was in his office and no one called to inform him of the inspection. The VOC Team then asked for and received Chuchie Garcia's permission to enter the house itself to examine the kind and number of appliances and light fixtures in the household and determine its electrical load. Afterwards, Chuchie Garcia signed the Inspection Division Report, which showed the condition of the electric meter when the VOC Team inspected it, with notice that it would be subjected to a laboratory test. She also signed a Load Survey Sheet that showed the electrical load of plaintiff-appellant Sesbreño.

But according to plaintiff-appellant Sesbreño, their entry to his house and the surrounding premises was effected without his permission and over the objections of his maids. They threatened, forced or coerced their way into his house. They unscrewed the electric meter, turned it upside down and took photographs thereof. They then replaced it with a new electric meter. They searched the house and its rooms without his permission or a search warrant. They forced a visitor to sign two documents, making her appear to be his representative or agent. Afterwards, he found that some of his personal effects were missing, apparently stolen by the VOC Team when they searched the house.

The RTC dismissed the complaint. The RTC believed the evidence of the respondents showing that the VOC inspection team had found the electric meter in Sesbreño's residence turned upside down to prevent the accurate registering of the electricity consumption of the household, causing them to detach and replace the meter. It held as unbelievable that the team forcibly entered the house through threats and intimidation; that they themselves turned the electric meter upside down in order to incriminate him for theft of electricity, because the fact that the team and Sesbreño had not known each other before then rendered it unlikely for the team to fabricate charges against him; and that Sesbreño's non-presentation of Chuchie Garcia left her allegation of her being forced to sign the two documents by the team unsubstantiated. The CA affirmed the RTC.

ISSUE

Was Sesbreño entitled to recover damages for abuse of rights?

RULING

The appeal has no merit. Anent the inspection of the garage, the VOC team had the continuing authority from Sesbreño as the consumer to enter his premises at all reasonable hours to conduct an inspection of the meter without being liable for trespass to dwelling. The authority emanated from paragraph 9 of the metered service contract entered into between VECO and each of its consumers. The members of the team obviously met the conditions imposed by paragraph 9 for an authorized entry. Firstly, their entry had the objective of conducting the routine inspection of the meter. Secondly, the entry and inspection were confined to the garage where the meter was installed. Thirdly, the entry was effected at around 4 o'clock p.m., a reasonable hour. And, fourthly, the persons who inspected the meter were duly authorized for the purpose by VECO.

It is true, as Sesbreño urges, that paragraph 9 did not cover the entry into the main premises of the residence. Did this necessarily mean that any entry by the VOS team into the main premises required a search warrant to be first secured?

The constitutional guaranty against unlawful searches and seizures is intended as a restraint against the Government and its agents tasked with law enforcement. It is to be invoked only to ensure freedom from arbitrary and unreasonable exercise of State power.

It is worth noting that the VOC inspectors decided to enter the main premises only after finding the meter of Sesbreño turned upside down, hanging and its disc not rotating. Their doing so would enable them to determine the unbilled electricity consumed by his household. The circumstances justified their decision, and their inspection of the main premises was a continuation of the authorized entry. There was no question then that their ability to determine the unbilled electricity called for them to see for themselves the usage of electricity inside. Not being agents of the State, they did not have to first obtain a search warrant to do so.

Balicha's presence participation in the entry did not make the inspection a search by an agent of the State within the ambit of the guaranty. As already mentioned, Balicha was part of the team by virtue of his mission order authorizing him to assist and escort the team during its routine inspection. Consequently, the entry into the main premises of the house by the VOC team did not constitute a violation of the guaranty.

Our holding could be different had Sesbreño persuasively demonstrated the intervention of malice or bad faith on the part of Constantino and Arcilla during their inspection of the main premises, or any excessiveness committed by them in the course of the inspection. But Sesbreño did not. On the other hand, the CA correctly observed that the inspection did not zero in on Sesbreño's residence because the other houses within the area were similarly subjected to the routine inspection. This, we think, eliminated any notion of malice or bad faith. Clearly, Sesbreño did not establish his claim for damages if the respondents were guilty of abuse of rights.

ARNALDO M. ESPINAS, et al. v. COMMISSION ON AUDIT
G.R. No. 198271, 1 April 2014, EN BANC (PERLAS-BERNABE, *J.*)

Petitioners are department managers of the Local Water Utilities Administration (LWUA) who, together with 28 other LWUA officials, sought reimbursement of their extraordinary and miscellaneous expenses (EME) for the period January to December 2006. According to petitioners, the reimbursement claims were within the ceiling provided under the LWUA Calendar Year 2006 Corporate Operating Budget approved by the LWUA Board of Trustees and the Department of Budget and Management.

The Office of the CoA Auditor issued Audit Observation Memorandum (AOM) No. AOM-2006-27, revealing that the 31 LWUA officials were able to reimburse ₱16,900,705.69 in EME, including expenses for official entertainment, service awards, gifts and plaques, membership fees, and seminars/conferences. Out of the said amount, ₱13,110,998.26 was reimbursed only through an attached certification attesting to their claimed incurrence ("certification"). According to the AOM, this violated CoA Circular No. 2006-01 dated January 3, 2006 (CoA Circular No. 2006-01), which pertinently states that the "claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursements."

During the CoA Exit Conference held sometime in April 2007, LWUA management officials, including herein petitioners, manifested that they were unaware of the existence of CoA Circular No. 2006-01, particularly during the period January to December 2006.

After the post-audit of the LWUA EME account for the same period, a Notice of Disallowance was issued disallowing the EME reimbursement claims of the 31 LWUA officials, in the total amount of ₱13,110,998.26, for the reason that they "were not supported by receipts and/or [other] documents evidencing disbursements as required under [Item III(3)] of [CoA Circular No. 2006-01]."

Pursuant to the CoA's 2009 Revised Rules of Procedure, petitioners appealed the notice of disallowance to the CoA Cluster Director which was later denied. The CoA affirmed Notice of Disallowance.

ISSUE:

Did CoA commit grave abuse of discretion in its ruling in this case?

a. Was the certification falling under the term "other documents"?
b. Was the circular violative of the equal protection clause?

RULING:

The petition lacks merit. The CoA did not commit any grave abuse of discretion as its affirmance of Notice of Disallowance No. 09-001-GF(06) is based on cogent legal grounds.

a. The "certification" submitted by petitioners cannot be properly considered as a supporting document within the purview of Item III(3) of CoA Circular No. 2006-01. Similar to the word "receipts," the "other documents" pertained to under the above-stated provision is qualified by the phrase "evidencing disbursements." That said, it then logically follows that petitioners' "certification," so as to fall under the phrase "other documents" under Item III(3) of CoA Circular No. 2006-01, must substantiate the "paying out of an account

payable," or, in simple term, a disbursement. However, an examination of the sample "certification" attached to the petition does not, by any means, fit this description. The signatory therein merely certifies that he/she has spent, within a particular month, a certain amount for meetings, seminars, conferences, official entertainment, public relations, and the like, and that the certified amount is within the ceiling authorized under the LWUA corporate budget. Accordingly, since petitioners' reimbursement claims were solely supported by this "certification," the CoA properly disallowed said claims for failure to comply with CoA Circular No. 2006-01.

b. The Court upholds the CoA's finding that there exists a substantial distinction between officials of NGAs and the officials of GOCCs, GFIs and their subsidiaries which justify the peculiarity in regulation. Since the EME of GOCCs, GFIs and their subsidiaries, are, pursuant to law, allocated by their own internal governing boards, as opposed to the EME of NGAs which are appropriated in the annual GAA duly enacted by Congress, there is a perceivable rational impetus for the CoA to impose nuanced control measures to check if the EME disbursements of GOCCs, GFIs and their subsidiaries constitute irregular, unnecessary, excessive, extravagant, or unconscionable government expenditures. Case in point is the LWUA Board of Trustees which, pursuant to Section 69 of PD 198, as amended, is "authorized to appropriate out of any funds of the Administration, such amounts as it may deem necessary for the operational and other expenses of the Administration including the purchase of necessary equipment." Indeed, the Court recognizes that denying GOCCs, GFIs and their subsidiaries the benefit of submitting a secondary-alternate document in support of an EME reimbursement, such as the "certification" discussed herein, is a CoA policy intended to address the disparity in EME disbursement autonomy. As pertinently stated in CoA Circular No. 2006-01, the consideration underlying the rules and regulations contained therein is the fact that "[g]overning boards of [GOCCs/GFIs] are invariably empowered to appropriate through resolutions such amounts as they deem appropriate for extraordinary and miscellaneous expenses."

OFFICE OF THE COURT ADMINISTRATOR v. JUDGE BORROMEO R. BUSTAMANTE
A.M. No. MTJ-12-1806, 7 April 2014, First Division (Leonardo-De Castro, *J.)*

Considering the impending retirement of Judge Bustamante, a judicial audit of the MTCC was conducted on September 21, 2010 by a team from the Office of the Court Administrator (OCA). The OCA submitted to the Court its Memorandum, reporting viz:

(1) Judge Bustamante had decided 33 out of the 35 cases for decision in his court. Of the 33 cases decided by Judge Bustamante, 13 were still within the reglementary period while 20 were already beyond the reglementary period. Of the 20 cases Judge Bustamante had decided beyond the reglementary period, 10 were decided more than a year after their respective due dates (ranging from 1 year and 8 days to 4 years and 7 months beyond the due dates) and 10 were decided within a year after their respective due dates (ranging from 5 days to 6 months beyond the due dates).

(2) Judge Bustamante had also resolved 6 out of the 23 cases with pending incidents in his court, all of which were resolved beyond their respective reglementary periods (ranging from 5 days to 3 years, 8 months, and 16 days after the due dates). As for the 17 other cases with pending incidents in his court, Judge Bustamante reasoned that (a) the motions require further hearing; (b) there is a need to await the resolution of other cases pending before other courts; and (c) oversight. The OCA noted, though, that Judge Bustamante failed to submit any order setting the pending incidents for hearing or holding in abeyance the resolution of the same until the related cases before other courts have already been decided.

ISSUE:

Is the retiring judge administratively liable for the remaining undecided cases?

RULING:

The Court agrees with the findings and recommendation of the OCA.

This Court has always emphasized the need for judges to decide cases within the constitutionally prescribed 90-day period. Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case. Not only does it magnify the cost of seeking justice, it undermines the people's faith and confidence in the judiciary, lowers its standards, and brings it to disrepute.

A member of the bench cannot pay mere lip service to the 90-day requirement; he/she should instead persevere in its implementation. Heavy caseload and demanding workload are not valid reasons to fall behind the mandatory period for disposition of cases. If a judge is unable to comply with the 90-day reglementary period for deciding cases or matters, he/she can, for good reasons, ask for an extension and such request is generally granted. But Judge Bustamante did not ask for an extension in any of these cases. Having failed to decide a case within the required period, without any order of extension granted by the Court, Judge Bustamante is liable for undue delay that merits administrative sanction.

Equally unacceptable for the Court is Judge Bustamante's explanation that he failed to decide Civil Case Nos. 1937 and 2056 because of the lack of Transcript of Stenographic Notes (TSN). Even if it were true that the two cases were heard by the previous presiding judge of the MTCC, there is no showing that from the time the cases had been submitted for decision until Judge Bustamante's retirement, Judge Bustamante made an effort to have the TSN completed. Although technically, the 90-

day period would have started to run only upon the completion of the TSN, the Court finds Judge Bustamante's lack of effort to have the TSN completed as the root cause for the delay in deciding the two cases.

Considering the significant number of cases and pending incidents left undecided/unresolved or decided/resolved beyond the reglementary period by Judge Bustamante; as well as the fact that Judge Bustamante had already retired and can no longer be dismissed or suspended, it is appropriate to impose upon him a penalty of a fine amounting to ₱20,000.00, to be deducted from his retirement benefits.

Despite the foregoing legislative measures, the population of the country kept on galloping at an uncontrollable pace. From a paltry number of just over 27 million Filipinos in 1960, the population of the country reached over 76 million in the year 2000 and over 92 million in 2010. The executive and the legislative, thus, felt that the measures were still not adequate. To rein in the problem, the RH Law was enacted to provide Filipinos, especially the poor and the marginalized, access and information to the full range of modem family planning methods, and to ensure that its objective to provide for the peoples' right to reproductive health be achieved. To make it more effective, the RH Law made it mandatory for health providers to provide information on the full range of modem family planning methods, supplies and services, and for schools to provide reproductive health education. To put teeth to it, the RH Law criminalizes certain acts of refusals to carry out its mandates.

Fourteen (14) petitions and two (2) petitions- in-intervention are assailing the constitutionality of RH Law. The following arguments were raised by the parties:

The RH Law violates the **right to life** of the unborn. According to the petitioners, notwithstanding its declared policy against abortion, the implementation of the RH Law would authorize the purchase of hormonal contraceptives, intra-uterine devices and injectables which are abortives, in violation of Section 12, Article II of the Constitution which guarantees protection of both the life of the mother and the life of the unborn from conception.

They argue that even if Section 9 of the RH Law allows only "non-abortifacient" and effective family planning products and supplies, medical research shows that contraceptives use results in abortion as they operate to kill the fertilized ovum which already has life. As it opposes the initiation of life, which is a fundamental human good, the petitioners assert that the State sanction of contraceptive use contravenes natural law and is an affront to the dignity of man.

The defenders of the RH Law point out that the intent of the Framers of the Constitution was simply the prohibition of abortion. They contend that the RH Law does not violate the Constitution since the said law emphasizes that only "non-abortifacient" reproductive health care services, methods, devices products and supplies shall be made accessible to the public. The constitutional protection of one's right to life is not violated considering that various studies of the WHO show that life begins from the implantation of the fertilized ovum. Consequently, he argues that the RH Law is constitutional since the law specifically provides that only contraceptives that do not prevent the implantation of the fertilized ovum are allowed.

The RH Law violates the **right to health** and the right to protection against hazardous products. The petitioners posit that the RH Law provides universal access to contraceptives which are hazardous to one's health, as it causes cancer and other health problems.

The RH Law violates the right to **religious freedom**. The petitioners contend that the RH Law violates the constitutional guarantee respecting religion as it authorizes the use of public funds for the procurement of contraceptives. For the petitioners, the use of public funds for purposes that are believed to be contrary to their beliefs is included in the constitutional mandate ensuring religious freedom.

While contraceptives and procedures like vasectomy and tubal ligation are not covered by the constitutional proscription, there are those who, because of their religious education and background, sincerely believe that contraceptives, whether abortifacient or not, are evil. Some of these are medical practitioners who essentially claim that their beliefs prohibit not only the use of contraceptives but also the willing participation and cooperation in all things dealing with contraceptive use.

It is also argued that the RH Law providing for the formulation of mandatory sex education in schools should not be allowed as it is an affront to their religious beliefs. They further argue that even if the conscientious objector's duty to refer is recognized, the recognition is unduly limited, because although it allows a conscientious objector in Section 23 (a)(3) the option to refer a patient seeking reproductive health services and information - no escape is afforded the conscientious objector in Section 23 (a)(l) and (2), i.e. against a patient seeking reproductive health procedures. They claim that the right of other individuals to conscientiously object, such as: a) those working in public health facilities referred to in Section 7; b) public officers involved in the implementation of the law referred to in Section 23(b); and c) teachers in public schools referred to in Section 14 of the RH Law, are also not recognize.[191]

While the petitioners recognize that the guarantee of religious freedom is not absolute, they argue that the RH Law fails to satisfy the "clear and present danger test" and the "compelling state interest test" to justify the regulation of the right to free exercise of religion and the right to free speech. While the right to act on one's belief may be regulated by the State, the acts prohibited by the RH Law are passive acts which produce neither harm nor injury to the public.

Petitioner CFC adds that the RH Law does not show compelling state interest to justify regulation of religious freedom because it mentions no emergency, risk or threat that endangers state interests. It does not explain how the rights of the people (to equality, non-discrimination of rights, sustainable human development, health, education, information, choice and to make decisions according to religious convictions, ethics, cultural beliefs and the demands of responsible parenthood) are being threatened or are not being met as to justify the impairment of religious freedom.

Finally, the petitioners also question Section 15 of the RH Law requiring would-be couples to attend family planning and responsible parenthood seminars and to obtain a certificate of compliance. They claim that the provision forces individuals to participate in the implementation of the RH Law even if it contravenes their religious beliefs.

The respondents, on the other hand, contend that the RH Law does not provide that a specific mode or type of contraceptives be used, be it natural or artificial. It neither imposes nor sanctions any religion or belief. They point out that the RH Law only seeks to serve the public interest by providing accessible, effective and quality reproductive health services to ensure maternal and child health, in line with the State's duty to bring to reality the social justice health guarantees of the Constitution, and that what the law only prohibits are those acts or practices, which deprive others of their right to reproductive health. They assert that the assailed law only seeks to guarantee informed choice, which is an assurance that no one will be compelled to violate his religion against his free will.

The respondents add that by asserting that only natural family planning should be allowed, the petitioners are asking that the Court recognize only the Catholic Church's sanctioned natural family planning methods and impose this on the entire citizenry.

With respect to the duty to refer, the respondents insist that the same does not violate the constitutional guarantee of religious freedom, it being a carefully balanced compromise between the interests of the religious objector, on one hand, who is allowed to keep silent but is required to refer -and that of the citizen who needs access to information and who has the right to expect that the health care professional in front of her will act professionally. For the respondents, the concession given by the State under Section 7 and 23(a)(3) is sufficient accommodation to the right to freely exercise one's religion without unnecessarily infringing on the rights of others. Whatever burden is placed on the petitioner's religious freedom is minimal as the duty to refer is limited in duration, location and impact.

Regarding mandatory family planning seminars under Section 15, the respondents claim that it is a reasonable regulation providing an opportunity for would-be couples to have access to information regarding parenthood, family planning, breastfeeding and infant nutrition. It is argued that those who object to any information received on account of their attendance in the required seminars are not compelled to accept information given to them. They are completely free to reject any information they do not agree with and retain the freedom to decide on matters of family life without intervention of the State.

The RH Law violates the constitutional provision on **involuntary servitude**. According to the petitioners, the RH Law subjects medical practitioners to involuntary servitude because, to be accredited under the PhilHealth program, they are compelled to provide forty-eight (48) hours of pro bona services for indigent women, under threat of criminal prosecution, imprisonment and other forms of punishment.

The petitioners explain that since a majority of patients are covered by PhilHealth, a medical practitioner would effectively be forced to render reproductive health services since the lack of PhilHealth accreditation would mean that the majority of the public would no longer be able to avail of the practitioners services.

The OSG counters that the rendition of pro bono services envisioned in Section 17 can hardly be considered as forced labor analogous to slavery, as reproductive health care service providers have the discretion as to the manner and time of giving pro bono services. Moreover, the OSG points out that the imposition is within the powers of the government, the accreditation of medical practitioners with PhilHealth being a privilege and not a right.

The RH Law violates the right to **equal protection** of the law. It is claimed that the RH Law discriminates against the poor as it makes them the primary target of the government program that promotes contraceptive use. The petitioners argue that, rather than promoting reproductive health among the poor, the RH Law seeks to introduce contraceptives that would effectively reduce the number of the poor. They add that the exclusion of private educational institutions from the mandatory reproductive health education program imposed by the RH Law renders it unconstitutional.

The RH Law is **"void-for-vagueness"** in violation of the due process clause of the Constitution. In imposing the penalty of imprisonment and/or fine for "any violation," it is vague because it does not define the type of conduct to be treated as "violation" of the RH Law.

The petitioners contend that the RH Law suffers from vagueness and, thus violates the due process clause of the Constitution. According to them, Section 23 (a)(l) mentions a "private health service provider" among those who may be held punishable but does not define who is a "private health care service provider." They argue that confusion further results since Section 7 only makes reference to

a "private health care institution." They also point out that Section 7 of the assailed legislation exempts hospitals operated by religious groups from rendering reproductive health service and modern family planning methods. It is unclear, however, if these institutions are also exempt from giving reproductive health information under Section 23(a)(l), or from rendering reproductive health procedures under Section 23(a)(2). it is also averred that the RH Law punishes the withholding, restricting and providing of incorrect information, but at the same time fails to define "incorrect information."

In this connection, it is claimed that "Section 7 of the RH Law violates the right to **due process** by removing from them (the people) the right to manage their own affairs and to decide what kind of health facility they shall be and what kind of services they shall offer." It ignores the management prerogative inherent in corporations for employers to conduct their affairs in accordance with their own discretion and judgment.

The RH Law violates the right to **free speech**. To compel a person to explain a full range of family planning methods is plainly to curtail his right to expound only his own preferred way of family planning. The petitioners note that although exemption is granted to institutions owned and operated by religious groups, they are still forced to refer their patients to another healthcare facility willing to perform the service or procedure.

The RH Law intrudes into the zone of **privacy of one's family** protected by the Constitution. It is contended that the RH Law providing for mandatory reproductive health education intrudes upon their constitutional right to raise their children in accordance with their beliefs.

It is claimed that, by giving absolute authority to the person who will undergo reproductive health procedure, the RH Law forsakes any real dialogue between the spouses and impedes the right of spouses to mutually decide on matters pertaining to the overall well-being of their family. In the same breath, it is also claimed that the parents of a child who has suffered a miscarriage are deprived of parental authority to determine whether their child should use contraceptives. Also, Section 23(a) (2) (i) thereof violates the provisions of the Constitution by intruding into marital privacy and autonomy. It argues that it cultivates disunity and fosters animosity in the family rather than promote its solidarity and total development.

The RH Law violates the constitutional principle of **non-delegation of legislative authority**. The petitioners question the delegation by Congress to the FDA of the power to determine whether a product is non-abortifacient and to be included in the Emergency Drugs List (EDL).

The RH Law violates the **one subject/one bill rule** provision under Section 26(1), Article VI of the Constitution.

The RH Law violates **Natural Law**.

The RH Law violates the principle of **Autonomy of Local Government Units (LGUs) and the Autonomous Region of Muslim Mindanao {ARMM)**. It is contended that the RH Law, providing for reproductive health measures at the local government level and the ARMM, infringes upon the powers devolved to LGUs and the ARMM under the Local Government Code and R.A . No. 9054.

ISSUES:

I. Procedural: May the court exercise its power of judicial review over the controversy?

1. Power of Judicial Review
2. Actual Case or Controversy
3. Facial Challenge
4. Locus Standi
5. Declaratory Relief
6. One Subject/One Title Rule

II. Substantive: Is the RH Law constitutional?

1. Right to Life
2. Right to Health
3. Freedom of Religion and the Right to Free Speech
4. The Family
5. Freedom of Expression and Academic Freedom
6. Due Process
7. Equal Protection
8. Involuntary Servitude
9. Delegation of Authority to the FDA
10. Autonomy of Local Governments/ARMM
11. Natural Law

RULING:

The petitions are PARTIALLY GRANTED.

I. Procedural

1. The Power of Judicial Review

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

As far back as Tanada v. Angara, the Court has unequivocally declared that certiorari, prohibition and mandamus are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials, as there is no other plain, speedy or adequate remedy in the ordinary course of law. In said case the Court wrote:

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. "The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld. " Once a "controversy as to the application or interpretation of constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide.

Lest it be misunderstood, it bears emphasizing that the Court does not have the unbridled authority to rule on just any and every claim of constitutional violation. Jurisprudence is replete with the rule that the power of judicial review is limited by four exacting requisites, viz : (a) there must be an actual case or controversy; (b) the petitioners must possess locus standi; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the lis mota of the case.

2. Actual Case or Controversy

Proponents of the RH Law submit that the subject petitions do not present any actual case or controversy because the RH Law has yet to be implemented. They claim that the questions raised by the petitions are not yet concrete and ripe for adjudication since no one has been charged with violating any of its provisions and that there is no showing that any of the petitioners' rights has been adversely affected by its operation. In short, it is contended that judicial review of the RH Law is premature.

An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. The rule is that courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. The controversy must be justiciable-definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof, on the other; that is, it must concern a real, tangible and not merely a theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.

In this case, the Court is of the view that an actual case or controversy exists and that the same is ripe for judicial determination. Considering that the RH Law and its implementing rules have already taken effect and that budgetary measures to carry out the law have already been passed, it is evident that the subject petitions present a justiciable controversy.

3. Facial Challenge

The OSG also assails the propriety of the facial challenge lodged by the subject petitions, contending that the RH Law cannot be challenged "on its face" as it is not a speech regulating measure.

While this Court has withheld the application of facial challenges to strictly penal statues, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights. The underlying reason for this modification is simple. This Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine

whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution.

Consequently, considering that the foregoing petitions have seriously alleged that the constitutional human rights to life, speech and religion and other fundamental rights mentioned above have been violated by the assailed legislation, the Court has authority to take cognizance of these kindred petitions and to determine if the RH Law can indeed pass constitutional scrutiny. To dismiss these petitions on the simple expedient that there exist no actual case or controversy, would diminish this Court as a reactive branch of government, acting only when the Fundamental Law has been transgressed, to the detriment of the Filipino people.

4. Locus Standi

The OSG also attacks the legal personality of the petitioners to file their respective petitions. It contends that the "as applied challenge" lodged by the petitioners cannot prosper as the assailed law has yet to be enforced and applied against them, and the government has yet to distribute reproductive health devices that are abortive.

The petitioners, for their part, invariably invoke the "transcendental importance" doctrine and their status as citizens and taxpayers in establishing the requisite locus standi.

Locus standi or legal standing is defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. In relation to locus standi, the "as applied challenge" embodies the rule that one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. The rule prohibits one from challenging the constitutionality of the statute grounded on a violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.

Notwithstanding, the Court leans on the doctrine that "the rule on standing is a matter of procedure, hence, can be relaxed for non-traditional plaintiffs like ordinary citizens, taxpayers, and legislators when the public interest so requires, such as when the matter is of transcendental importance, of overreaching significance to society, or of paramount public interest."

With these said, even if the constitutionality of the RH Law may not be assailed through an "as-applied challenge, still, the Court has time and again acted liberally on the locus standi requirement. It has accorded certain individuals standing to sue, not otherwise directly injured or with material interest affected by a Government act, provided a constitutional issue of transcendental importance is invoked. In view of the seriousness, novelty and weight as precedents, not only to the public, but also to the bench and bar, the issues raised must be resolved for the guidance of all. After all, the RH Law drastically affects the constitutional provisions on the right to life and health, the freedom of religion and expression and other constitutional rights. Mindful of all these and the fact that the issues of contraception and reproductive health have already caused deep division among a broad spectrum of society, the Court entertains no doubt that the petitions raise issues of transcendental importance warranting immediate court adjudication. More importantly, considering that it is the right to life of the mother and the unborn which is primarily at issue, the Court need not wait for a life to be taken away before taking action.

5. Declaratory Relief

The respondents also assail the petitions because they are essentially petitions for declaratory relief over which the Court has no original jurisdiction. Suffice it to state that most of the petitions are praying for injunctive reliefs and so the Court would just consider them as petitions for prohibition under Rule 65, over which it has original jurisdiction. Where the case has far-reaching implications and prays for injunctive reliefs, the Court may consider them as petitions for prohibition under Rule 65.

6. One Subject-One Title

According to the petitioners, being one for reproductive health with responsible parenthood, the assailed legislation violates the constitutional standards of due process by concealing its true intent - to act as a population control measure.

Despite efforts to push the RH Law as a reproductive health law, the Court sees it as principally a population control measure. The corpus of the RH Law is geared towards the reduction of the country's population. While it claims to save lives and keep our women and children healthy, it also promotes pregnancy-preventing products. For said reason, the manifest underlying objective of the RH Law is to reduce the number of births in the country.

Be that as it may, the RH Law does not violate the one subject/one bill rule. In Benjamin E. Cawaling, Jr. v. The Commission on Elections and Rep. Francis Joseph G Escudero, it was written:

It is well-settled that the "one title-one subject" rule does not require the Congress to employ in the title of the enactment language of such precision as to mirror, fully index or catalogue all the contents and the minute details therein. The rule is sufficiently complied with if the title is comprehensive enough as to include the general object which the statute seeks to effect, and where, as here, the persons interested are informed of the nature, scope and consequences of the proposed law and its operation. Moreover, this Court has invariably adopted a liberal rather than technical construction of the rule "so as not to cripple or impede legislation."

The one subject/one title rule expresses the principle that the title of a law must not be "so uncertain that the average person reading it would not be informed of the purpose of the enactment or put on inquiry as to its contents, or which is misleading, either in referring to or indicating one subject where another or different one is really embraced in the act, or in omitting any expression or indication of the real subject or scope of the act."

In this case, a textual analysis of the various provisions of the law shows that both "reproductive health" and "responsible parenthood" are interrelated and germane to the overriding objective to control the population growth. The Court finds no reason to believe that Congress intentionally sought to deceive the public as to the contents of the assailed legislation.

II. Substantive

1. The Right to Life

It is a universally accepted principle that every human being enjoys the right to life. Even if not formally established, the right to life, being grounded on natural law, is inherent and, therefore, not a creation of, or dependent upon a particular law, custom, or belief. It precedes and transcends any

authority or the laws of men. In this jurisdiction, the right to life is given more than ample protection. Section 1, Article III of the Constitution.

When Life Begins

Textually, the Constitution affords protection to the unborn from conception. This is undisputable because before conception, there is no unborn to speak of. For said reason, it is no surprise that the Constitution is mute as to any proscription prior to conception or when life begins. Those opposing the RH Law contend that conception is synonymous with "fertilization" of the female ovum by the male sperm. On the other side of the spectrum are those who assert that conception refers to the "implantation" of the fertilized ovum in the uterus.

It is a canon in statutory construction that the words of the Constitution should be interpreted in their plain and ordinary meaning. In conformity with this principle, the traditional meaning of the word "conception" which, as described and defined by all reliable and reputable sources, means that life begins at fertilization.

Apparent from the deliberations of the Framers of the Constitution was their emphasis that the State shall provide equal protection to both the mother and the unborn child from the earliest opportunity of life, that is, upon fertilization or upon the union of the male sperm and the female ovum. It is also apparent is that the Framers of the Constitution intended that to prohibit Congress from enacting measures that would allow it determine when life begins.

Equally apparent, however, is that the Framers of the Constitution did not intend to ban all contraceptives for being unconstitutional. In fact, Commissioner Bernardo Villegas, spearheading the need to have a constitutional provision on the right to life, recognized that the determination of whether a contraceptive device is an abortifacient is a question of fact which should be left to the courts to decide on based on established evidence. Contraceptives that kill or destroy the fertilized ovum should be deemed an abortive and thus prohibited. Conversely, contraceptives that actually prevent the union of the male sperm and the female ovum, and those that similarly take action prior to fertilization should be deemed non-abortive, and thus, constitutionally permissible.

In all, whether it be taken from a plain meaning, or understood under medical parlance, and more importantly, following the intention of the Framers of the Constitution, the undeniable conclusion is that a zygote is a human organism and that the life of a new human being commences at a scientifically well-defined moment of conception, that is, upon fertilization.

This theory of implantation as the beginning of life is devoid of any legal or scientific mooring. It does not pertain to the beginning of life but to the viability of the fetus.

The RH Law and Abortion

The clear and unequivocal intent of the Framers of the 1987 Constitution in protecting the life of the unborn from conception was to prevent the Legislature from enacting a measure legalizing abortion.

A reading of the RH Law would show that it is in line with this intent and actually proscribes abortion. While the Court has opted not to make any determination, at this stage, when life begins, it finds that the RH Law itself clearly mandates that protection be afforded from the moment of

fertilization. As pointed out by Justice Carpio, the RH Law is replete with provisions that embody the policy of the law to protect to the fertilized ovum and that it should be afforded safe travel to the uterus for implantation. Moreover, the RH Law recognizes that abortion is a crime under Article 256 of the Revised Penal Code, which penalizes the destruction or expulsion of the fertilized ovum.

In carrying out its declared policy, the RH Law is consistent in prohibiting abortifacients. The RH Law mandates that protection must be afforded from the moment of fertilization. By using the word " or," the RH Law prohibits not only drugs or devices that prevent implantation, but also those that induce abortion and those that induce the destruction of a fetus inside the mother's womb. The conclusion becomes clear because the RH Law, first, prohibits any drug or device that induces abortion (first kind), which refers to that which induces the killing or the destruction of the fertilized ovum, and, second, prohibits any drug or device the fertilized ovum to reach and be implanted in the mother's womb (third kind).

However, the Court finds that the authors of the RH-IRR gravely abused their office when they redefined the meaning of abortifacient. With the addition of the word "primarily," in Section 3.0l(a) and G) of the RH-IRR is indeed ultra vires. It contravenes Section 4(a) of the RH Law and should, therefore, be declared invalid. There is danger that the insertion of the qualifier "primarily" will pave the way for the approval of contraceptives which may harm or destroy the life of the unborn from conception/fertilization in violation of Article II, Section 12 of the Constitution. With such qualification in the RH-IRR, it appears to insinuate that a contraceptive will only be considered as an "abortifacient" if its sole known effect is abortion or, as pertinent here, the prevention of the implantation of the fertilized ovum. For the same reason, this definition of "contraceptive" would permit the approval of contraceptives which are actually abortifacients because of their fail-safe mechanism.

Section 9 calls for the certification by the FDA that these contraceptives cannot act as abortive. With this, together with the definition of an abortifacient under Section 4 (a) of the RH Law and its declared policy against abortion, the undeniable conclusion is that contraceptives to be included in the PNDFS and the EDL will not only be those contraceptives that do not have the primary action of causing abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb, but also those that do not have the secondary action of acting the same way.

2. The Right to Health

A component to the right to life is the constitutional right to health. In this regard, the Constitution is replete with provisions protecting and promoting the right to health, particularly Section 15, Article II, Sections 11 to 13, Article XIII and Section 9, Article XVI of the Constitution.

These provisions are self-executing. Unless the provisions clearly express the contrary, the provisions of the Constitution should be considered self-executory.

The legislative intent in the enactment of the RH Law in this regard is to leave intact the provisions of R.A. No. 4729. There is no intention at all to do away with it. It is still a good law and its requirements are still in to be complied with. Thus, the Court agrees with the observation of respondent Lagman that the effectivity of the RH Law will not lead to the unmitigated proliferation of contraceptives since the sale, distribution and dispensation of contraceptive drugs and devices will still require the prescription of a licensed physician. With R.A. No. 4729 in place, there exists adequate safeguards to ensure the public that only contraceptives that are safe are made available to the public.

The distribution of contraceptive drugs and devices must not be indiscriminately done. The public health must be protected by all possible means. As pointed out by Justice De Castro, a heavy responsibility and burden are assumed by the government in supplying contraceptive drugs and devices, for it may be held accountable for any injury, illness or loss of life resulting from or incidental to their use.

The Court is of the strong view that Congress cannot legislate that hormonal contraceptives and intra-uterine devices are safe and non-abortifacient. The first sentence of Section 9 that ordains their inclusion by the National Drug Formulary in the EDL by using the mandatory "shall" is to be construed as operative only after they have been tested, evaluated, and approved by the FDA. The FDA, not Congress, has the expertise to determine whether a particular hormonal contraceptive or intrauterine device is safe and non-abortifacient.

3. Freedom of Religion and the Right to Free Speech

The Filipino people in "imploring the aid of Almighty God " manifested their spirituality innate in our nature and consciousness as a people, shaped by tradition and historical experience. As this is embodied in the preamble, it means that the State recognizes with respect the influence of religion in so far as it instills into the mind the purest principles of morality. The Framers, however, felt the need to put up a strong barrier so that the State would not encroach into the affairs of the church, and vice-versa. The principle of separation of Church and State was enshrined in Article II, Section 6 of the 1987 Constitution. The constitutional assurance of religious freedom provides two guarantees: the Establishment Clause and the Free Exercise Clause.

The establishment clause "principally prohibits the State from sponsoring any religion or favoring any religion as against other religions. It mandates a strict neutrality in affairs among religious groups." Essentially, it prohibits the establishment of a state religion and the use of public resources for the support or prohibition of a religion.

On the other hand, the basis of the free exercise clause is the respect for the inviolability of the human conscience. Under this part of religious freedom guarantee, the State is prohibited from unduly interfering with the outside manifestations of one's belief and faith.

Corollary to the guarantee of free exercise of one's religion is the principle that the guarantee of religious freedom is comprised of two parts: the freedom to believe, and the freedom to act on one's belief. The first part is absolute. The second part however, is limited and subject to the awesome power of the State and can be enjoyed only with proper regard to the rights of others. It is "subject to regulation where the belief is translated into external acts that affect the public welfare."

Thus, in case of conflict between the free exercise clause and the State, the Court adheres to the doctrine of benevolent neutrality. The benevolent neutrality theory believes that with respect to these governmental actions, accommodation of religion may be allowed, not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance. "The purpose of accommodation is to remove a burden on, or facilitate the exercise of, a person's or institution's religion. What is sought under the theory of accommodation is not a declaration of unconstitutionality of a facially neutral law, but an exemption from its application or its 'burdensome effect,' whether by the legislature or the courts."

In ascertaining the limits of the exercise of religious freedom, the compelling state interest test is proper. Underlying the compelling state interest test is the notion that free exercise is a fundamental right and that laws burdening it should be subject to strict scrutiny.

In the case at bench, it is not within the province of the Court to determine whether the use of contraceptives or one's participation in the support of modem reproductive health measures is moral from a religious standpoint or whether the same is right or wrong according to one's dogma or belief. For the Court has declared that matters dealing with "faith, practice, doctrine, form of worship, ecclesiastical law, custom and rule of a church ... are unquestionably ecclesiastical matters which are outside the province of the civil courts." The jurisdiction of the Court extends only to public and secular morality. Stated otherwise, while the Court stands without authority to rule on ecclesiastical matters, as vanguard of the Constitution, it does have authority to determine whether the RH Law contravenes the guarantee of religious freedom.

While the Constitution prohibits abortion, laws were enacted allowing the use of contraceptives. To some medical practitioners, however, the whole idea of using contraceptives is an anathema. Consistent with the principle of benevolent neutrality, their beliefs should be respected.

In the same breath that the establishment clause restricts what the government can do with religion, it also limits what religious sects can or cannot do with the government. They can neither cause the government to adopt their particular doctrines as policy for everyone, nor can they not cause the government to restrict other groups. To do so, in simple terms, would cause the State to adhere to a particular religion and, thus, establishing a state religion.

Consequently, the petitioners are misguided in their supposition that the State cannot enhance its population control program through the RH Law simply because the promotion of contraceptive use is contrary to their religious beliefs. Indeed, the State is not precluded to pursue its legitimate secular objectives without being dictated upon by the policies of any one religion. One cannot refuse to pay his taxes simply because it will cloud his conscience.

While the RH Law, in espousing state policy to promote reproductive health manifestly respects diverse religious beliefs in line with the Non-Establishment Clause, the same conclusion cannot be reached with respect to Sections 7, 23 and 24 thereof. The said provisions commonly mandate that a hospital or a medical practitioner to immediately refer a person seeking health care and services under the law to another accessible healthcare provider despite their conscientious objections based on religious or ethical beliefs.

In a situation where the free exercise of religion is allegedly burdened by government legislation or practice, the compelling state interest test in line with the Court's espousal of the Doctrine of Benevolent Neutrality finds application. In this case, the conscientious objector's claim to religious freedom would warrant an exemption from obligations under the RH Law, unless the government succeeds in demonstrating a more compelling state interest in the accomplishment of an important secular objective.

In applying the test, the first inquiry is whether a conscientious objector's right to religious freedom has been burdened. The Court is of the view that the obligation to refer imposed by the RH Law violates the religious belief and conviction of a conscientious objector. Once the medical practitioner, against his will, refers a patient seeking information on modem reproductive health products, services, procedures and methods, his conscience is immediately burdened as he has been

compelled to perform an act against his beliefs. As Commissioner Joaquin A. Bernas (Commissioner Bernas) has written, "at the basis of the free exercise clause is the respect for the inviolability of the human conscience.

Though it has been said that the act of referral is an opt-out clause, it is, however, a false compromise because it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive. They cannot, in conscience, do indirectly what they cannot do directly. One may not be the principal, but he is equally guilty if he abets the offensive act by indirect participation.

Moreover, the guarantee of religious freedom is necessarily intertwined with the right to free speech, it being an externalization of one's thought and conscience. This in turn includes the right to be silent. With the constitutional guarantee of religious freedom follows the protection that should be afforded to individuals in communicating their beliefs to others as well as the protection for simply being silent. Accordingly, a conscientious objector should be exempt from compliance with the mandates of the RH Law. If he would be compelled to act contrary to his religious belief and conviction, it would be violative of "the principle of non-coercion" enshrined in the constitutional right to free exercise of religion.

The same holds true with respect to non-maternity specialty hospitals and hospitals owned and operated by a religious group and health care service providers.

The Court is not oblivious to the view that penalties provided by law endeavour to ensure compliance. Without set consequences for either an active violation or mere inaction, a law tends to be toothless and ineffectual. Nonetheless, when what is bartered for an effective implementation of a law is a constitutionally-protected right the Court firmly chooses to stamp its disapproval. The punishment of a healthcare service provider, who fails and/or refuses to refer a patient to another, or who declines to perform reproductive health procedure on a patient because incompatible religious beliefs, is a clear inhibition of a constitutional guarantee which the Court cannot allow.

The conscientious objection clause should be equally protective of the religious belief of public health officers. There is no perceptible distinction why they should not be considered exempt from the mandates of the law. The protection accorded to other conscientious objectors should equally apply to all medical practitioners without distinction whether they belong to the public or private sector. After all, the freedom to believe is intrinsic in every individual and the protective robe that guarantees its free exercise is not taken off even if one acquires employment in the government.

Exception: Life Threatening Cases

All this notwithstanding, the Court properly recognizes a valid exception set forth in the law. While generally healthcare service providers cannot be forced to render reproductive health care procedures if doing it would contravene their religious beliefs, an exception must be made in life-threatening cases that require the performance of emergency procedures. In these situations, the right to life of the mother should be given preference, considering that a referral by a medical practitioner would amount to a denial of service, resulting to unnecessarily placing the life of a mother in grave danger.

In a conflict situation between the life of the mother and the life of a child, the doctor is morally obliged always to try to save both lives. If, however, it is impossible, the resulting death to one should not be deliberate. Accordingly, if it is necessary to save the life of a mother, procedures endangering the

life of the child may be resorted to even if is against the religious sentiments of the medical practitioner. As quoted above, whatever burden imposed upon a medical practitioner in this case would have been more than justified considering the life he would be able to save.

Family Planning Seminars

Anent the requirement imposed under Section 15 as a condition for the issuance of a marriage license, the Court finds the same to be a reasonable exercise of police power by the government. A cursory reading of the assailed provision bares that the religious freedom of the petitioners is not at all violated. All the law requires is for would-be spouses to attend a seminar on parenthood, family planning breastfeeding and infant nutrition. It does not even mandate the type of family planning methods to be included in the seminar, whether they be natural or artificial. As correctly noted by the OSG, those who receive any information during their attendance in the required seminars are not compelled to accept the information given to them, are completely free to reject the information they find unacceptable, and retain the freedom to decide on matters of family life without the intervention of the State.

4. The Family and the Right to Privacy

The Court cannot but agree.

The 1987 Constitution is replete with provisions strengthening the family as it is the basic social institution. In fact, one article, Article XV, is devoted entirely to the family.

In this case, the RH Law, in its not-so-hidden desire to control population growth, contains provisions which tend to wreck the family as a solid social institution. It bars the husband and/or the father from participating in the decision making process regarding their common future progeny. It likewise deprives the parents of their authority over their minor daughter simply because she is already a parent or had suffered a miscarriage.

Section 3, Art. XV of the Constitution espouses that the State shall defend the "right of the spouses to found a family." One person cannot found a family. The right, therefore, is shared by both spouses. The RH Law cannot be allowed to infringe upon this mutual decision-making. By giving absolute authority to the spouse who would undergo a procedure, and barring the other spouse from participating in the decision would drive a wedge between the husband and wife, possibly result in bitter animosity, and endanger the marriage and the family, all for the sake of reducing the population. This would be a marked departure from the policy of the State to protect marriage as an inviolable social institution. Unless it prejudices the State, which has not shown any compelling interest, the State should see to it that they chart their destiny together as one family. At any rate, in case of conflict between the couple, the courts will decide.

Equally deplorable is the debarment of parental consent in cases where the minor, who will be undergoing a procedure, is already a parent or has had a miscarriage. It is precisely in such situations when a minor parent needs the comfort, care, advice, and guidance of her own parents. The State cannot replace her natural mother and father when it comes to providing her needs and comfort. To say that their consent is no longer relevant is clearly anti-family. It does not promote unity in the family. It is an affront to the constitutional mandate to protect and strengthen the family as an inviolable social institution.

More alarmingly, it disregards and disobeys the constitutional mandate that "the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government."

First Exception: Access to Information

There must be a differentiation between access to information about family planning services, on one hand, and access to the reproductive health procedures and modern family planning methods themselves, on the other. Insofar as access to information is concerned, the Court finds no constitutional objection to the acquisition of information by the minor referred to under the exception in the second paragraph of Section 7 that would enable her to take proper care of her own body and that of her unborn child. After all, Section 12, Article II of the Constitution mandates the State to protect both the life of the mother as that of the unborn child. Considering that information to enable a person to make informed decisions is essential in the protection and maintenance of ones' health, access to such information with respect to reproductive health must be allowed.

Second Exception: Life Threatening Cases

As in the case of the conscientious objector, an exception must be made in life-threatening cases that require the performance of emergency procedures. In such cases, the life of the minor who has already suffered a miscarriage and that of the spouse should not be put at grave risk simply for lack of consent. It should be emphasized that no person should be denied the appropriate medical care urgently needed to preserve the primordial right, that is, the right to life.

5. Academic Freedom

At this point, suffice it to state that any attack on the validity of Section 14 of the RH Law is premature because the Department of Education, Culture and Sports has yet to formulate a curriculum on age-appropriate reproductive health education. One can only speculate on the content, manner and medium of instruction that will be used to educate the adolescents and whether they will contradict the religious beliefs of the petitioners and validate their apprehensions. Thus, considering the premature nature of this particular issue, the Court declines to rule on its constitutionality or validity.

At any rate, Section 12, Article II of the 1987 Constitution provides that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and development of moral character shall receive the support of the Government. Also, it is the inherent right of the State to act as parens patriae to aid parents in the moral development of the youth. Indeed, the Constitution makes mention of the importance of developing the youth and their important role in nation building. As Section 14 also mandates that the mandatory reproductive health education program shall be developed in conjunction with parent-teacher-community associations, school officials and other interest groups, it could very well be said that it will be in line with the religious beliefs of the petitioners. By imposing such a condition, it becomes apparent that the petitioners' contention that Section 14 violates Article XV, Section 3(1) of the Constitution is without merit.

6. Due Process

The arguments fail to persuade.

A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. Moreover, in determining whether the words used in a statute are vague, words must not only be taken in accordance with their plain meaning alone, but also in relation to other parts of the statute. It is a rule that every part of the statute must be interpreted with reference to the context, that is, every part of it must be construed together with the other parts and kept subservient to the general intent of the whole enactment.

As correctly noted by the OSG, in determining the definition of "private health care service provider," reference must be made to Section 4(n) of the RH Law which defines a "public health service provider. Further, the use of the term "private health care institution" in Section 7 of the law, instead of "private health care service provider," should not be a cause of confusion for the obvious reason that they are used synonymously.

Clearly, subject to the qualifications and exemptions earlier discussed, the right to be exempt from being obligated to render reproductive health service and modem family planning methods, necessarily includes exemption from being obligated to give reproductive health information and to render reproductive health procedures. The terms "service" and "methods" are broad enough to include the providing of information and the rendering of medical procedures.

From the plain of Sec. 23 of the RH Law plain meaning, the word "incorrect" here denotes failing to agree with a copy or model or with established rules; inaccurate, faulty; failing to agree with the requirements of duty, morality or propriety; and failing to coincide with the truth. On the other hand, the word "knowingly" means with awareness or deliberateness that is intentional. Used together in relation to Section 23(a)(l), they connote a sense of malice and ill motive to mislead or misrepresent the public as to the nature and effect of programs and services on reproductive health. Public health and safety demand that health care service providers give their honest and correct medical information in accordance with what is acceptable in medical practice. While health care service providers are not barred from expressing their own personal opinions regarding the programs and services on reproductive health, their right must be tempered with the need to provide public health and safety. The public deserves no less.

7. Equal Protection

To provide that the poor are to be given priority in the government's reproductive health care program is not a violation of the equal protection clause. In fact, it is pursuant to Section 11, Article XIII of the Constitution which recognizes the distinct necessity to address the needs of the underprivileged by providing that they be given priority in addressing the health development of the people.

It should be noted that Section 7 of the RH Law prioritizes poor and marginalized couples who are suffering from fertility issues and desire to have children. There is, therefore, no merit to the contention that the RH Law only seeks to target the poor to reduce their number. Moreover, the RH Law does not prescribe the number of children a couple may have and does not impose conditions upon couples who intend to have children. While the petitioners surmise that the assailed law seeks to charge couples with the duty to have children only if they would raise them in a truly humane way, a deeper

look into its provisions shows that what the law seeks to do is to simply provide priority to the poor in the implementation of government programs to promote basic reproductive health care.

With respect to the exclusion of private educational institutions from the mandatory reproductive health education program under Section 14, suffice it to state that the mere fact that the children of those who are less fortunate attend public educational institutions does not amount to substantial distinction sufficient to annul the assailed provision. On the other hand, substantial distinction rests between public educational institutions and private educational institutions, particularly because there is a need to recognize the academic freedom of private educational institutions especially with respect to religious instruction and to consider their sensitivity towards the teaching of reproductive health education.

8. Involuntary Servitude

The point of the OSG is well-taken.

Moreover, as some petitioners put it, the notion of involuntary servitude connotes the presence of force, threats, intimidation or other similar means of coercion and compulsion. A reading of the assailed provision, however, reveals that it only encourages private and non- government reproductive healthcare service providers to render pro bono service. Other than non-accreditation with PhilHealth, no penalty is imposed should they choose to do otherwise. Private and non-government reproductive healthcare service providers also enjoy the liberty to choose which kind of health service they wish to provide, when, where and how to provide it or whether to provide it all. Clearly, therefore, no compulsion, force or threat is made upon them to render pro bono service against their will. While the rendering of such service was made a prerequisite to accreditation with PhilHealth, the Court does not consider the same to be an unreasonable burden, but rather, a necessary incentive imposed by Congress in the furtherance of a perceived legitimate state interest.

Consistent with what the Court had earlier discussed, however, it should be emphasized that conscientious objectors are exempt from this provision as long as their religious beliefs and convictions do not allow them to render reproductive health service, pro bono or otherwise.

9. Delegation of Authority to the FDA

The Court finds nothing wrong with the delegation. The FDA does not only have the power but also the competency to evaluate, register and cover health services and methods. It is the only government entity empowered to render such services and highly proficient to do so.

10. Autonomy of Local Governments and the Autonomous Region of Muslim Mindanao (ARMM)

In this case, a reading of the RH Law clearly shows that whether it pertains to the establishment of health care facilities, the hiring of skilled health professionals, or the training of barangay health workers, it will be the national government that will provide for the funding of its implementation. Local autonomy is not absolute. The national government still has the say when it comes to national priority programs which the local government is called upon to implement like the RH Law.

Moreover, from the use of the word "endeavor," the LGUs are merely encouraged to provide these services. There is nothing in the wording of the law which can be construed as making the availability of these services mandatory for the LGUs. For said reason, it cannot be said that the RH Law

amounts to an undue encroachment by the national government upon the autonomy enjoyed by the local governments.

The fact that the RH Law does not intrude in the autonomy of local governments can be equally applied to the ARMM. The RH Law does not infringe upon its autonomy. Moreover, Article III, Sections 6, 10 and 11 of R.A. No. 9054, or the organic act of the ARMM, simply delineate the powers that may be exercised by the regional government, which can, in no manner, be characterized as an abdication by the State of its power to enact legislation that would benefit the general welfare. Except for the express and implied limitations imposed on it by the Constitution, Congress cannot be restricted to exercise its inherent and plenary power to legislate on all subjects which extends to all matters of general concern or common interest.

11. Natural Law

With respect to the argument that the RH Law violates natural law, suffice it to say that the Court does not duly recognize it as a legal basis for upholding or invalidating a law. Our only guidepost is the Constitution. While every law enacted by man emanated from what is perceived as natural law, the Court is not obliged to see if a statute, executive issuance or ordinance is in conformity to it. To begin with, it is not enacted by an acceptable legitimate body. Moreover, natural laws are mere thoughts and notions on inherent rights espoused by theorists, philosophers and theologists. Unless, a natural right has been transformed into a written law, it cannot serve as a basis to strike down a law. Natural law is to be used sparingly only in the most peculiar of circumstances involving rights inherent to man where no law is applicable.

AURELIO M. UMALI *v.* COMMISSION ON ELECTIONS, JULIUS CESAR V. VERGARA, and THE CITY GOVERNMENT OF CABANATUAN
G.R. No. 203974, 22 April 2014, EN BANC (Velasco, Jr., J.)

Presidential Proclamation No. 418, Series of 2012, was issued by the President proclaiming the City of Cabanatuan as an HUC subject to "ratification in a plebiscite by the qualified voters therein, as provided for in Section 453 of the Local Government Code of 1991." Pursuant to such proclamation, COMELEC issued a minute resolution which provided that only those registered residents of Cabanatuan City should participate in the said plebiscite. Petitioner, Aurelio Umali, then Governor of Nueva Ecija, filed a verified motion for reconsideration, maintaining that the proposed conversion in question will necessarily and directly affect the mother province of Nueva Ecija. Hence, all the registered voters in the province are qualified to cast their votes in resolving the proposed conversion of Cabanatuan City. However, his motion for reconsideration was denied by COMELEC.

ISSUE:

Whether or not only the qualified registered voters of Cabanatuan City can participate in the plebiscite called for the conversion of Cabanatuan City from a component city into an HUC.

RULING:

No. The qualified registered voters of the entire province of Nueva Ecija can participate in the plebiscite called for the conversion of Cabanatuan City from a component city into an HUC.

The phrase "by the qualified voters therein" in Sec. 453 means the qualified voters not only in the city proposed to be converted to an HUC but also the voters of the political units directly affected by such conversion in order to harmonize Sec. 453 with Sec. 10, Art. X of the Constitution.

The province will inevitably suffer a corresponding decrease in territory brought about by Cabanatuan City's gain of independence. It reduces the territorial jurisdiction of the province. Also, the said conversion will result in the reduction of the Internal Revenue Allotment (IRA) to the province based on Sec. 285 of the LGC. The residents of the city will cease to be political constituencies of the province, effectively reducing the latter's population. It will likewise reduce the province's taxing jurisdiction, and corollary to this, it will experience a corresponding decrease in shares in local tax collections. A component city's conversion into an HUC and its resultant autonomy from the province is a threat to the latter's economic viability.

In view of these changes in the economic and political rights of the province of Nueva Ecija and its residents, the entire province certainly stands to be directly affected by the conversion of Cabanatuan City into an HUC. Following the doctrines in Tan and Padilla, all the qualified registered voters of Nueva Ecija should then be allowed to participate in the plebiscite called for that purpose.

DEPARTMENT OF AGRARIAN REFORM v. SALUD GACIAS BERIÑA, et al.
G.R. No. 183931 and 183901, 9 July 2014, Second Division (Perlas-Bernabe, *J.)*

Respondents are among the eight (8) children of the late spouses Sabiniano and Margarita Gacias (Sps. Gacias), whose 12.6866 has. of riceland and 16.8080 has. of other agricultural lands, located in Barangays Carriedo and Buenavista, respectively, in Irosin, Sorsogon, were placed under the government's Operation Land Transfer (OLT) Program, pursuant to Presidential Decree No. (PD) 27, otherwise known as the "Tenants Emancipation Decree," as amended.

It appears that the DAR had initially valued the 8-ha. portion of the aforesaid riceland (subject portion) at ₱77,000.00 (DAR valuation), using the formula under Executive Order No. (EO) 228, i.e., Land Value = Average Gross Product (AGP) x 2.5 x ₱35.00 x area. Under this formula, the government support price (GSP) for one (1) cavan of 50 kilos of palay was pegged at ₱35.00, which is the GSP set on the date of the effectivity of PD 27 on October 21, 1972.

Respondents filed a Complaint for Determination of Just Compensation before the RTC averring that the initial DAR valuation was unconscionably low. The RTC rendered a Decision rejecting the DAR valuation and fixing the just compensation of the subject portion at 735,562.05, using the formula Land Value = (AGP x 2) x 2.5 x 35.00 x Has. The CA affirmed the RTC Decision with the modification imposing legal interest at the rate of 12% p.a. on the compensation award upon its finality until full payment.

ISSUES:

1. Is it proper to direct the LBP to pay the amount of ₱735,562.05 as just compensation for the subject portion despite the absence of the land transfer claim/claim folder for processing and payment?
2. Is the amount of just compensation as determined by the RTC proper?

RULING:

1. It cannot be denied that the subject portion had already been expropriated considering (a) the DAR's admission that it had already valued the same under PD 27 and EO 228, and (b) the issuance of EPs and/or CLTs to some of the tenants-beneficiaries, thereby dispossessing the Gacias Heirs of their property without just compensation. Certainly, the Gacias Heirs' entitlement to just compensation for the taking of their property cannot be disregarded by the mere absence of the claim folders asserted in this case, as otherwise, the Court would be abetting the perpetration of a grave injustice against them, occasioned by the undue delay and unjustified failure of the DAR to forward to the LBP the said folders even after the taking of the subject portion and the issuance of the EPs and/or CLTs to some of the tenants-beneficiaries.
2. While the LBP is charged with the initial responsibility of determining the value of lands placed under the land reform program and the compensation to be paid for their taking, guided by the records/ documents contained in the claim folders, it must be emphasized that its valuation is considered only as an initial determination, which is not conclusive. Verily, it is the Regional Trial Court, sitting as a Special Agrarian Court, that should make the final determination of just Compensation and which has the final say on what the amount of just compensation will be pursuant to the well-settled rule that the determination of just compensation is a judicial function. This rule notwithstanding, a review of the records, nonetheless, impels the Court to order the remand of the case to the RTC considering the failure of both the RTC and the CA to consider

the factors enumerated under Section 17 of RA 6657, as amended, in determining the just compensation for the subject portion.

DEPARTMENT OF AGRARIAN REFORM v. SPOUSES DIOSDADO STA. ROMANA, et al.
G.R. No. 183290, 9 July 2014, Second Division, (PERLAS-BERNABE, *J.)*

Respondents are the owners of a 27.5307-ha. agricultural land situated in San Jose City, Nueva Ecija. Petitioner, the Department of Agrarian Reform (DAR), compulsorily acquired a 21.2192-ha. portion (subject land) of respondents' property pursuant to the government's Operation Land Transfer Program under Presidential Decree No. (PD) 27, otherwise known as the "Tenants Emancipation Decree," as amended. DAR caused the generation of emancipation patents (EPs) in favor of the farmer-beneficiaries, and, in 1996, the LBP fixed the value of the subject land at ₱361,181.87. Dissatisfied with the LBP valuation, respondents filed a Petition for Approval and Appraisal of Just Compensation before the RTC averring that: (a) the LBP valuation was grossly inadequate considering the subject land's proximity to subdivision lots and commercial establishments; and (b) the fair market value of the subject land should be fixed in the amount of at least ₱300,000.00/ha. as some beneficiaries were even selling their lands to subdivision developers at the price of ₱1,000,000.00/ha.

The RTC rendered a Decision rejecting the LBP valuation and fixing the just compensation of the subject land at ₱2,576,829.94 or ₱121,438.60/ha. The CA affirmed the RTC Decision.

ISSUE:

Was the subject land was properly valued in accordance with the factors set forth in Section 17 of RA 6657, as amended?

RULING:

Settled is the rule that when the agrarian reform process is still incomplete, as in this case where the just compensation for the subject land acquired under PD 27 has yet to be paid, just compensation should be determined and the process concluded under RA 6657, with PD 27 and EO 228 having mere suppletory effects. This means that PD 27 and EO 228 only apply when there are gaps in RA 6657; where RA 6657 is sufficient, PD 27 and EO 228 are superseded.

For purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of taking. In addition, the factors enumerated under Section 17 of RA 6657, i.e., (a) the acquisition cost of the land, (b) the current value of like properties, (c) the nature and actual use of the property, and the income therefrom, (d) the owner's sworn valuation, (e) the tax declarations, (f) the assessment made by government assessors, (g) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and (h) the non-payment of taxes or loans secured from any government financing institution on the said land, if any , must be equally considered.

The Court has gone over the records and observed that the only factors considered by the RTC in determining the just compensation for the subject land were (a) the acquisition price of a 5.5825-ha. landholding situated in the same locality paid to the owner on November 17, 1997, and (b) the market value of the subject land declared by the respondents, without a showing that the other factors under Section 17 of RA 6657 , as amended, were even taken into account or, otherwise, found to be inapplicable , contrary to what the law requires. Consequently, the CA erred in upholding the RTC's valuation as having been made in accordance with Section 17 of RA 6657, as amended.

HEIRS OF DIOSDADO M. MENDOZA, et al. v. DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS and the DPWH SECRETARY
G.R. No. 203834, 9 July 2014, Second Division, (CARPIO, *J.)*

Mendoza, doing business under the name and style of D' Superior Builders (Superior Builders), was the winning bidder for the construction of the 15-kilometer Madaymen Masala Amsuling Road in Benguet and the engineers' quarters and laboratory, designated as Package VI, of the Highland Agriculture Development Project (HADP). He was also the winning bidder for the construction of the 15-kilometer barangay roads (Sinipsip-Akiki, SinipsipMaalad, and Madaymen) in Benguet, designated as Package IX of the HADP.

During the pre-construction survey, Mendoza alleged that he discovered that the whole stretch of the 15-kilometer project had no right-of-way, in violation of Ministry Order No. 65. He brought the matter to the attention of the DPWH and UTI but according to him, it was only resolved when the affected landowners and farmers allowed passage at Mendoza's risk. Mendoza alleged that the defendants, except for Estuar, conspired to make it appear that Superior Builders incurred negative slippage of 29% and recommended the forfeiture of the contract.

The DPWH alleged that the owner of the road, Gregorio Abalos (Abalos) issued a certification that he never disallowed passage to Superior Builders' vehicles and equipment and road right-of-way was never a problem.

The trial court ruled that the termination of the contract over Package VI and the non-award of Package IX to Superior Builders were arbitrary and unjustified. The trial court ruled that under the original plan, Package VI was inaccessible from the starting point which is a privately-owned road. The trial court ruled that there was no showing of any attempt by the government to secure right-of-way by expropriation or other legal means. The trial court held that Superior Builders could not be faulted for its failure to perform the obligation within the stipulated period because the DPWH made it impossible by its failure to acquire the necessary right-of-way and as such, no negative slippage could be attributed to Superior Builders. The trial court further ruled that in entering into a contract, the DPWH divested itself of immunity from suit and assumed the character of an ordinary litigant.

The Court of Appeals ruled that the DPWH's forfeiture order of Package VI of the HADP as well as the non-award of Package IX to Superior Builders was justified. The Court of Appeals found that Superior Builders incurred a negative slippage of 31.852%, which is double the limit set by the government under DPWH Circular No. 102, series of 1988. Also, the area where there was a right-of way problem was only the first 3.2 kilometers of the 15.5-kilometer project. Hence, Superior Builders could have worked on the other areas and the right-of-way issue could not justify the 31.852% negative slippage it incurred. The Court of Appeals faulted the trial court for skirting the issue on state immunity from suit. The Court of Appeals ruled that there should be a distinction whether the DPWH entered the contracts for Package VI and Package XI in its governmental or proprietary capacity. In this case, the Court of Appeals ruled that the DPWH's contractual obligation was made in the exercise of its governmental functions and was imbued with public interest.

ISSUES:

1. Is the delay in the accomplishment of the project attributable to Superior Builders?
2. Does the DPWH have a separate juridical personality of its own and that Mendoza's action was a suit against the State?

RULING:

1. The Superior Builders should be made to bear its own losses. Undeniably, the negative slippage incurred by Superior Builders, which reached 31.852%, far exceeded the allowable slippage under PD 1870.

In this case, Superior Builders was warned of its considerable delay in the implementation of the project as early as 29 April 1989 when the progress slippage reached 4.534% due to the late implementation of the project. Thereafter, Superior Builders received the first, second and final warnings when the negative slippages reached 7.648%, 11.743% and 16.32%, respectively. By the time the contract was terminated, the negative slippage already reached 31.852% or more than twice the terminal stage under DO 102.

The right-of-way problem turned out to affect only the first 3.2 kilometers of the project. However, as the Court of Appeals pointed out, Superior Builders was not able to go beyond the 3.2 kilometers because of the limited equipment it mobilized on the project site. Further, the Court of Appeals noted that Superior Builders' bulldozer broke down after three days of work, proving that Superior Builders had been remiss in its responsibilities as a contractor. In addition, Abalos denied in a certification that he disallowed the passage of Superior Builders' vehicles and equipment on the road within his property from the time of the commencement of the contract in March 1989.

In short, Superior Builders could have proceeded with the project, as it was constantly reminded to do so, but it capitalized on the right-of-way problem to justify its delays.

Given the foregoing, the DPWH was justified in forfeiting Package VI for Superior Builders' failure to comply with its contractual obligations. We also note that Package IX of the HADP was tied to the completion of Package VI because the Asian Development Bank could not approve the award of Package IX to Superior Builders unless its work on Package VI was satisfactory to the DPWH. This explains why Package IX had to be rebid despite the initial award of the project to Superior Builders.

The Court of Appeals likewise correctly ruled that the DPWH should not be made to pay for the rental of the unserviceable equipment of Superior Builders. The Court of Appeals noted that (1) Superior Builders failed to mobilize its equipment despite having the first 7.5% advance payment under the contract, and (2) even when the trial court issued a temporary restraining order on 2 August 1990 in favor of Superior Builders, it failed to remove the equipment from the project site. As regards the delivery and value of the materials, the Court of Appeals found that the supposed delivery was only signed by Areniego without verification from UTI's Quantity Engineer and Resident Engineer. Thus, we agree with the Court of Appeals that Superior Builders should be made to bear its own losses.

2. The doctrine of immunity from suit is anchored on Section 3, Article XVI of the 1987 Constitution which states that the State may not be sued without its consent.

The general rule is that a state may not be sued, but it may be the subject of a suit if it consents to be sued, either expressly or impliedly. There is express consent when a law so provides, while there is implied consent when the State enters into a contract or it itself commences litigation. This Court explained that in order to determine implied waiver when the State or its agency entered into a contract, there is a need to distinguish whether the contract was entered into in its governmental or proprietary capacity, thus:

x x x. However, it must be clarified that when a state enters into a contract, it does not automatically mean that it has waived its nonsuability. The State "will be deemed to have impliedly waived its nonsuability [only] if it has entered into a contract in its proprietary or private capacity. [However,] when the contract involves its sovereign or governmental capacity[,] x x x no such waiver may be implied." Statutory provisions waiving [s]tate immunity are construed in strictissimi juris. For, waiver of immunity is in derogation of sovereignty.

Having made this distinction, we reiterate that the DPWH is an unincorporated government agency without any separate juridical personality of its own and it enjoys immunity from suit.

The contracts that the DPWH entered into with Mendoza for the construction of Packages VI and IX of the HADP were done in the exercise of its governmental functions. Hence, petitioners cannot claim that there was an implied waiver by the DPWH simply by entering into a contract. Thus, the Court of Appeals correctly ruled that the DPWH enjoys immunity from suit and may not be sued without its consent.

DEPARTMENT OF AGRARIAN REFORM v. SUSIE IRENE GALLE
G.R. No. 195213 and 171836, 11 August 2014, Second Division (Del Castillo, *J.*)

Respondent Susie Irene Galle (Galle) owned two contiguous parcels of land known as the Patalon Coconut Estate (the estate) in Patalon, Zamboanga City and covered by two titles issued in her name. The estate is a fully developed and income-producing farm. The estate contained between 35,810 to 38,666 coconut trees, producing copra. Likewise, cattle, carabao and horses were raised therein.

DAR offered a compensation of Php6,083,545.26 for the property covering an area of 356.2257 has. This offered compensation was later increased to Php7,534,063.92.

Galle filed a case for "Determination and Payment of Just Compensation with Damages" against the Secretary of the DAR, LBP, and PEARA, with the RTC of Pagadian City, the designated Special Agrarian Court (SAC). Galle alleged that the estate was a fully developed and income-generating farm which was situated near the Zamboanga City Special Economic Zone Authority and the Ayala de Zamboanga Industrial Estate; that the estate was a rich source of sand and gravel, and more than 62 hectares thereof was coastal land; that at the time of taking by the State, the fair market value thereof was no less than ₱100.00 per square meter, or ₱1 million per hectare; and that DAR and LBP offered compensation equivalent to only ₱1.70 per square meter. Galle prayed that just compensation be fixed in the amount of not less than ₱1 million per hectare or a total of ₱350,569,636.10; that she be granted compounded interest on the just compensation due her, computed from the time her land was taken until she is paid; that she be awarded 15% attorney's fees, "actual expenses", and costs of suit.

Considering the documents submitted by the respondent, the SAC found both LBP's and DAR's valuation as confiscatory and tantamount to unjust taking of respondent's land.

Indeed, it has been established that when the DAR took respondent's land, it was a fully-developed estate. It has been planted to coconut trees with intercrops, mango trees, bamboo clamps [sic], coffee trees which were then fruit bearing. Respondent also raised in the land livestock such as cattle, carabao, and horses which she proposed to sell to DAR based on normal cattle weights to be paid by LBP. In fact, respondent's land was fenced and patrolled by security guards prior to DAR's taking. It is even significant to consider that more than sixty-two hectares of the land is coastal fronting the Sulu Sea, while on the south portion of the land lies the Miluao River and on the north, the Patalon River. Not only that. The subject land is located along Zamboanga-Labuan road – a national road which covers an approximately two (2) hectare-stretch of the land. Respondent was likewise even recognized by DAR for providing the 1.4 hectare-portion of the land as barangay road. The undisputed presence of water and road networks in respondent's land certainly defy LBP's valuation of the land at ₱7,534,063.91, which translates to the ridiculously unfair amountof ₱2.11 per square meter.

In arriving at a valuation of ₱83.04 per square meter, the SAC meticulously evaluated the following factors: [1] the report of the Commissioners vis-à-vis the Dissenting Opinion; [2] the nature of the land, its actual use and income; [3] the sworn valuation by the owner; the tax declarations; [4] the current value of like properties or the comparative sales of adjacent land; [5] the permanent improvements on the land and value of improvements; and [6] the potential use.

ISSUE:

What is the proper amount of just compensation?

RULING:

As already discussed, the determination of just compensation is a judicial function. Moreover, both Section 17 of RA 6657 and the formula prescribed in the applicable AO of the DAR must be considered in the computation.

Reading the August 15, 2005 Resolution in its entirety, it readily appears that the SAC did not apply the formula in the applicable Administrative Circulars of the DAR (AOs 6 and 11) in arriving at its own independent valuation of Galle's estate. It relied upon Manalo's Commissioners' Report, which likewise did not apply the formula in AOs 6 and 11, although it took into consideration some of the factors laid down in Section 17 of RA 6657.

The CA is guilty of the same mistake. Nowhere in the appellate court's decision can it be seen that the formula prescribed by AOs 6 and 11 were taken into account; all that were considered were the factors enumerated in Section 17 of RA 6657, which thus makes its pronouncement incomplete.

Thus, while this Court acknowledges that Galle's estate was expropriated to the extent of 356.8257 hectares as the CA has found, the computation of the exact amount of just compensation remains an issue that must be resolved, taking into consideration both Section 17 of RA 6657 and AOs 6 and 11. Iin the exercise ofthe Court's essentially judicial function of determining just compensation, the RTC-SACs are not granted unlimited discretion and must consider and apply the R.A. No. 6657-enumerated factors and the DAR formula that reflect these factors. These factors and formula provide the uniform framework or structure for the computation of the just compensation for a property subject to agrarian reform. This uniform system will ensure that they do not arbitrarily fix an amount that is absurd, baseless and even contradictory to the objectives of our agrarian reform laws as just compensation. This system will likewise ensure that the just compensation fixed represents, at the very least, a close approximation of the full and real value of the property taken that is fair and equitable for both the farmer-beneficiaries and the landowner.

Taking the foregoing into consideration, there is thus a need to remand the case in order to properly compute the just compensation that Galle and her heirs are entitled to, including interest and attorney's fees, if any. For this purpose, the CA may be commissioned to receive and evaluate the evidence of the parties; this becomes especially relevant where the property was taken from its owners way back and the case for just compensation has been pending for decades. Considering, however, that the land was acquired in 1989 and the only surviving petitioner is now an octogenarian and is in need of urgent medical attention, we find these special circumstances justifying in the acceleration of the final disposition of this case. This Court deems it best pro hac vice to commission the CA as its agent to receive and evaluate the evidence of the parties. In light of the foregoing considerations, it is but just and proper to allow, with becoming dispatch, withdrawal of the revised compensation amount, albeit protested. The concept of just compensation contemplates of just and timely payment; it embraces not only the correct determination of the amount to be paid to the landowner, but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot, as Land Bank of the Philippines v. Court of Appeals instructs, be considered "just," for the owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for years before actually receiving the amount necessary to cope with his loss.

Using the foregoing pronouncement as precedent, this Court opts to grant, in the interest of justice, Galle's heirs the right to withdraw the amount of ₱7,534,063.91, which LBP is willing to

compensate the respondents for their mother's estate, in the meantime that the case is pending determination anew in the CA.

FRANCIS JARDELEZA v. CHIEF JUSTICE MARIA LOURDES P.A. SERENO, et al.
G.R. No. 213181, 19 August 2014, EN BANC, (Mendoza, J.)

To fall under Section 2, Rule 10 of JBC-009, there must be a showing that the act complained of is, at the least, linked to the moral character of the person and not to his judgment as a professional. When an integrity question arises, the voting requirement for his or her inclusion as a nominee to a judicial post becomes "unanimous"instead of the "majority vote".

Before the compulsory retirement of Associate Justice Roberto Abad, the Judicial Board Council (JBC) announced the opening of application or recommendation for the said vacated position. JBC received a nomination to Francis H. Jardeleza, then incumbent Solicitor General of the Republic, for the position.

Jardeleza received telephone calls from Justice Aurora Santiago Lagman, who informed him that Chief Justice and JBC ex-officio Chairperson, CJ Maria Lourdes P.A. Sereno, manifested that she would be invoking Section 2, Rule 10 of JBC-009 against him. Jardeleza was then directed to make himself available before the JBC during which he would be informed of the objections to his integrity.

Consequently, Jardeleza filed a letter-petition praying that the Court, in the exercise of its constitutional power of supervision issue an order: (1) directing the JBC to give him at least five (5) working days written notice of any hearing of the JBC to which he would be summoned; and the said notice to contain the sworn specifications of the charges against him by his oppositors, the sworn statements of supporting witnesses, if any, and copies of documents in support of the charges; and notice and sworn statements shall be made part of the public record of the JBC; (2) allowing him to cross-examine his oppositors and supporting witnesses, if any, and the cross-examination to be conducted in public, under the same conditions that attend the public interviews held for all applicants; and (3) directing the JBC to disallow Chief Justice Sereno from participating in the voting or at any adjournment thereof where such vote would be taken for the nominees for the position.

Jardeleza alleged that he was asked by Chief Justice Sereno if he wanted to defend himself against the integrity issues raised against him. He answered that he would defend himself provided that due process would be observed. Jardeleza specifically demanded that Chief Justice Sereno execute a sworn statement specifying her objections and that he be afforded the right to cross-examine her in a public hearing.

ISSUE:

Was Francis Jardeleza invalidly excluded from the shortlist submitted to the President?

RULING:

Yes. The Court notes that the initial or original invocation of Section 2, Rule 10 of JBC-009 was grounded on Jardeleza's "inability to discharge the duties of his office". The records bear that Chief Justice Sereno initially invoked the "unanimity rule"during the JBC meeting where she expressed her position that Jardeleza did not possess the integrity required to be a member of the Court. The Court cannot consider Chief Justice Sereno's invocation of Section 2, Rule 10 of JBC-009 as conformably

within the contemplation of the rule. What this disposition perceives, therefore, is the inapplicability of Section 2, Rule 10 of JBC-009 to the original ground of its invocation.

When an integrity question arises, the voting requirement for his or her inclusion as a nominee to a judicial post becomes "unanimous"instead of the "majority vote". Considering that JBC-009 employs the term "integrity"as an essential qualification for appointment, and its doubtful existence in a person merits a higher hurdle to surpass, that is, the unanimous vote of all the members of the JBC, the Court is of the safe conclusion that "integrity"as used in the rules must be interpreted uniformly.

The crux of the issue is on the availability of the right to due process in JBC proceedings. The Court concludes that the right to due process is available and thereby demandable as a matter of right. The Court does not brush aside the unique and special nature of JBC proceedings. The fact that a proceeding is sui generis and is impressed with discretion, however, does not automatically denigrate an applicant's entitlement to due process. Disciplinary proceedings are actually aimed to verify and finally determine, if a lawyer charged is still qualified to benefit from the rights and privileges that membership in the legal profession evoke.

The Court subscribes to the view that in cases where an objection to an applicant's qualifications is raised, the observance of due process neither negates nor renders illusory the fulfilment of the duty of JBC to recommend. This holding is not an encroachment on its discretion in the nomination process. Actually, its adherence to the precepts of due process supports and enriches the exercise of its discretion.

Having been able to secure four (4) out of six (6) votes, the only conclusion left to propound is that a majority of the members of the JBC, nonetheless, found Jardeleza to be qualified for the position of Associate Justice and this grants him a rightful spot in the shortlist submitted to the President.

GMA NETWORK, INC., et al v. COMMISSION ON ELECTIONS
G.R.Nos. 205357, 205374, 205592, 205852 & 206360, SEPTEMBER 2, 2014

Political speech is one of the most important expressions protected by the Fundamental Law. "Freedom of speech, of expression, and of the press are at the core of civil liberties and have to be protected at all costs for the sake of democracy." The "aggregate-based" airtime limits is unreasonable and arbitrary as it unduly restricts and constrains the ability of candidates and political parties to reach out and communicate with the people.

Resolution 9615 of the Commission on Elections (COMELEC) changed the airtime limitations for political campaign from "per station" basis, as used during the 2007 and 2010 elections, to a "total aggregate" basis for the 2013. Various broadcast networks such as ABS-CBN, ABC, GMA, MBC, NBN, RMN and KBP questioned the interpretation of the COMELEC on the ground that the provisions are oppressive and violative of the constitutional guarantees of freedom of expression and of the press.

Collectively, they question the constitutionality of Section 9 (a), which provides for an "aggregate total" airtime instead of the previous "per station" airtime for political campaigns or advertisements, and also required prior COMELEC approval for candidates' television and radio guesting's and appearances. Petitioners claim that Section 9(a) limits the computation of "aggregate total" airtime and imposes unreasonable burden on broadcast media of monitoring a candidate's or political party's aggregate airtime. On the other hand, COMELEC alleges that the broadcast networks do not have locus standi, as the limitations are imposed on candidates, not on media outlets.

Comelec maintains that the per candidate rule or total aggregate airtime limit is in accordance with the Fair Election Act as this would truly give life to the constitutional objective to equalize access to media during elections. It sees this as a more effective way of "levelling the playing field" between candidates/political parties with enormous resources and those without much.

ISSUES:

1. Does Section 9(a) of Comelec Resolution No. 9615 on airtime limit violate the constitutional guaranty of freedom of expression, of speech and of the press?
2. Does resolution No. 9165 impose unreasonable burden on the broadcast industry?

HELD:

1. Yes, Section 9(a) of COMELEC Resolution No. 9615, with its adoption of the "aggregate-based" airtime limits unreasonably restricts the guaranteed freedom of speech and of the press.

Political speech is one of the most important expressions protected by the Fundamental Law. "Freedom of speech, of expression, and of the press are at the core of civil liberties and have to be protected at all costs for the sake of democracy."

GMA came up with its analysis of the practical effects of such a regulation: Given the reduction of a candidate's airtime minutes in the New Rules, petitioner GMA estimates that a national candidate will only have 120 minutes to utilize for his political advertisements in television during the whole campaign period of 88 days, or will only have 81.81 seconds per day TV exposure allotment. If he chooses to place his political advertisements in the 3 major TV networks in equal allocation, he will only

have 27.27 seconds of airtime per network per day. This barely translates to 1 advertisement spot on a 30-second spot basis in television.

The Court agrees. The assailed rule on "aggregate-based" airtime limits is unreasonable and arbitrary as it unduly restricts and constrains the ability of candidates and political parties to reach out and communicate with the people. Here, the adverted reason for imposing the "aggregate-based" airtime limits – leveling the playing field – does not constitute a compelling state interest which would justify such a substantial restriction on the freedom of candidates and political parties to communicate their ideas, philosophies, platforms and programs of government.

2. No, Resolution No. 9615 does not impose an unreasonable burden on the broadcast industry.

The Court cannot agree with the contentions of GMA. The apprehensions of COMELEC appear more to be the result of a misappreciation of the real import of the regulation rather than a real and present threat to its broadcast activities. The Court is more in agreement with COMELEC when it explained that the legal duty of monitoring lies with the COMELEC. Broadcast stations are merely required to submit certain documents to aid the COMELEC in ensuring that candidates are not sold airtime in excess of the allowed limits. There is absolutely no duty on the broadcast stations to do monitoring, much less monitoring in real time. GMA grossly exaggerates when it claims that the non-existent duty would require them to hire and train an astounding additional 39,055 personnel working on

ELSIE S. CAUSING v. COMELEC and HERNAN D. BIRON, SR.
G.R. NO. 199139, SEPTEMBER 9, 2014

The only personnel movements prohibited by COMELEC Resolution No. 8737 are transfer and detail. Transfer is defined in the Resolution as "any personnel movement from one government agency to another or from one department, division, geographical unit or subdivision of a government agency to another with or without the issuance of an appointment"; while detail as defined in the Administrative Code of 1987 is the movement of an employee from one agency to another without the issuance of an appointment.

Elsie Causing assumed office as the Municipal Civil Registrar of Barotac Nuevo, Iloilo. Mayor Biron issued Memorandum No. 12, Series of 2010 (Office Order No. 12), commanding for the detailing of Causing at the Office of the Municipal Mayor.

Causing filed the complaint claiming that issuance made by Mayor Biron ordering her detail to the Office of the Municipal Mayor, being made within the election period and without prior authority from the COMELEC, was illegal and it violated of Section 1, Paragraph A, No. 1, in connection with Section 6 (B) of COMELEC Resolution No. 8737. Mayor Biron countered that the purpose of transferring the office of Causing was to closely supervise the performance of her functions after complaints regarding her negative behavior in dealing with her coemployees and with the public transacting business in her office.

The Provincial Election Supervisor recommended the dismissal of the complaint-affidavit for lack of probable cause. COMELEC En Banc affirmed the findings and recommendation.

ISSUE:

Is the relocation of Causing by Mayor Biron during the election period from her office as the Municipal Civil Registrar to the Office of the Mayor constitute a prohibited act under the Omnibus Election Code and the relevant Resolution of the COMELEC?

HELD:

No. Reassignment was not prohibited by the Omnibus Election Code there was no probable cause to criminally charge Mayor Biron with the violation of the Omnibus Election Code. UST Law Review, Vol. LIX, No. 1, May 2015 The movement involving Causing did not equate to either a transfer or a detail within the contemplation of the law if Mayor Biron only physically transferred her office area from its old location to the Office of the Mayor. Causing is not stripped of her functions as Municipal Civil Registrar. She was merely required to physically report to the Mayor's Office and perform her functions as Municipal Civil Registrar therein. Definitely, she is still the MCR, albeit doing her work physically outside of her usual work station. She is also not deprived of her supervisory function over the staff as she continues to review their work and signs documents they prepared. While she may encounter difficulty in performing her duties as a supervisor as she is not physically near her staff that by itself, however, does not mean that she has lost supervision over them. Moreover, Causing's too literal understanding of transfer should not hold sway because the provisions involved here were criminal in nature. Mayor Biron was sought to be charged with an election offense punishable under Section 264 of the Omnibus Election Code. It is a basic rule of statutory construction that penal statutes are to be liberally construed in favor of the accused. Every reasonable doubt must then be resolved in favor of the accused.

In the light of the foregoing, the Court defers to the Executive Branch on the matter of compensation and rehabilitation measures through diplomatic channels. It is settled that "the conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative—"the political"--departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision."

The USS Guardian, the United States avenger class mine counter-measures ship, from its routine ship replenishment, maintenance, and crew liberty in Subic Bay damaged the Tubbataha reef on its way to Sulu Sea. The Fleet Commander, Vice Admiral Scott Swift and US Ambassador to the Philippines Harry K. Thomas, Jr expressed their regret over the incident andassured Foreign Affairs Secretary Albert F. del Rosario that the United States will provide appropriate compensation for damage to the reef caused by the ship. Petitioners claim that the grounding, salvaging and post-salvaging operations of the USS Guardian caused and continue to cause environmental damage that affected the provinces of Palawan, Antique, Aklan, Guimaras, Iloilo, Negros Occidental, Negros Oriental, Zamboanga del Norte, Basilan, Sulu, and Tawi-Tawi, which violate their constitutional rights to a balanced and healthful ecology. They also seek a directive from this Court for the institution of civil, administrative and criminal suits for acts committed in violation of environmental laws and regulations in connection with the grounding incident. Specifically, petitioners cite the following violations committed by US respondents under R.A. No. 10067: unauthorized entry (Section 19); non-payment of conservation fees (Section 21); obstruction of law enforcement officer (Section 30); damages to the reef (Section 20); and destroying and disturbing resources (Section 26[g]). Furthermore, petitioners assail certain provisions of the Visiting Forces Agreement (VFA) which they want this Court to nullify for being unconstitutional.

ISSUES:

1. Does the Supreme Court have jurisdiction over US respondents who did not submit any pleading or manifestation?
2. Will the unauthorized entry of the Foreign Warship of the US with resulting damage to marine resources bear an international responsibility under the UNCLOS when the said flag state is not a signatory to the same convention?
3. Does the grounding of the USS Guardian, which adversely affected the Tubbataha reef, make the crew liable to the Philippines as provided by the VFA?
4. May the Writ of Kalikasan be validly implemented as a proper remedy for the situation at hand?

HELD:

1. No the Supreme Court has no jurisdiction over US respondents who did not submit any pleading or manifestation.

The matter deals with a sovereign nation and in the maxim "par in parem, non habet imperium" where all sovereign states are equals and thus cannot assert jurisdiction over one another in which assertion of jurisdiction may vex the peace among nations, the matter is one that should be dealt with the executive department due to its nature of dealing with another sovereign nation thus may not be dealt with judicially and the judiciary may not have jurisdiction concerning the US respondents who did not submit any pleading or manifestation

2. Yes non-membership in the UNCLOS does not mean that the US will disregard the rights of the Philippines as a coastal state over its internal waters and territorial sea The Court thus expects the US to bear "international responsibility" under Art. 31 in connection with the USS Guardian grounding which adversely affected the Tubbataha reefs. Indeed, it is difficult to imagine that our long-time ally and trading partner, which has been actively supporting the country's efforts to preserve our vital marine resources, would shirk from its obligation to compensate the damage caused by its warship while transiting our internal waters. Much less can the Court comprehend a Government exercising leadership in international affairs, unwilling to comply with the UNCLOS directive for all nations to cooperate in the global task to protect and preserve the marine environment as provided in Article 197, viz:

Article 197 - Cooperation on a global or regional basis States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

In fine, the relevance of UNCLOS provisions to the present controversy is beyond dispute. Although the said treaty upholds the immunity of warships from the jurisdiction of Coastal States while navigating the latter's territorial sea, the flag States shall be required to leave the territorial sea immediately if they flout the laws and regulations of the Coastal State, and they will be liable for damages caused by their warships or any other government vessel operated for non-commercial purposes under Article 31.

3. No, for in the VFA the US only waives its immunity concerning criminal jurisdiction and not to special civil actions as is implemented in this case

The VFA is an agreement which defines the treatment of United States troops and personnel visiting the Philippines to promote "common security interests" between the US and the Philippines in the region. It provides for the guidelines to govern such visits of military personnel, and further defines the rights of the United States and the Philippine government in the matter of criminal jurisdiction, movement of vessel and aircraft, importation and exportation of equipment, materials and supplies.36 The invocation of US federal tort laws and even common law is thus improper considering that it is the VFA which governs disputes involving US military ships and crew navigating Philippine waters in pursuance of the objectives of the agreement.As it is, the waiver of State immunity under the VFA pertains only to criminal jurisdiction and not to special civil actions such as the present petition for issuance of a writ of Kalikasan.

4. No, for the concept of state immunity from suit does not allow another state to sue another state without its consent. Also the VFA only provides that the US will only waive its immunity concerning criminal jurisdiction and the writ of Kalikasan which was implemented in this situation is a special civil suit, which the US is immune from.

The waiver of State immunity under the VFA pertains only to criminal jurisdiction and not to special civil actions such as the present petition for issuance of a writ of Kalikasan. In fact, it can be inferred from Section 17, Rule 7 of the Rules that a criminal case against a person charged with a violation of an environmental law is to be filed separately:

Sec. 17. Institution of separate actions.—The filing of a petition for the issuance of the writ of kalikasan shall not preclude the filing of separate civil, criminal or administrative actions.

In any case, it is our considered view thata ruling on the application or nonapplication of criminal jurisdiction provisions of the VFA to US personnel who may be found responsible for the grounding of the USS Guardian, would be premature and beyond the province of a petition for a writ of Kalikasan. We also find it unnecessary at this point to determine whether such waiver of State immunity is indeed absolute. In the same vein, we cannot grant damages which have resulted from the violation of environmental laws. The Rules allows the recovery of damages, including the collection of administrative fines under R.A. No. 10067, in a separate civil suit or that deemed instituted with the criminal action charging the same violation of an environmental law

PEOPLE OF THE PHILIPPINES v. REYNALDO TORRES, JAY TORRES, BOBBY TORRES BOBBY TORRES
G.R. No. 189850, September 22, 2014

Siblings Reynaldo Torres (Reynaldo), Jay Torres (Jay), Ronnie Torres (Ronnie) and appellant with the special complex crime of robbery with homicide committed against Jaime M. Espino (Espino).

The accused armed with bladed weapons, conspired and conferred with one other malefactor, with the use of force, violence and intimidation blocked Espino's path and forcibly grabbed his belt-bag. On the occasion of the robbery, the accused use personal violence and abuse of superior strength which was resisted by the victim prompting the accused to stab the former which cause his immediate death. Further, they carry away with the personal properties of the victim.

The RTC ruled that the appellant can only be liable for murder. The CA modified the decision and found the appellant guilty of robbery with homicide.

Hence, this present appeal.

ISSUE:

Whether or not the accused can be held liable for the complex crime of robbery with homicide instead of murder?

HELD:

Yes. The Supreme Court affirmed with further modifications the decision of the CA.

Appellant is guilty of the crime of robbery with homicide. "Robbery with homicide exists 'when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery'.

It is clear that the primordial intention of appellant and his companions was to rob Espino. The killing was merely incidental, resulting by reason or on occasion of the robbery.

Nonetheless, the presence of abuse of superior strength should not result in qualifying the offense to murder. When abuse of superior strength obtains in the special complex crime of robbery with homicide; it is to be regarded as a generic circumstance, robbery with homicide being a composite crime with its own definition and special penalty in the Revised Penal Code. With the penalty of reclusion perpetua to death imposed for committing robbery with homicide,[40] "[t]he generic aggravating circumstance of[abuse of superior strength] attending the killing of the victim qualifies the imposition of the death penalty on [appellant]."[41] In view, however, of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," the penalty that must be imposed on appellant is reclusion perpetua without eligibility for parole.[42]

Further, in robbery with homicide, civil indemnity and moral damages are awarded automatically without need of allegation and evidence other than the death of the victim owing to the commission of the crime. In granting compensatory damages, the prosecution must "prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable to the injured party. Receipts should support claims of actual damages.'

LINA DELA PEÑA JALOVER, GEORGIE A. HUISO and VELVET BARQUIN ZAMORA v. JOHN HENRY R. OSMEÑA and COMMISSION ON ELECTIONS
G.R. No. 209286, SEPTEMBER 23, 2014

On October 3, 2012, Osmeña filed his Certificate of Candidacy (COC) for the position of mayor, Toledo City, Cebu.10 In his COC, Osmeña indicated that he had been a resident of Toledo City for fifteen (15) years prior to the May 2013 elections. Before running for the mayoralty position, Osmeña also served as the representative of the 3rd Congressional District of the Province of Cebu from 1995-1998, which incidentally includes the City of Toledo.

Soon thereafter, the petitioners filed before the COMELEC a "Petition to Deny Due Course and to Cancel Certificate of Candidacy and to disqualify a Candidate for Possessing Some Grounds for Disqualification," docketed as SPA No. 13-079.

Citing Section 78 in relation with Section 74 of the Omnibus Election Code, the petitioners alleged before the COMELEC that Osmeña made material misrepresentations of fact in the latter's COC and likewise failed to comply with the residency requirement under Section 39 of the Local Government Code. In particular, the petitioners claimed that Osmeña falsely declared under oath in his COC that he had already been a resident of Toledo City fifteen (15) years prior to the scheduled May 13, 2013 local elections.

In support of their petition, the petitioners submitted the following: a) a certification from the Toledo City Assessor's Office, dated October 5, 2012, showing that Osmeña does not own any real property in Toledo City; b) a tax declaration of Osmeña's alleged residence at Ibo, Toledo City showing that it is owned by Osmeña's son; c) photographs of Osmeña's alleged dilapidated residence in Barangay Ibo, Toledo City, which the petitioners claim is not in keeping with Osmeña's prominence, wealth and stature in society; d) a certification from the Business Permit and Licensing Office, that Osmeña never applied nor has he been issued any business permit by Toledo City; and e) several affidavits, including that of the barangay captain of Ibo, Toledo City, attesting that Osmeña was never a resident of Toledo City and that he has only been seen in the city in September 2012 to conduct political meetings.

Osmeña denied the petitioners' allegations. In his defense, Osmeña argued that even prior to his actual transfer of residence to Ibo, Toledo City, in 2004, he had been able to establish ties with Toledo City in view of his family's business interests and his political linkages. According to Osmeña, in 1995, he bought a piece of land in Ibo, Toledo City, where he built two (2) houses from 1998 to 2004 and became a permanent resident thereof in 2004. Osmeña further averred that he became a registered voter of Toledo City in 2006 and that he leased at least two (2) properties in Toledo City for his headquarters. In addition, he claimed that in December 2011, he bought a five (5) hectare parcel of land in Das, Toledo City.

The Ruling of the COMELEC's Second Division

The COMELEC Second Division dismissed the petition on the ground that Osmeña did not commit any material misrepresentation in his COC. Citing Velasco v. COMELEC, the Second Division found that Osmeña was able to explain why he indicated in his COC that the period of his residence in Toledo City prior to the May 23, 2013 elections is 15 years. This was his belief, as according to him, he

has ties with Toledo City since childhood and that even as a Senator, he continued to bring projects to Toledo City. The Second Division further found that Osmeña complied with the residency requirement.

The petitioners timely moved for a reconsideration of the April 3, 2013 Resolution of the COMELEC. Before the COMELEC resolved the motion, however, the Board of Canvassers of Toledo City proclaimed Osmeña as the winning candidate for the mayoralty seat.

The COMELEC En Banc Ruling

The COMELEC en banc subsequently denied the petitioners' motion for reconsideration. Citing Sabili v. COMELEC, the COMELEC en banc stated that it is not required that a candidate should have his own house in order to establish his residence or domicile in a place. It is enough that he should live in the locality even in a rented house or that of a friend or a relative.

ISSUE:

Whether Osmena made material misrepresentation in his COC?

HELD:

No. Section 74, in relation with Section 78 of the Omnibus Election Code governs the cancellation of, and grant or denial of due course to, the COCs. The combined application of these sections requires that the facts stated in the COC by the would-be candidate be true, as any false representation of a material fact is a ground for the COC's cancellation or the withholding of due course.

The false representation that these provisions mention pertains to a material fact, not to a mere innocuous mistake. This is emphasized by the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws. Obviously, these facts are those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence.

Separate from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible." In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. In *Mitra v. COMELEC*, we held that the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception of the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run.

To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of this intention. It requires not only such bodily presence in that place but also a declared and probable intent to make it one's fixed and permanent place of abode.

The critical issue, however, pertains to Osmeña's bodily presence in Toledo City and the declaration he made in his COC on this point. The petitioners claim that Osmeña was only seen in Toledo City in the month of September 2012 to conduct political meetings. They also stress that the

dilapidated property in Ibo, Toledo City is not even owned by Osmeña, and is not in keeping with the latter's stature — a former Senator and a member of a political clan.

The law does not require a person to be in his home twenty-four (24) hours a day, seven (7) days a week, to fulfill the residency requirement. In Fernandez v. House Electoral Tribunal, we ruled that the "fact that a few barangay health workers attested that they had failed to see petitioner whenever they allegedly made the rounds in Villa de Toledo is of no moment, especially considering that there were witnesses (including petitioner's neighbors in Villa de Toledo) that were in turn presented by petitioner to prove that he was actually a resident of Villa de Toledo, in the address he stated in his COC. x x x It may be that whenever these health workers do their rounds petitioner was out of the house to attend to his own employment or business."

Under the circumstances, the evidence submitted by the petitioners do not conclusively prove that Osmeña did not in fact reside in Toledo City for at least the year before election day; most especially since the sworn statements of some Toledo City residents attesting that they never saw Osmeña in Toledo City were controverted by similar sworn statements by other Toledo City residents who claimed that Osmeña resided in Toledo City.

Similarly, the fact that Osmeña has no registered property under his name does not belie his actual residence in Toledo City because property ownership is not among the qualifications required of candidates for local election. It is enough that he should live in the locality, even in a rented house or that of a friend or relative. To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that only the landed can establish compliance with the residency requirement. In Perez v. COMELEC, we sustained the COMELEC when it considered as evidence tending to establish a candidate's domicile of choice the mere lease (rather than ownership) of an apartment by a candidate in the same province where he ran for the position of governor.

We cannot accord credence either to the petitioners' contention that the dilapidated house in Ibo, Toledo City, could not serve as Osmeña's residence in view of the latter's stature. At the outset, the photographs submitted by Osmeña in evidence show that the house is modestly furnished and contains the comforts of a simple abode. Moreover, the petitioners' speculation involves the use of subjective non-legal standards, which we previously condemned in the case of Mitra v. Commission on Elections.

The respondents significantly ask us in this case to adopt the same faulty approach of using subjective norms, as they now argue that given his stature as a member of the prominent Mitra clan of Palawan, and as a three term congressman, it is highly incredible that a small room in a feed mill has served as his residence since 2008.

We reject this suggested approach outright for the same reason we condemned the COMELEC's use of subjective non-legal standards. Mitra's feed mill dwelling cannot be considered in isolation and separately from the circumstances of his transfer of residence, specifically, his expressed intent to transfer to a residence outside of Puerto Princesa City to make him eligible to run for a provincial position; his preparatory moves starting in early 2008; his initial transfer through a leased dwelling; the purchase of a lot for his permanent home; and the construction of a house in this lot that, parenthetically, is adjacent to the premises he leased pending the completion of his house. These incremental moves do not offend reason at all, in the way that the COMELEC's highly subjective non-legal standards do.

Osmeña's actual physical presence in Toledo City is established not only by the presence of a place (Ibo, Toledo City, house and lot) he can actually live in, but also the affidavits of various persons in Toledo City. Osmeña's substantial and real interest in establishing his domicile of choice in Toledo City is also sufficiently shown not only by the acquisition of additional property in the area and the transfer of his voter registration and headquarters, but also his participation in the community's socio-civic and political activities.

Before his transfer of residence, Osmeña already had intimate knowledge of Toledo City, particularly of the whole 3rd legislative district that he represented for one term. Thus, he manifests a significant level of knowledge of and sensitivity to the needs of the said community. Moreover, Osmeña won the mayoralty position as the choice of the people of Toledo City.

We find it apt to reiterate in this regard the principle enunciated in the case of Frivaldo v. Comelec, that "in any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority."

To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. The reason for such liberality stems from the recognition that laws governing election contests must be construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.

Nonetheless, we wish to remind that COC defects beyond matters of form and that involve material misrepresentations cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken.88 Where a material COC misrepresentation under oath is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate's will.

With the conclusion that Osmeña did not commit any material misrepresentation in his COC, we see no reason in this case to appeal to the primacy of the electorate's will. We cannot deny, however, that the people of Toledo City have spoken in an election where residency qualification had been squarely raised and their voice has erased any doubt about their verdict on Osmeña's qualifications.

RHONDA AVE S. VIVARES, et al.v. ST. THERESA'S COLLEGE, et. al.
G.R. No. 202666, SEPTEMBER 29, 2014

Availment of the writ of habeas data requires the existence of a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other.

Nenita Julia V. Daluz and Julienne Vide Suzara, both minors, were graduating high school students at St. Theresa's College (STC), Cebu City. While changing into their swimsuits for a beach party they were about to attend, Julia and Julienne, along with several others, took digital pictures of themselves clad only in their undergarments and were uploaded by Angela Lindsay Tan on her Facebook profile. Mylene Theza T. Escudero, a computer teacher of STC, learned from her students that Julia, Julienne, and Chloe Lourdes Taboada posted pictures online, depicting themselves from the waist up, dressed only in brassieres. Using STC's computers, Escudero's students logged in to their respective personal Facebook accounts and showed her photos of the identified students, which include Julia and Julienne: (a) drinking hard liquor and smoking cigarettes inside a bar; and (b) wearing articles of clothing that show virtually the entirety of their black brassieres. There were times when access to or the availability of the identified students' photos was not confined to the girls' Facebook friends, but were, in fact, viewable by any Facebook user. STC's Discipline-in-Charge penalized the students by barring them from joining the commencement exercises. Angela's mother, Dr. Armenia M. Tan, filed a petition for injunction and damages before the Regional Trial Court (RTC) against STC, praying that STC be enjoined from implementing the sanction that precluded Angela from joining the commencement exercises to which Rhonda Ave Vivares, Julia's mother, joined as intervenor. The RTC issued a Temporary Restraining Order (TRO) allowing students to attend the graduation ceremony. Despite the issuance of the TRO, STC barred the sanctioned students from participating in the graduation rites. Thereafter, Virares filed before the RTC a Petition for the Issuance of a Writ of Habeas Data, arguing that the privacy setting of their children's Facebook accounts was set at "Friends Only".

The RTC rendered a decision dismissing the petition for habeas data stating that the Vivares, et al. failed to prove the existence of an actual or threatened violation of the minors' right to privacy, one of the preconditions for the issuance of the writ of habeas data.

ISSUE:

Was there an actual or threatened violation of the right to privacy of the minors involved so as to warrant the issuance of writ of habeas data?

HELD:

No. In developing the writ of habeas data, the Court aimed to protect an individual's right to informational privacy, among others. A comparative law scholar has, in fact, defined habeas data as "a procedure designed to safeguard individual freedom from abuse in the information age." The writ, however, will not issue on the basis merely of an alleged unauthorized access to information about a person. Availment of the writ requires the existence of a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Thus, the existence of a person's right to informational privacy and a showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim are indispensable before the privilege of the writ may be extended.

Facebook was armed with different privacy tools designed to regulate the accessibility of a user's profile as well as information uploaded by the user. These are designed to set up barriers to broaden or limit the visibility of his or her specific profile content, statuses, and photos, among others, from other user's point of view. In other words, Facebook extends its users an avenue to make the availability of their Facebook activities reflect their choice as to "when and to what extent to disclose facts about themselves – and to put others in the position of receiving such confidences". Ideally, the selected setting will be based on one's desire to interact with others, coupled with the opposing need to withhold certain information as well as to regulate the spreading of his or her personal information. Needless to say, as the privacy setting becomes more limiting, fewer Facebook users can view that user's particular post.

It is through the availability of said privacy tools that many OSN users are said to have a subjective expectation that only those whom they grant access to their profile will view the information they post or upload thereto. Before one can have an expectation of privacy in his or her OSN activity, it is first necessary that said user, in this case their children, manifest the intention to keep certain posts private, through the employment of measures to prevent access thereto or to limit its visibility. And this intention can materialize in cyberspace through the utilization of the OSN's privacy tools. In other words, utilization of these privacy tools is the manifestation, in cyber word, of the user's invocation of his or her right to informational privacy. Therefore, a Facebook user who opts to make use of a privacy tool to grant or deny access to his or her post or profile detail should not be denied the informational privacy right which necessarily accompanies said choice.

CRISOSTOMO B. AQUINO, v. MUNICIPALITY OF MALAY, AKLAN
G.R. No. 211356, September 29, 2014

Island West Cove Management Philippines, to which Petitioner Aquino is working as the President and Chief Executive Officer, applied for a zoning compliance with the municipal government of Malay, Aklan. While the company was already operating a resort in the area, the application sought the issuance of a building permit covering the construction of a three-storey hotel, covered by a Forest Land Use Agreement for Tourism Purposes (FLAgT) issued by the DENR. However, the Municipal Zoning Administrator denied petitioner's application on the ground that the proposed construction site was within the "no build zone". There was no action taken by the Municipality despite Aquino's appeal. EO 10, ordering the closure and demolition of Boracay West Cove's hotel was then issued. Respondents thereafter demolished the improvements. The Petitioner argued that since the area is a forestland, it is the DENR—and not the municipality of Malay that has primary jurisdiction.

ISSUE:

Whether or not respondent mayor committed grave abuse of discretion in ordering the demolition of the property.

HELD:

No. The LGU may properly order the hotel's demolition. Based on law and jurisprudence, the office of the mayor has quasi-judicial powers to order the closing and demolition of establishments. Moreover, in the exercise of police power and the general welfare clause, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government. In establishing a no build zone through local legislation, the LGU effectively made a determination that constructions therein, without first securing exemptions from the local council, qualify as nuisances for they pose a threat to public safety. Based on law and jurisprudence, the office of the mayor has quasi-judicial powers to order the closing and demolition of establishments No build zones are intended for the protection of the public because the stability of the ground's foundation is adversely affected by the nearby body of water.

REPUBLIC OF THE PHILIPPINES v. SPOUSES ROGELIO LAZO and DOLORES LAZO
G.R. No. 195594 SEPTEMBER 29, 2014

Respondents spouses Rogelio Lazo and Dolores Lazo are the owners and developers of Monte Vista Homes (Monte Vista), a residential subdivision located in Barangay Paing, Municipality of Bantay, Ilocos Sur. Sometime in 2006, they voluntarily sold to the National Irrigation Administration (NIA) a portion of Monte Vista for the construction of an open irrigation canal that is part of the Banaoang Pump Irrigation Project (BPIP). The consideration of the negotiated sale was in a total amount of P27,180,000.00 at the rate of P2,500.00 per square meter. Subsequently, respondents engaged the services of Engr. Donno G. Custodio, retired Chief Geologist of the Mines and Geosciences Bureau Department of Environment and Natural Resources, to conduct a geohazard study on the possible effects of the BPIP on Monte Vista. Engr. Custodio later came up with a Geohazard Assessment Report (GAR), finding that ground shaking and channel bank erosion are the possible hazards that could affect the NIA irrigation canal traversing Monte Vista.

On December 22, 2006, the Sangguniang Bayan of Bantay, Ilocos Sur approved Resolution No. 34, which adopted the recommendations contained in the GAR. Among others, it resolved that the GAR recommendations should be observed and implemented by the concerned implementing agency of the NIA BPIP.

Respondent Rogelio Lazo brought to NIA's attention Resolution No. 34. He specifically asked for the implementation of the GAR recommendations and the payment of just compensation for the entire buffer zone. When respondents' demands were not acted upon, they decided to file a complaint for just compensation with damages against NIA. The trial court found that petitioner violated R.A. No. 7160, or the Local Government Code of 1991.

The petitioner, by reason of its failure to abide by the required consultation, had effectively deprecated the function, authority and power of the Sangguniang Bayan of the Municipality of Bantay. Consequently, without the prior approbation of the Sanggunian the irrigation project cannot be absolutely declared as representative of the consent of the local government. Hence, it must be enjoined until compliance by petitioner on consultative requirement or clear and convincing proof of incorporation of the Sanggunian Resolution in the project design of the irrigation project has been adduced.

ISSUE:

Whether or not the petitioners violated R.A. No. 7160, or the Local Government Code of 1991.

HELD:

No, the petitioners did not violate R.A. No. 7160 of the Local Government Code, Section 2(c) of the Local Government Code declares the policy of the State "to require all national agencies and offices to conduct periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions."

This provision applies to national government projects affecting the environmental or ecological balance of the particular community implementing the project. Exactly, Sections 26 and 27 of the Local Government Code requires prior consultations with the concerned sectors and the prior approval of the

Sanggunian. It was said that the Congress introduced these provisions to emphasize the legislative concern "for the maintenance of a sound ecology and clean environment.

DR. JOY MARGATE LEE v. PSSUPT. NERI A. ILAGAN
G.R. NO. 203254. OCTOBER 8, 2014

Neri, a police officer, filed a petition for the issuance of Writ of Habeas Data against Joy, her former common law partner. According to him, sometime in July 2011, he visited Joy's condominium and rested for a while. When he arrived at his office, he noticed his digital camera missing. On August 23, 2011, Joy confronted him about a purported sex video she discovered from the digital camera showing him and another woman. He denied the video and demanded the return of the camera, but she refused. They had an altercation where Neri allegedly slammed Joy's head against a wall and then walked away.

Because of this, Joy filed several cases against him, including a case for violation of *Republic Act 9262* and administrative cases before the Napolcom, utilizing the said video. The use of the same violated his life to liberty, security and privacy and that of the other woman, thus he had no choice but to file the petition for issuance of the writ of habeas data. After finding the petition sufficient in form and substance, the RTC issued the writ and directed Joy to appear before the RTC and produce Neri's digital camera, as well as the original and copies of the video, and to make a return within five days from receipt. In her return, Joy admitted keeping the memory card of the digital camera and reproducing the video but only for use as evidence in the cases she filed against Neri. Neri's petitions should be dismissed because its filing was only aimed at suppressing the evidence in the cases she filed against him; and she is not engaged in the gathering, collecting, or storing of data regarding the person of Neri.

The RTC granted Neri's petition and ordered the turn-over of the video to Neri and enjoined Joy from reproducing the same. It disregarded Joy's defense that she is not engaged in the collection, gathering and storage of data, and that her acts of reproducing the same and showing it to other persons (Napolcom) violated Neri's right to privacy and humiliated him. It clarified that it ruling only on the return of the video and not on its admissibility as evidence. Dissatisfied, Joy filed the instant petition before the Supreme Court.

ISSUE:

Whether or not the RTC correctly extended the privilege of the writ of habeas data in favor of Ilagan

HELD:

No. The petition is meritorious.

A.M. No. 08-1-16-SC, or the Rule on the Writ of Habeas Data (Habeas Data Rule), was conceived as a response, given the lack of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances. It was conceptualized as a judicial remedy enforcing the right to privacy, most especially the right to informational privacy of individuals, which is defined as "the right to control the collection, maintenance, use, and dissemination of data about oneself."

As defined in Section 1 of the Habeas Data Rule, the writ of habeas data now stands as "a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home,

and correspondence of the aggrieved party." Thus, in order to support a petition for the issuance of such writ, Section 6 of the Habeas Data Rule essentially requires that the petition sufficiently alleges, among others, "[t]he manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party." In other words, the petition must adequately show that there exists a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Corollarily, the allegations in the petition must be supported by substantial evidence showing an actual or threatened violation of the right to privacy in life, liberty or security of the victim. In this relation, it bears pointing out that the writ of habeas data will not issue to protect purely property or commercial concerns nor when the grounds invoked in support of the petitions therefor are vague and doubtful*[6]*.

In this case, the Court finds that Ilagan was not able to sufficiently allege that his right to privacy in life, liberty or security was or would be violated through the supposed reproduction and threatened dissemination of the subject sex video. While Ilagan purports a privacy interest in the suppression of this video – which he fears would somehow find its way to Quiapo or be uploaded in the internet for public consumption – he failed to explain the connection between such interest and any violation of his right to life, liberty or security. Indeed, courts cannot speculate or contrive versions of possible transgressions. As the rules and existing jurisprudence on the matter evoke, alleging and eventually proving the nexus between one's privacy right to the cogent rights to life, liberty or security are crucial in habeas data cases, so much so that a failure on either account certainly renders a habeas data petition dismissible, as in this case.

In fact, even discounting the insufficiency of the allegations, the petition would equally be dismissible due to the inadequacy of the evidence presented. As the records show, all that Ilagan submitted in support of his petition was his self-serving testimony which hardly meets the substantial evidence requirement as prescribed by the Habeas Data Rule. This is because nothing therein would indicate that Lee actually proceeded to commit any overt act towards the end of violating Ilagan's right to privacy in life, liberty or security. Nor would anything on record even lead a reasonable mind to conclude that Lee was going to use the subject video in order to achieve unlawful ends – say for instance, to spread it to the public so as to ruin Ilagan's reputation. Contrastingly, Lee even made it clear in her testimony that the only reason why she reproduced the subject video was to legitimately utilize the same as evidence in the criminal and administrative cases that she filed against Ilagan. Hence, due to the insufficiency of the allegations as well as the glaring absence of substantial evidence, the Court finds it proper to reverse the RTC Decision and dismiss the habeas data petition.

PEOPLE OF THE PHILIPPINES v. PABLITO ANDAYA
G.R. NO. 183700, OCTOBER 13, 2014

The non-presentation of the confidential informant as a witness does not ordinarily weaken the State's case against the accused. However, if the arresting lawmen arrested the accused based on the pre-arranged signal from the confidential informant who acted as the poseur buyer, his non-presentation must be credibly explained and the transaction established by other ways in order to satisfy the quantum of proof beyond reasonable doubt because the arresting lawmen did not themselves participate in the buy-bust transaction with the accused.

Bagsit, an asset of the police, reported that he had arranged to buy shabu from Pablito Andaya. A team was formed to conduct a buy-bust operation. Two pieces of P100.00 were marked and were given to Bagsit who will act as poseurbuyer. Upon reaching the designated place, the team members occupied different positions where they could see and observe the asset. After exchange of talks, Bagsit gave Andaya the marked money and the former received something in return. The pre-arranged signal signifying the consummation of the transaction was given. The team members then arrested Andaya. The merchandise was sent to the Regional Crime Laboratory in Camp Vicente Lim, Laguna and specimen was positive for methampethamine Hydrochloride (shabu), a dangerous drug.

The Regional Trial Court convicted Andaya for violating Comprehensive Dangerous Drugs Act of 2002 based on the testimonies of the police officers who conducted the operation. The decision was affirmed by the Court of Appeals. On appeal before the Supreme Court, Andaya insisted that the non-presentation of confidential informant was adverse to the Prosecution, indicating that his guilt was not proved beyond reasonable doubt.

ISSUE:

Is the presentation of confidential informant necessary to prove Andaya's guilt beyond reasonable doubt?

HELD:

Yes. The confidential informant was not a police officer. He was designated to be the poseur buyer himself. It is notable that the members of the buy bust team arrested Andaya on the basis of the pre-arranged signal from the poseur buyer. The pre-arranged signal signified to the members of the buy-bust team that the transaction had been consummated between the poseur buyer and Andaya. However, the State did not present the confidential informant/poseur buyer during the trial to describe how exactly the transaction between him and Andaya had taken place. There would have been no issue against that, except that none of the members of the buy-bust team had directly witnessed the transaction, if any, between Andaya and the poseur buyer due to their being positioned at a distance from the poseur buyer and Andaya at the moment of the supposed transaction.

Indeed, Section 5 of Republic Act No. 9165 punishes "any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions." Under the law, selling was any act "of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration;" while delivering was any act "of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration." Given the legal

characterizations of the acts constituting the offense charged, the members of the buy-bust team could not incriminate Andaya by simply declaring that they had seen from their positions the poseur buyer handing something to Andaya who, in turn, gave something to the poseur buyer. If the transaction was a sale, it was unwarranted to infer from such testimonies of the members of the buy-bust team that what the poseur buyer handed over were the marked P100.00 bills and that what Andaya gave to the poseur buyer was the shabu purchased.

Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt. This responsibility imposed on the State accords with the presumption of innocence in favor of the accused, who has no duty to prove his innocence until and unless the presumption of innocence in his favor has been overcome by sufficient and competent evidence

ATTY. ANACLETO B. BUENA, JR. v. DR. SANGCAD D. BENITO
G.R. NO. 181760, 14 October 2014

The Regional Governor of the Autonomous Region in Muslim Mindanao (ARMM) has the power to appoint officers in the region's civil service. However, if there is no regional law providing for the qualifications for the position at the time of appointment, the appointee must satisfy the civil service eligibilities required for the position in the national government to be appointed in a permanent capacity.

Regional Governor Dr. Parouk S. Hussin of the ARMM appointed Dr. Sangcad D. Benito as Assistant Schools Division Superintendent of the Department of Education (DepEd) Division on Lanao del Sur in a temporary capacity. In 2005, Hussin reappointed Dr. Benito in the same position but in a permanent capacity. Hussin requested the Civil Service Commission Regional Office of the ARMM to attest to Dr. Benito's appointment. However, Regional Director Anacleto B. Buena (Buena) declined on the ground that Dr. Benito did not possess the career executive service eligibility required for the said position. The latter filed a petition for Mandamus before the Regional Trial Court to compel the Regional Office to attest to his permanent appointment arguing that the position does not belong to the Career Executive Service under the Administrative Code of 1987, thus, the position does not require Career Executive Service eligibility. He further claimed that under RA 9054, Regional Governor of the ARMM is the appointing authority for positions in the civil service in the region. Since Hussin already exercised his discretion, the Regional Office had no choice but to attest to his appointment.

Buena claimed that the permanent appointee must have career executive service eligibility. According to Buena, the Regional Office recognizes the autonomy of the ARMM. However, until the region enacts its own regional civil service law, the Regional Office shall carry on with the Civil Service Commission's mandate under the Constitution to promote and enforce civil service laws and rules.

ISSUE:

Is Dr. Benito validly appointed as Assistant Schools Division Superintendent in a permanent capacity by the Regional Governor of ARMM?

HELD:

No. The position of Assistant Schools Division Superintendent belongs to the Career Executive Service. Appointment to the position is based on merit and fitness and gives the appointee an opportunity for advancement to higher career positions, such as Schools Division Superintendent. If permanently appointed, the appointee is guaranteed security of tenure. The position is above Division Chief. An Assistant Schools Division Superintendent has a salary grade of 25. As to functions and responsibilities, the Assistant Schools Division Superintendent assists the Schools Division Superintendent in performing executive and managerial

functions under Governance of Basic Education Act of 2001. In fact, the law recognizes that the position of Assistant Schools Division Superintendent belongs to the Career Executive Service. Section 7 of the said law explicitly provides that an appointee to the position must be a career executive service officer. In this case, Dr. Benito does not possess the required career executive service eligibility. He, therefore, cannot be appointed to the position of Assistant Schools Division Superintendent in a permanent capacity. The Civil Service Commission cannot be compelled to attest to the permanent appointment of Dr. Benito.

The Regional Governor has the power to appoint civil servants in the ARMM under Republic Act No. 9054. In Muslim Mindanao Autonomy Act No. 279 or the ARMM Basic Education Act of 2010, the Regional Assembly set the qualification standards of Assistant Schools Division Superintendents of Divisions of the Department of Education in the Autonomous Region. Nevertheless, when Dr. Benito was appointed Assistant Schools Division Superintendent in 2005, there was yet no regional law providing for the qualifications for the Assistant Schools Division Superintendents of Divisions of the Department of Education in the Autonomous Region.

JOEY M. PESTILOS, et. al. v. MORENO GENEROSO AND PEOPLE OF THE PHILIPPINES

G.R. No. 182601, 10 November 2014

Personal knowledge of a crime just committed does not require actual presence at the scene while a crime was being committed; it is enough that evidence of the recent commission of the crime is patent and the police officer has probable cause to believe based on personal knowledge of facts or circumstances, that the person to be arrested has recently committed the crime.

On February 20, 2005, at around 3:15 in the morning, an altercation ensued between petitioners Joey M. Pestilos, Dwight Macapanas, Miguel Gaces, Jerry Fernandez, and Roland Muñoz and Atty. Moreno Generoso. The police officers arrived at the scene of the crime less than one hour after the alleged altercation and they saw Atty. Generoso badly beaten.cAtty. Generoso then pointed to the petitioners as those who mauled him, which prompted the police officers to "invite" the petitioners for investigation. At the inquest proceeding, the City Prosecutor found that the petitioners stabbed Atty. Generoso with a bladed weapon. Consequently, the petitioners were indicted for attempted murder.

The petitioners filed an Urgent Motion for Regular Preliminary Investigation on the ground that they had not been lawfully arrested as there was no valid warrantless arrest since the police officers had no personal knowledge that they were the perpetrators of the crime. Thus, the inquest proceeding was improper, and a regular procedure for preliminary investigation should have been performed.The Regional Trial Court (RTC) denied the petitioners' Motion. On petition for certiorari before the Court of Appeals (CA), the petition was dismissed for lack of merit. The petitioners moved for reconsideration, but the CA denied the motion.

ISSUE:

Was the petitioner validly arrested without a warrant?

HELD:

The petitioners were validly arrested. In light of the discussion on the developments of Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure and our jurisprudence on the matter, we hold that the following must be present for a valid warrantless arrest: 1) the crime should have been just committed; and 2) the arresting officer's exercise of discretion is limited by the standard of probable cause to be determined from the facts and circumstances within his personal knowledge. The requirement of the existence of probable cause objectifies the reasonableness of the warrantless arrest for purposes of compliance with the Constitutional mandate against unreasonable arrests.

To summarize, the arresting officers went to the scene of the crime upon the complaint of Atty. Generoso of his alleged mauling; the police officers responded to the scene of the crime less than one (1) hour after the alleged mauling; the alleged crime transpired in a community where Atty. Generoso and the petitioners reside; Atty. Generoso positively identified the petitioners as those responsible for his mauling and, notably, the petitioners and Atty. Generoso lived almost in the same neighborhood; more importantly, when the petitioners were confronted by the arresting officers, they did not deny their participation in the incident with Atty. Generoso, although they narrated a different version of what transpired.

With these facts and circumstances that the police officers gathered and which they have personally observed less than one hour from the time that they have arrived at the scene of the crime until the time of the arrest of the petitioners, we deem it reasonable to conclude that the police officers had personal knowledge of facts or circumstances justifying the petitioners' warrantless arrests. These circumstances were well within the police officers' observation, perception and evaluation at the time of the arrest. These circumstances qualify as the police officers' personal observation, which are within their personal knowledge, prompting them to make the warrantless arrests.

In determining the reasonableness of the warrantless arrests, it is incumbent upon the courts to consider if the police officers have complied with the requirements set under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure, specifically, the requirement of immediacy; the police officer's personal knowledge of facts or circumstances; and lastly, the propriety of the determination of probable cause that the person sought to be arrested committed the crime.

The records show that soon after the report of the incident occurred, SPOl Monsalve immediately dispatched the arresting officer, SP02 Javier, to render personal assistance to the victim. This fact alone negates the petitioners' argument that the police officers did not have personal knowledge that a crime had been committed - the police immediately responded and had personal knowledge that a crime had been committed.

SOCIAL JUSTICE SOCIETY (SJS) OFFICERS, et al v. ALFREDO S. LIM ET AL.
G.R. No. 187836/G.R. No. 187916 November 25, 2014

On 12 October 2001, a Memorandum of Agreement was entered into by oil companies (Chevron, Petron and Shell) and Department of Energy for the creation of a Master Plan to address and minimize the potential risks and hazards posed by the proximity of communities, business and offices to Pandacan oil terminals without affecting security and reliability of supply and distribution of petroleum products. On 20 November 2001, the Sangguniang Panlungsod (SP) enacted Ordinance No. 8027 which reclassifies the land use of Pandacan, Sta. Ana, and its adjoining areas from Industrial II to Commercial. Owners and operators of the businesses affected by the reclassification were given six (6) months from the date of effectivity to stop the operation of their businesses. It was later extended until 30 April 2003.

On 4 December 2002, a petition for mandamus was filed before the Supreme Court (SC) to enforce Ordinance No. 8027. Â· Unknown to the SC, the oil companies filed before the Regional Trial Court of Manila an action to annul Ordinance No. 8027 with application for writs of preliminary prohibitory injunction and preliminary mandatory injunction. The same was issued in favor of Chevron and Shell. Petron, on the other hand, obtained a status quo on 4 August 2004. Â· On 16 June 2006, Mayor Jose Atienza, Jr. approved Ordinance No. 8119 entitled â œAn Ordinance Adopting the Manila Comprehensive Land Use Plan and Zoning Regulations of 2006 and Providing for the Administration, Enforcement and Amendment theretoâ . This designates Pandacan oil depot area as a Planned Unit Development/Overlay Zone. Â· On 7 March 2007, the SC granted the petition for mandamus and directed Mayor Atienza to immediately enforce Ordinance No. 8027. It declared that the objective of the ordinance is to protect the residents of manila from the catastrophic devastation that will surely occur in case of a terrorist attack on the Pandacan Terminals. Â· The oil companies filed a Motion for Reconsideration (MR) on the 7 March 2007 Decision. The SC later resolved that Ordinance No. 8027 is constitutional and that it was not impliedly repealed by Ordinance No. 8119 as there is no irreconcilable conflict between them. Â· SC later on denied with finality the second MR of the oil companies. Â· On 14 May 2009, during the incumbency of Mayor Alfredo Lim (Mayor Lim), the SP enacted Ordinance No. 8187. The Industrial Zone under Ordinance No. 8119 was limited to Light Industrial Zone, Ordinance No. 8187 appended to the list a Medium and a Heavy Industrial Zone where petroleum refineries and oil depots are expressly allowed. Petitioners Social Justice Society Officers, Mayor Atienza, et.al. filed a petition for certiorari under Rule 65 assailing the validity of Ordinance No. 8187. Their contentions are as follows: Â· It is an invalid exercise of police power because it does not promote the general welfare of the people Â· It is violative of Section 15 and 16, Article II of the 1987 Constitution as well as health and environment related municipal laws and international conventions and treaties, such as: Clean Air Act; Environment Code; Toxic and Hazardous Wastes Law; Civil Code provisions on nuisance and human relations; Universal Declaration of Human Rights; and Convention on the Rights of the Child Â· The title of Ordinance No. 8187 purports to amend or repeal Ordinance No. 8119 when it actually intends to repeal Ordinance No. 8027 Â· On the other hand, the respondents Mayor Lim, et.al. and the intervenors oil companies contend that: Â· The petitioners have no legal standing to sue whether as citizens, taxpayers or legislators. They further failed to show that they have suffered any injury or threat of injury as a result of the act complained of Â· The petition should be dismissed outright for failure to properly apply the related provisions of the Constitution, the Rules of Court, and/or the Rules of Procedure for Environmental Cases relative to the appropriate remedy available Â· The principle of the hierarchy of courts is violated because the SC only exercises appellate jurisdiction over cases involving the constitutionality or validity of an ordinance under Section 5, Article VIII of the 1987 Constitution Â· It is the function of the SP to enact zoning ordinance without prior referral to the Manila Zoning Board of Adjustment and Appeals; thus, it may repeal all or part of zoning ordinance sought to be modified Â· There is a valid exercise of police power Â· On 28 August 2012, the SP enacted Ordinance No. 8283

which essentially amended the assailed Ordinance to exclude the area where petroleum refineries and oil depots are located from the Industrial Zone. The same was vetoed by Mayor Lim.

ISSUES:

1. WON the petitioners have legal standing to sue
2. WON Ordinance No. 8187 is unconstitutional in relation to the Pandacan Terminals

HELD:

1. Yes. The SC referred to their Decision dated 7 March 2007 which ruled that the petitioners in that case have a legal right to seek the enforcement of Ordinance No. 8027 because the subject of the petition concerns a public right, and they, as residents of Manila, have a direct interest in the implementation of the ordinances of the city. No different are herein petitioners who seek to prohibit the enforcement of the assailed ordinance, and who deal with the same subject matter that concerns a public right. In like manner, the preservation of the life, security and safety of the people is indisputably a right of utmost importance to the public. Certainly, the petitioners, as residents of Manila, have the required personal interest to seek relief to protect such right.

2. Yes. In striking down the contrary provisions of the assailed Ordinance relative to the continued stay of the oil depots, the SC followed the same line of reasoning used in its 7 March 2007 decision, to wit: Ordinance No. 8027 was enacted for the purpose of promoting a sound urban planning, ensuring health, public safety and general welfare of the residents of Manila. The Sanggunian was impelled to take measures to protect the residents of Manila from catastrophic devastation in case of a terrorist attack on the Pandacan Terminals. Towards this objective, the Sanggunian reclassified the area defined in the ordinance from industrial to commercial. The following facts were found by the Committee on Housing, Resettlement and Urban Development of the City of Manila which recommended the approval of the ordinance: (1) The depot facilities contained 313.5 million liters of highly flammable and highly volatile products which include petroleum gas, liquefied petroleum gas, aviation fuel, diesel, gasoline, kerosene and fuel oil among others; (2) The depot is open to attack through land, water and air; (3) It is situated in a densely populated place and near Malacanang Palace; and (4) In case of an explosion or conflagration in the depot, the fire could spread to the neighboring communities. The Ordinance was intended to safeguard the rights to life, security and safety of all the inhabitants of Manila and not just of a particular class. The depot is perceived, rightly or wrongly, as a representation of western interests which means that it is a terrorist target. As long as there is such a target in their midst, the residents of Manila are not safe. It therefore becomes necessary to remove these terminals to dissipate the threat. The same best interest of the public guides the present decision. The Pandacan oil depot remains a terrorist target even if the contents have been lessened. In the absence of any convincing reason to persuade the Court that the life, security and safety of the inhabitants of Manila are no longer put at risk by the presence of the oil depots, the SC holds that the Ordinance No. 8187 in relation to the Pandacan Terminals is invalid and unconstitutional. For, given that the threat sought to be prevented may strike at one point or another, no matter how remote it is as perceived by one or some, the SC cannot allow the right to life be dependent on the unlikelihood of an event. Statistics and theories of probability have no place in situations where the very life of not just an individual but of residents of big neighbourhoods is at stake. DISPOSITIVE PORTION 1. Ordinance No. 8187 is declared unconstitutional and invalid with respect to the continued stay of the Pandacan Oil Terminals. 2. The incumbent mayor of the City of Manila is ordered to cease and desist from enforcing Ordinance No. 8187 and to oversee the relocation and transfer of the oil terminals out of the Pandacan area 3. The oil companies shall, within a non-extendible period of forty-five (45) days, submit to the RTC Manila,

Branch 39 an updated comprehensive plan and relocation schedule, which relocation shall be completed not later than six (6) months from the date the required document is submitted.

EMILIO RAMON "E.R." P. EJERCITO v. HON. COMMISSION ON ELECTIONS, ET AL.
G.R. No. 212398, November 25, 2014

Three days prior to the May 13, 2013 National and Local Elections, a petition for disqualification was filed by San Luis before the Office of the COMELEC Clerk in Manila against Ejercito, who was a fellow gubernatorial candidate and, at the time, the incumbent Governor of the Province of Laguna. [Ejercito], during the campaign period for 2013 local election, distributed to the electorates of the province of Laguna the so-called "Orange Card" with an intent to influence, induce or corrupt the voters in voting for his favor. Copy thereof is hereto attached and marked as Annex "C" and made as an integral part hereof; Further, based on the records of the Provincial COMELEC, the Province of Laguna has a total of 1,525,522 registered electorate.

In this regard, par. (a), Section 5 of COMELEC Resolution No. 9615, otherwise known as the Rules and Regulations Implementing FAIR ELECTION ACT provides and I quote:

"Authorized Expenses of Candidates and Parties. – The aggregate amount that a candidate or party may spent for election campaign shall be as follows:

For candidates – Three pesos (P3.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy.

For other candidates without any political party and without any support from any political party – Five pesos (P5.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy.

For Political Parties and party-list groups – Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates. (underscoring mine for emphasis)

Accordingly, a candidate for the position of Provincial Governor of Laguna is only authorized to incur an election expense amounting to FOUR MILLION FIVE HUNDRED SEVENTY-SIX THOUSAND FIVE HUNDRED SIXTY-SIX (P4,576,566.00) PESOS.

However, in total disregard and violation of the afore-quoted provision of law, [Ejercito] exceeded his expenditures in relation to his campaign for the 2013 election.

Subsequently, on May 16, 2013, San Luis filed a Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent and Supplemental to the Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent.[5] However, these were not acted upon by the COMELEC.

The next day, Ejercito and Ramil L. Hernandez were proclaimed by the Provincial Board of Canvassers as the duly-elected Governor and Vice-Governor, respectively, of Laguna.[6] Based on the Provincial/District Certificate of Canvass, Ejercito obtained 549,310 votes compared with San Luis' 471,209 votes.

In view of the foregoing disquisitions, it is evident that [Ejercito] committed an election offense as provided for under Section 35 of COMELEC Resolution No. 9615, which provides and I quote: "Election Offense. – Any violation of R.A. No. 9006 and these Rules shall constitute an election offense

punishable under the first and second paragraph of Section 264 of the Omnibus Election Code in addition to administrative liability, whenever applicable. x x x"

Moreover, it is crystal clear that [Ejercito] violated Sec. 68 of the Omnibus Election Code which provides and I quote:

"Sec. 68. Disqualifications. – Any candidate who, in an action or protest in which he is a party is declared by final decision by a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86, and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws." (emphasis ours)

On the other hand, the effect of disqualification is provided under Sec. 6 of Republic Act No. 6646, which states and I quote:

"Effect of Disqualification Case. – Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of [his] guilt is strong."

Subsequently, on May 16, 2013, San Luis filed a *Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent and Supplemental to the Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent*.[5] However, these were not acted upon by the COMELEC. The next day, Ejercito and Ramil L. Hernandez were proclaimed by the Provincial Board of Canvassers as the duly-elected Governor and Vice-Governor, respectively, of Laguna.

he COMELEC First Division settled the substantive issues put forth in the petition for disqualification in this wise:

Anent [San Luis'] first cause of action, [San Luis] presented the *Sworn Statement dated [May 7, 2013]* of a certain Mrs. Daisy A. Cornelio, together with the "Orange Card" issued to Mrs. Cornelio, marked respectively as Exhibits "A-4" and "A-3" as per [San Luis'] *Summary of Exhibits* – to prove that [Ejercito] committed the act described in Section 68 (a) of the OEC. After reviewing Mrs. Cornelio's *Sworn Statement*, we do not find any averment to the effect that the Orange Card was given to the affiant to influence or induce her to vote for [Ejercito]. Affiant only stated that she was given the Orange Card "last April of this year" and that she was "not able to use it during those times when [she] or one of [her] family members got sick and needed hospital assistance." Aside from Mrs. Cornelio's *Sworn Statement*,

there is no other evidence to support [San Luis'] claim, leading us to reject [San Luis'] first cause of action.

Only Ejercito filed a *Verified Motion for Reconsideration* before the COMELEC *En Banc*.[26] After the parties' exchange of pleadings,[27] the Resolution of the COMELEC First Division was unanimously affirmed on May 21, 2014.

The COMELEC *En Banc* agreed with the findings of its First Division that San Luis' petition is an action to disqualify Ejercito.

ISSUE:

1. Did the commission violated the right of petitioner to due process when it ruled for the disqualification of petitioner even if it was never prayed for in the petition. Worse, there is yet no finding of guilt by a competent court or a finding of fact stating that petitioner actually committed the alleged election offense of overspending;
2. Did it disqualified petitioner for an act done by a third party who simply exercised its right to free expression without the knowledge and consent of petitioner

HELD:

The petition is unmeritorious.

The petition filed by San Luis against Ejercito is for the latter's disqualification and prosecution for election offense

The purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws.[54] A petition to disqualify a candidate may be filed pursuant to Section 68 of the OEC, which states:

SEC. 68. *Disqualifications*. -- Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having: (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

The prohibited acts covered by Section 68 (e) refer to election campaign or partisan political activity outside the campaign period (Section 80); removal, destruction or defacement of lawful election propaganda (Section 83); certain forms of election propaganda (Section 85); violation of rules and regulations on election propaganda through mass media; coercion of subordinates (Section 261 [d]); threats, intimidation, terrorism, use of fraudulent device or other forms of coercion (Section 261 [e]); unlawful electioneering (Section 261 [k]); release, disbursement or expenditure of public funds (Section 261 [v]); solicitation of votes or undertaking any propaganda on the day of the election within the restricted areas (Section 261 [cc], sub-par.6). All the offenses mentioned in Section 68 refer to election

offenses under the OEC, not to violations of other penal laws. In other words, offenses that are punished in laws other than in the OEC cannot be a ground for a Section 68 petition. Thus, We have held:

x x x [T]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the [OEC]. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature. Pursuant to Sections 265 and 268 of the [OEC], the power of the COMELEC is confined to the conduct of preliminary investigation on the alleged election offenses for the purpose of prosecuting the alleged offenders before the regular courts of justice, *viz*:

"Section 265. *Prosecution*. – The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: *Provided, however*, That in the event that the Commission fails to act on any complaint within four months from its filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

In the case at bar, the COMELEC First Division and COMELEC *En Banc* correctly ruled that the petition filed by San Luis against Ejercito is not just for prosecution of election offense but for disqualification as well.

With the foregoing, Ejercito cannot feign ignorance of the true nature and intent of San Luis' petition. This considering, it is unnecessary for Us to discuss the applicability of Section 2, Rule 9 of the COMELEC Rules of Procedure, there being no substantial amendment to San Luis' petition that constitutes a material deviation from his original causes of action.

The conduct of preliminary investigation is not required in the resolution of the electoral aspect of a disqualification case.

Section 5, Rule 25 of COMELEC Resolution No. 9523 states:

Section 5. Effect of Petition if Unresolved Before Completion of Canvass. – If a Petition for Disqualification is unresolved by final judgment on the day of elections, the petitioner may file a motion with the Division or Commission *En Banc* where the case is pending, to suspend the proclamation of the candidate concerned, provided that the evidence for the grounds to disqualify is strong. For this purpose, at least three (3) days prior to any election, the Clerk of the Commission shall prepare a list of pending cases and furnish all Commissioners copies of said the list.

In the event that a candidate with an existing and pending Petition to disqualify is proclaimed winner, the Commission shall continue to resolve the said Petition.

It is expected that COMELEC Resolution No. 9523 is silent on the conduct of preliminary investigation because it merely amended, among others, Rule 25 of the COMELEC Rules of Procedure, which deals with disqualification of candidates. In disqualification cases, the COMELEC may designate any of its officials, who are members of the Philippine Bar, to hear the case and to receive evidence only in cases involving barangay officials.[59] As aforementioned, the present rules of procedure in the investigation and prosecution of election offenses in the COMELEC, which requires preliminary investigation, is governed by COMELEC Resolution No. 9386. Under said Resolution, all lawyers in the

COMELEC who are Election Officers in the National Capital Region ("NCR"), Provincial Election Supervisors, Regional Election Attorneys, Assistant Regional Election Directors, Regional Election Directors and lawyers of the Law Department are authorized to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the COMELEC.

the legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, *i.e.*, until judgment is rendered thereon. The word "shall" signifies that this requirement of the law is mandatory, operating to impose a positive duty which must be enforced. The implication is that the COMELEC is left with no discretion but to proceed with the disqualification case even after the election.

Ejercito should be disqualified for spending in his election campaign an amount in excess of what is allowed by the OEC

R.A. No. 9006 explicitly directs that broadcast advertisements donated to the candidate shall not be broadcasted without the written acceptance of the candidate, which shall be attached to the advertising contract and shall be submitted to the COMELEC, and that, in every case, advertising contracts shall be signed by the donor, the candidate concerned or by the duly-authorized representative of the political party.

ALROBEN J. GOH *v.* HON. LUCILO R. BAYRON and COMMISSION ON ELECTIONS
G.R. No. 212584, November 25, 2014, EN BANC (Carpio, J.)

On 17 March 2014, Goh filed before the COMELEC a recall petition, docketed as SPA EM No. 14-004 (RCL),[7] against Mayor Bayron due to loss of trust and confidence brought about by "gross violation of pertinent provisions of the Anti-Graft and Corrupt Practices Act, gross violation of pertinent provisions of the Code of Conduct and Ethical Standards for Public Officials, Incompetence, and other related gross inexcusable negligence/dereliction of duty, intellectual dishonesty and emotional immaturity as Mayor of Puerto Princesa City."ChanRoblesVirtualawlibrary

On 1 April 2014, the COMELEC promulgated Resolution No. 9864. Resolution No. 9864 found the recall petition sufficient in form and substance, but suspended the funding of any and all recall elections until the resolution of the funding issue.

On 28 April 2014, Mayor Bayron filed with the COMELEC an Omnibus Motion for Reconsideration and for Clarification[9] which prayed for the dismissal of the recall petition for lack of merit.

On 19 May 2014, Goh filed a Comment/Opposition (To the 27 April 2014 Omnibus Motion for Reconsideration and for Clarification) with Motion to Lift Suspension[10] which prayed for the COMELEC's denial of Mayor Bayron's 27 April 2014 Omnibus Motion, as well as to direct COMELEC's authorized representative to immediately carry out the publication of the recall petition against Mayor Bayron, the verification process, and the recall election of Mayor Bayron.

The conduct of recall is one of several constitutional mandates of the Commission. Unfortunately, it cannot now proceed with the conduct of recall elections as it does not have an appropriation or legal authority to commit public funds for the purpose.

ISSUES:

1. The 2014 gaa provides for an appropriation or line item budget to serve as a contingency fund for the conduct of recall elections.
2. The respondent commission may lawfully augment any supposed insufficiency in funding for the conduct of recall elections by utilizing its savings.
3. The proper, orderly and lawful exercise of the process of recall is within the exclusive power and authority of the respondent commission.

HELD:

We grant the petition.

We hold that the COMELEC committed grave abuse of discretion in issuing Resolution Nos. 9864 and 9882. The 2014 GAA provides the line item appropriation to allow the COMELEC to perform

its constitutional mandate of conducting recall elections. There is no need for supplemental legislation to authorize the COMELEC to conduct recall elections for 2014.

The 1987 Constitution expressly provides the COMELEC with the power to "[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall."[26] The 1987 Constitution not only guaranteed the COMELEC's fiscal autonomy,[27] but also granted its head, as authorized by law, to augment items in its appropriations from its savings.[28] The 2014 GAA provides such authorization to the COMELEC Chairman.

There is no clash between the COMELEC and Congress. We reiterate that the 2014 GAA provides a line item appropriation for the COMELEC's conduct of recall elections. Since the COMELEC now admits that it does not have sufficient funds from its current line item appropriation for the "Conduct and supervision of x x x recall votes x x x" to conduct an actual recall election, then there is therefore an actual deficiency in its operating funds for the current year. This is a situation that allows for the exercise of the COMELEC Chairman's power to augment actual deficiencies in the item for the "Conduct and supervision of x x x recall votes x x x" in its budget appropriation.

Moreover, the line item appropriation for the "Conduct and supervision of x x x recall votes x x x" in the 2014 GAA is sufficient to fund recall elections. There is no constitutional requirement that the budgetary appropriation must be loaded in "contingent funds." The Congress has plenary power to lodge such appropriation in current operating expenditures.

Considering that there is an existing line item appropriation for the conduct of recall elections in the 2014 GAA, we see no reason why the COMELEC is unable to perform its constitutional mandate to "enforce and administer all laws and regulations relative to the conduct of x x x recall."[45] Should the funds appropriated in the 2014 GAA be deemed insufficient, then the COMELEC Chairman may exercise his authority to augment such line item appropriation from the COMELEC's existing savings, as this augmentation is expressly authorized in the 2014 GAA.

ALROBEN J. GOH v. HON. LUCILO R. BAYRON and COMMISSION ON ELECTIONS
G.R. No. 212584, NOVEMBER 25, 2014

Alroben Goh filed a recall petition against Puerto Princesa Mayor Lucilo Bayron for loss of confidence due to "gross violations of the Anti-Graft & Corrupt Practices Act and the Code of Conduct and Ethical Standards for Public Officials", among others. COMELEC issued Res. 9864, finding the petition sufficient in form & substance, but suspended any recall elections until they determined where to get the funds for it. Sec. 75, Local Government Code & Sec. 31, COMELEC Res. 7505: states all expenses incidental to recall elections are to be borne by COMELEC, and mandates a contingency fund included in the GAA for it

Finance Services Department (FSD) questioned if COMELEC should bear the burden of funding the entire process of any and all recall elections, stalling the proceedings, including the verification process. COMELEC issued Res. 9882, stating that while Recall is one of its constitutional mandates (A9-C, S2[9]), it cannot proceed with elections since it doesn't have legal authority to commit public funds for it (A6, S29), and they have no contingency fund to do so:

While the Commission has a line item for the "Conduct & supervision of elections, referenda, recall votes, and plebiscites under the program category of its 2014 budget in the amount of P1.4B", it cannot be considered as "an appropriation made by law" nor as a contingency fund; legally intended to finance basic continuing staff support and administrative operations

Sec. 32, Revised Administrative Code: "All moneys appropriated...shall be available solely for the specific purposes for which these are appropriated." Previous GAA's had a line item "Conduct & Supervision of Elections & Other Political Exercises", but was never utilized for the actual conduct of any elections or other political exercises separate line items were provided by Congress for the conduct of the National & Local, SK & Barangay Elections, and Overseas Absentee Voting, under the Locally Funded Projects (Project) Category

Funds intended for Program can be used for Project only when there is a valid augmentation (A6S25[5])

- There must be a law authorizing the Chairman to augment (Sec 67, GAA)
- There must be a deficient existing line item in the GAA to be augmented (there is none)
- There must be savings on the part of the Commission

Assuming augmentation is possible, recall elections is not one of the specific purposes and priorities for augmentation under the 2014 GAA

Sec. 69, GAA: priority given to compensation, personnel benefits, and other sections of the GAA.

Allowing the present petition to push through will open the floodgates for numerous other recall petitions which will result in multiple counts of violation of existing appropriation laws, and may adversely affect ongoing preparations for the conduct of National, Local, and ARMM Elections

Only solution is the enactment of a law that will appropriate funds for the conduct of recall elections inclusion in the 2015 GAA of a contingency fund that may be used for the conduct of recall

elections passage by Congress of a supplemental appropriations law for the FY 2014 for the conduct of recall elections

Hence this Petition by Goh asking to compel COMELEC to act on its constitutional mandate of recall

ISSUE:

Whether COMELEC committed grave abuse of discretion in issuing Res. Nos. 9864 & 9882, suspending recall elections

HELD:

Yes. The 2014 GAA expressly provides a line item for recall elections, which was admitted by COMELEC in Res. 9882: "Conduct & supervision of elections, referenda, recall votes, and plebiscites".

i. When the COMELEC receives a budgetary appropriation for its "Current Operating Expenditures, despite not being a specific appropriation, it is sufficient for COMELEC to carry out its constitutional functions, including the conduct of recall elections.
ii. Socrates v COMELEC: recall elections were conducted even without a specific appropriation for recall elections in the 2002 GAA, where COMELEC drew funds from "Conduct & Supervision of Elections & Other Political Exercises", which is even less specific than the current line
iii. COMELEC has the authority to augment Recall Elections from savings and does not need to defer to a supplemental appropriations law passed by Congress.
iv. In Chairman Brillantes' opening statement before the Senate Committee on Finance, he revealed that COMELEC had savings of somewhere between P2.8-10b. Hence, there are savings.
v. As admitted by COMELEC, since there is a line item appropriation for recall elections, there is no clash between COMELEC & Congress – there is an actual deficiency in an item provided for in the GAA's budget, which can be prioritized by savings.
vi. That the budget for such recall elections must be loaded in a "Contingency Fund" has no basis – Congress has the plenary power to lodge such appropriation in current operating expenditures.
vii. The distinction between "Project" and "Program" is irrelevant: the Constitutional test for validity of augmentation is not how itemized the appropriation is, but whether or not the purpose of the appropriation is specific enough to allow the President to exercise his line-veto power.

DENNIS A. B. FUNA v. THE CHAIRMAN, CIVIL SERVICE COMMISSION, FRANCISCO T. DUQUE III, et. al.
G.R. No. 191672, 25 November 2014

Section 1, Article IX-A of the 1987 Constitution expressly describes all the Constitutional Commissions as "independent." Although their respective functions are essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of such functions. Each of the Constitutional Commissions conducts its own proceedings under the applicable laws and its own rules and in the exercise of its own discretion.

In 2010, then President Gloria Macapagal-Arroyo appointed Francisco T. Duque III (Duque) as Chairman of the Civil Service Commission, which was thereafter confirmed by the Commission on Appointments. Subsequently, President Arroyo issued Executive Order No. 864 (EO 864). Pursuant to it, Duque was designated as a member of the Board of Directors or Trustees in an ex officio capacity of the following government-owned or government-controlled corporations: (a) Government Service Insurance System (GSIS); (b) Philippine Health Insurance Corporation (PHILHEALTH), (c) the Employees Compensation Commission (ECC), and (d) the Home Development Mutual Fund (HDMF).

Petitioner Dennis A.B. Funa, in his capacity as taxpayer, concerned citizen and lawyer, filed the instant petition challenging the constitutionality of EO 864, as well as Section 14, Chapter 3, Title I-A, Book V of Executive Order No. 292 (EO 292), otherwise known as The Administrative Code of 1987, and the designation of Duque as a member of the Board of Directors or Trustees of the GSIS, PHIC, ECC and HDMF for being clear violations of Section 1 and Section 2, Article IX-A of the 1987 Constitution.

ISSUE:

Does the designation of Duque as member of the Board of Directors or Trustees of the GSIS, PHILHEALTH, ECC and HDMF, in an ex officio capacity, impair the independence of the CSC and violate the constitutional prohibition against the holding of dual or multiple offices for the Members of the Constitutional Commissions?

HELD:

Yes. The Court partially grants the petition. The Court upholds the constitutionality of Section 14, Chapter 3, Title I-A, Book V of EO 292, but declares unconstitutional EO 864 and the designation of Duque in an ex officio capacity as a member of the Board of Directors or Trustees of the GSIS, PHILHEALTH, ECC and HDMF.

Section 1, Article IX-A of the 1987 Constitution expressly describes all the Constitutional Commissions as "independent." Although their respective functions UST Law Review, Vol. LIX, No. 1, May 2015 are essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of such functions. Each of the Constitutional Commissions conducts its own proceedings under the applicable laws and its own rules and in the exercise of its own discretion. Its decisions, orders and rulings are subject only to review on certiorari by the Court as provided by Section 7, Article IXA of the 1987 Constitution. To safeguard the independence of these Commissions, the 1987 Constitution, among others, imposes under Section 2, Article IX-A of the Constitution certain inhibitions and disqualifications upon the Chairmen and members to strengthen their integrity, to wit:

(a) Holding any other office or employment during their tenure;

(b) Engaging in the practice of any profession;

(c) Engaging in the active management or control of any business which in any way may be affected by the functions of his office; and

(d) Being financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including government owned or -controlled corporations or their subsidiaries.

The issue herein involves the first disqualification abovementioned, which is the disqualification from holding any other office or employment during Duque's tenure as Chairman of the CSC. The Court finds it imperative to interpret this disqualification in relation to Section 7, paragraph (2), Article IX-B of the Constitution and the Court's pronouncement in Civil Liberties Union v. Executive Secretary. Section 7, paragraph (2), Article IX-B reads:chanroblesvirtuallawlibrary

Section 7. x x x

Unless otherwise allowed by law or the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

Being an appointive public official who does not occupy a Cabinet position (i.e., President, the Vice-President, Members of the Cabinet, their deputies and assistants), Duque was thus covered by the general rule enunciated under Section 7, paragraph (2), Article IX-B. He can hold any other office or employment in the Government during his tenure if such holding is allowed by law or by the primary functions of his position.

Section 3, Article IX-B of the 1987 Constitution describes the CSC as the central personnel agency of the government and is principally mandated to establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service; to strengthen the merit and rewards system; to integrate all human resources development programs for all levels and ranks; and to institutionalize a management climate conducive to public accountability.

Section 14, Chapter 3, Title I-A, Book V of EO 292 is clear that the CSC Chairman's membership in a governing body is dependent on the condition that the functions of the government entity where he will sit as its Board member must affect the career development, employment status, rights, privileges, and welfare of government officials and employees. Based on this, the Court finds no irregularity in Section 14, Chapter 3, Title I-A, Book V of EO 292 because matters affecting the career development, rights and welfare of government employees are among the primary functions of the CSC and are consequently exercised through its Chairman. The CSC Chairman's membership therein must, therefore, be considered to be derived from his position as such. Accordingly, the constitutionality of Section 14, Chapter 3, Title I-A, Book V of EO 292 is upheld.

The GSIS, PHILHEALTH, ECC and HDMF are vested by their respective charters with various powers and functions to carry out the purposes for which they were created. While powers and functions associated with appointments, compensation and benefits affect the career development, employment status, rights, privileges, and welfare of government officials and employees, the GSIS,

PHILHEALTH, ECC and HDMF are also tasked to perform other corporate powers and functions that are not personnel-related. All of these powers and functions, whether personnel-related or not, are carried out and exercised by the respective Boards of the GSIS, PHILHEALTH, ECC and HDMF. Hence, when the CSC Chairman sits as a member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF, he may exercise these powers and functions, which are not anymore derived from his position as CSC Chairman, such as imposing interest on unpaid or unremitted contributions, issuing guidelines for the accreditation of health care providers, or approving restructuring proposals in the payment of unpaid loan amortizations. The Court also notes that Duque's designation as member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF entitles him to receive per diem, a form of additional compensation that is disallowed by the concept of an ex officio position by virtue of its clear contravention of the proscription set by Section 2, Article IX-A of the 1987 Constitution. This situation goes against the principle behind an ex officio position, and must, therefore, be held unconstitutional.

Apart from violating the prohibition against holding multiple offices, Duque's designation as member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF impairs the independence of the CSC. Under Section 17, Article VII of the Constitution, the President exercises control over all government offices in the Executive Branch. An office that is legally not under the control of the President is not part of the Executive Branch.

As provided in their respective charters, PHILHEALTH and ECC have the status of a government corporation and are deemed attached to the Department of Health and the Department of Labor, respectively. On the other hand, the GSIS and HDMF fall under the Office of the President. The corporate powers of the GSIS, PHILHEALTH, ECC and HDMF are exercised through their governing Boards, members of which are all appointed by the President of the Philippines. Undoubtedly, the GSIS, PHILHEALTH, ECC and HDMF and the members of their respective governing Boards are under the control of the President. As such, the CSC Chairman cannot be a member of a government entity that is under the control of the President without impairing the independence vested in the CSC by the 1987 Constitution.

In view of the application of the prohibition under Section 2, Article IX-A of the 1987 Constitution, Duque did not validly hold office as Director or Trustee of the GSIS, PHILHEALTH, ECC and HDMF concurrently with his position of CSC Chairman. Accordingly, he was not to be considered as a de jure officer while he served his term as Director or Trustee of these GOCCs. A de jure officer is one who is deemed, in all respects, legally appointed and qualified and whose term of office has not expired.That notwithstanding, Duque was a de facto officer during his tenure as a Director or Trustee of the GSIS, PHILHEALTH, ECC and HDMF.

A de facto officer is one who derives his appointment from one having colorable authority to appoint, if the office is an appointive office, and whose appointment is valid on its face. He may also be one who is in possession of an office, and is discharging its duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer. Consequently, the acts of the de facto officer are just as valid for all purposes as those of a de jure officer, in so far as the public or third persons who are interested therein are concerned.

In order to be clear, therefore, the Court holds that all official actions of Duque as a Director or Trustee of the GSIS, PHILHEALTH, ECC and HDMF, were presumed valid, binding and effective as if he was the officer legally appointed and qualified for the office. This clarification is necessary in order to

protect the sanctity and integrity of the dealings by the public with persons whose ostensible authority emanates from the State. Duque's official actions covered by this clarification extend but are not limited to the issuance of Board resolutions and memoranda approving appointments to positions in the concerned GOCCs, promulgation of policies and guidelines on compensation and employee benefits, and adoption of programs to carry out the corporate powers of the GSIS, PHILHEALTH, ECC and HDMF.

OLIVIA DA SILVA CERAFICA v. COMMISSION ON ELECTIONS
G.R. No. 205136, DECEMBER 2, 2014

COMELEC has the ministerial duty to receive and acknowledge receipt of COCs. The question of eligibility or ineligibility of a candidate is thus beyond the usual and proper cognizance of the COMELEC.

On October 2012, Kimberly filed her certificate of candidacy (COC) for Councilor, City of Taguig for the 2013 Elections. Her COC stated that she was born on 29 October 1992, or that she will be twenty (20) years of age on the day of the elections, in contravention of the requirement that one must be at least twenty-three (23) years of age on the day of the elections. As such, Kimberly was summoned to a clarificatory hearing due to the age qualification. Instead of attending the hearing, Kimberly opted to file a sworn Statement of Withdrawal of COC. Simultaneously, Olivia filed her own COC as a substitute of Kimberly. The COMELEC rendered a decision ordering the cancellation of Kimberly's COC, and the denial of the substitution of Kimberly by Olivia.

COMELEC argued that Olivia cannot substitute Kimberly as the latter was never an official candidate because she was not eligible for the post by reason of her age, and that; moreover, the COC that Kimberly filed was invalid because it contained a material misrepresentation relating to her eligibility for the office she seeks to be elected to. Olivia countered that although Kimberly may not be qualified to run for election because of her age, it cannot be denied that she still filed a valid COC and was, thus, an official candidate who may be substituted. Olivia also claimed that there was no ground to cancel or deny Kimberly's COC on the ground of lack of qualification and material misrepresentation because she did not misrepresent her birth date to qualify for the position of councilor, and as there was no deliberate attempt to mislead the electorate, which is precisely why she withdrew her COC upon learning that she was not qualified.

ISSUE:

Was there a valid substitution?

HELD:

Yes, in declaring that Kimberly, being under age, could not be considered to have filed a valid COC and, thus, could not be validly substituted by Olivia, we find that the COMELEC gravely abused its discretion. Firstly, subject to its authority over nuisance candidates and its power to deny due course to or cancel COCs under Sec. 78, Batas Pambansa (B.P.) Blg. 881, the COMELEC has the ministerial duty to receive and acknowledge receipt of COCs. The question of eligibility or ineligibility of a candidate is thus beyond the usual and proper cognizance of the COMELEC.

The next question then is whether Olivia complied with all of the requirements for a valid substitution; we answer in the affirmative. First, there was a valid withdrawal of Kimberly's COC after the last day for the filing of COCs; second, Olivia belongs to and is certified to by the same political party to which Kimberly belongs; and third, Olivia filed her COC not later than mid-day of Election Day.

CONRADO B. NICART, JR. v. MA. JOSEFINA C. TITONG and JOSELITO M. ABRUGAR, SR.
G.R. No. 207682, December 10, 2014

A few days prior to the end of his term, then Governor of Eastern Samar Ben P. Evardone issued ninety-three (93) appointments including that of respondents Ma. Josefina Titong and JoselitoAbrugar, Sr. which appointments were later disapproved for having been made in violation of Section 2.1 of CSC Memorandum Circular No. 16, series of 2007. Titong and Abrugar requested the assistance of the CSC with their claim for payment of their first salary which was denied by the Commission on Audit (COA) Provincial Office and by Conrado Nicart, Jr., the incumbent Governor. The CSC then granted the petition.

Meanwhile, the CSC, upon respondents' motion, issued a writ of execution under CSC Resolution No. 1101319, ordering petitioner and the Provincial Government to pay the salaries and other emoluments due to respondents from the time of their assumption of office. Nevertheless, the Court of Appeals declared the appointments invalid.

The Supreme Court then denied the petition for review of the CA Decision. However, Pending the SC's action on respondents' motion for reconsideration the Regional Trial Court rendered the assailed Decision granting the Petition for Mandamus filed by the respondents, grounded on the Writ of Execution issued by the CSC. According to the RTC, the non-issuance by the CA of a restraining order or injunction restraining it from proceeding with the Civil Case, coupled with respondents' filing of a Rule 45 petition before the SC thereby staying the Decision of the CA which reversed the ruling of the CSC and declared respondents' appointment as invalid, results in the continued effectivity of the CSC Decision in respondents' favour.

ISSUE:

Whether the enforcement of the Decision of the CSC upholding the legality of respondents' appointment remains to be proper considering the Supreme Court's affirmation of the invalidity thereof?

HELD:

NO. The central foundation for the RTC's continuation of the proceedings and the rendering of the assailed Decision, among others, is Section 82 of CSC Memorandum Circular No. 19, s. 1999 which states that the filing and pendency of a petition for review with the CA or certiorari with the Supreme Court shall not stop the execution of the final decision of the Commission unless the Court issues a restraining order or an injunction. Ordinarily, the non-issuance by the CA of an injunction or restraining order would make the CSC Resolution executory pending appeal.

However, what the RTC failed to take into account is the fact that the propriety of the very directives under the writ of mandamus sought is wholly reliant on the CA's resolution and that judicial courtesy dictates that it suspend its proceedings and await the CA's resolution of the petition for review. When the RTC rendered the assailed Decision, it was well aware of the pendency of the civil case, the subject of which is the reversal and setting aside of the CSC's affirmation of respondents' appointments, embodied in the very Resolution which respondents seek to be enforced in the petition for mandamus. In this regard, the Court has, in several cases, held that there are instances where, even if there is no writ of preliminary injunction or temporary restraining order issued by a higher court, it would be proper for a lower court or court of origin to suspend its proceedings on the precept of judicial courtesy. To Our

mind, considering that the mandamus petition heavily relies on the validity or invalidity of the appointments which issue is to be resolved by the CA, the court a quo incorrectly concluded that it may take cognizance of the petition without erroneously disregarding the principle of judicial courtesy.

The RTC went on to state that "the ground relied upon by Nicart is the mere fact that respondents' appointments were allegedly 'midnight appointments' which the CSC, however, ruled out to be devoid with merit. The prohibition under Article VII, Section 15 of the Constitution, it must be noted, applies only to presidential appointments, but not to local appointments, like in this case. This is true even if the grounds relied upon by petitioner are with respect to CSC Circulars and/or Memorandum, Resolutions, Laws, Rules, and Regulations relative to the civil service."

GOV. LUIS RAYMUND F. VILLAFUERTE, et al. v. HON. JESSE M. ROBREDO
G.R. No. 195390, DECEMBER 10, 2014

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.

In 1995, the Commission on Audit (COA) conducted an examination and audit on the manner the local government units utilized their Internal Revenue Allotment (IRA) for the calendar years 1993-1994. The examination yielded an official report, showing 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). In 2010, Jesse Robredo, in his capacity as DILG Secretary, issued the assailed Memorandum Circular (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 MC requires the posting within 30 days from the end of each fiscal year in at least three (3) publicly accessible and conspicuous places in the local government unit a summary of all revenues collected and funds received including the appropriations and disbursements of such funds during the preceding fiscal year. The foregoing circular also states that noncompliance will be meted sanctions in accordance with pertinent laws, rules and regulations. On December 2, 2010, the Robredo issued another MC, reiterating that 20% component of the IRA 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 a list for which the fund must not be utilized.

Villafuerte, then Governor of Camarines Sur, joined by the Provincial Government of Camarines Sur, filed the instant petition for certiorari, seeking to nullify the assailed issuances of the respondent for being unconstitutional for violating the principles of local and fiscal autonomy enshrined in the Constitution and the LGC.

ISSUE:

Did the assailed memorandum circulars violate the principles of local and fiscal autonomy

HELD:

No, 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. Contrary to the Villafuerte, et al.'s posturing, however, the enumeration was not meant to restrict the discretion of the LGUs in the utilization of their funds. 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. Villafuerte, et al. 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. 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. Villafuerte, et al. 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. Pertinently, Section 352 of the LGC reads that Local treasurers, accountants, budget officers, and other accountable officers shall, within thirty (30) days from the end of the fiscal year, post in at least three (3) publicly accessible and conspicuous places in the local government unit. R.A. No. 9184, on the other hand, requires the posting of the invitation to bid, notice of award, notice to proceed, and approved contract in the procuring entity's premises, in newspapers of general circulation, and the website of the procuring entity. In particular, the Constitution commands the strict adherence to full disclosure of information on all matters relating to official transactions and those involving public interest. Pertinently, Section 28, Article II and Section 7, Article III of the Constitution.

IN THE MATTER OF: SAVE THE SUPREME COURT JUDICIAL INDEPENDENCE AND FISCAL AUTONOMY MOVEMENT *v.* ABOLITION OF JUDICIARY DEVELOPMENT FUND (JDF) and REDUCTION OF FISCAL AUTONOMY
UDK-15143, 21 January 2015, EN BANC, (Leonen J.)

This petition for mandamus was filed by Rolly Mijares in order to compel the Congress to stop the passing of the law of House Bill authored by Rep. Niel Tupas, Jr that would abolish the Judicial Development Fund and replace it with the Judicial Support Fund wherein its fund will be remitted to the National Treasury and Congress will determine its allocation.

Petitioner contends that due to the ruling of the Court in the Priority Assistance Development Fund and Disbursement Acceleration Plan, the Congress has drafted the Judicial Support Fund wherein it transgresses the separation of powers.

Issues:

Whether or not the petition meets the requisites of judicial review.

Ruling:

NO. The petitioner fails to meet the first two requisites essential to the exercise of judicial review. Petitioner seeks to strike down two bills that has been filed in the Congress. For the Court to act on the matter, the case must be ripe for adjudication and not hypothetical and conjectural. There must first be a law passed at this instance for the court to take cognizance of the matter.

Also, petitioner has no legal standing since there has been no "direct injury" that he has no personal and substantial interest in the case.

MARIA CAROLINA ARAULLO v. BENIGNO AQUINO III
G.R. No. 209287, 3 February 2015, (Bersamin, J.)

This Motion for Reconsideration was filed by the petitioners due to the ruling of the Supreme Court on the previous case which was decided on 2014. Petitioners contend that the court made various errors on procedural and substantive issues, hence the motion for reconsideration.

ISSUES:

1. Whether or not the exercise of the power of judicial review is valid.
2. Whether or not the strict construction of the Court regarding the power to augment is tenable.
3. Whether or not the power to augment can be used to fund non-existing provisions in the General Appropriations Act.

RULING:

1. **YES.**

The judicial branch of the government is clothed by the Constitution to interpret the intent and meaning of the law. Such power may be transgressed by a subsequent interpretation and construction of the law by the Legislative branch. Furthermore, the fact that the respondent's motion for reconsideration allege that there has been grave abuse of discretion compels the Court to rule upon the issue.

2. **YES.**

The decision of the Court has underscored that the exercise of the power to augment shall be strictly construed by virtue of its being an exception to the general rule that the funding of PAPs shall be limited to the amount fixed by Congress for the purpose. Necessarily, savings, their utilization and their management will also be strictly construed against expanding the scope of the power to augment. Such a strict interpretation is essential in order to keep the Executive and other budget implementors within the limits of their prerogatives during budget execution, and to prevent them from unduly transgressing Congress' power of the purse.

Hence, regardless of the perceived beneficial purposes of the DAP, and regardless of whether the DAP is viewed as an effective tool of stimulating the national economy, the acts and practices under the DAP and the relevant provisions of NBC No. 541 cited in the Decision should remain illegal and unconstitutional as long as the funds used to finance the projects mentioned therein are sourced from savings that deviated from the relevant provisions of the GAA, as well as the limitation on the power to augment under Section 25(5), Article VI of the Constitution. In a society governed by laws, even the best intentions must come within the parameters defined and set by the Constitution and the law. Laudable purposes must be carried out through legal methods.

3. **NO.**

In the case of Nazareth v. Villar, we clarified that there must be an existing item, project or activity, purpose or object of expenditure with an appropriation to which savings may be transferred for the purpose of augmentation. Accordingly, so long as there is an item in the GAA for which Congress

had set aside a specified amount of public fund, savings may be transferred thereto for augmentation purposes. This interpretation is consistent not only with the Constitution and the GAAs, but also with the degree of flexibility allowed to the Executive during budget execution in responding to unforeseeable contingencies.

DIOCESE OF BACOLOD v. COMMISSION ON ELECTIONS
G.R. No. 205278, 21 July 2015, EN BANC (Leonen, J.)

On February 21, 2013, petitioners posted two (2) tarpaulins within a private compound housing the San Sebastian Cathedral of Bacolod. Each tarpaulin was approximately six feet (6') by ten feet (10') in size. They were posted on the front walls of the cathedral within public view. The first tarpaulin contains the message "IBASURA RH Law" referring to the Reproductive Health Law of 2012 or Republic Act No. 10354. The second tarpaulin is the subject of the present case. This tarpaulin contains the heading "Conscience Vote" and lists candidates as either "(Anti-RH) Team Buhay" with a check mark, or "(Pro-RH) Team Patay" with an "X" mark. The electoral candidates were classified according to their vote on the adoption of Republic Act No. 10354, otherwise known as the RH Law. Those who voted for the passing of the law were classified by petitioners as comprising "Team Patay," while those who voted against it form "Team Buhay."

Respondents conceded that the tarpaulin was neither sponsored nor paid for by any candidate. Petitioners also conceded that the tarpaulin contains names of candidates for the 2013 elections, but not of politicians who helped in the passage of the RH Law but were not candidates for that election.

ISSUES:

1. Whether or not the size limitation and its reasonableness of the tarpaulin is a political question, hence not within the ambit of the Supreme Court's power of review.
2. Whether or not the petitioners violated the principle of exhaustion of administrative remedies as the case was not brought first before the COMELEC En Banc or any if its divisions.
3. Whether or not COMELEC may regulate expressions made by private citizens.
4. Whether or not the assailed notice and letter for the removal of the tarpaulin violated petitioners' fundamental right to freedom of expression.
5. Whether the order for removal of the tarpaulin is a content-based or content-neutral regulation.
6. Whether or not there was violation of petitioners' right to property.
7. Whether or not the tarpaulin and its message are considered religious speech.

RULING:

1. No. The Court ruled that the present case does not call for the exercise of prudence or modesty. There is no political question. It can be acted upon by this court through the expanded jurisdiction granted to this court through Article VIII, Section 1 of the Constitution..

The concept of a political question never precludes judicial review when the act of a constitutional organ infringes upon a fundamental individual or collective right. Even assuming arguendo that the COMELEC did have the discretion to choose the manner of regulation of the tarpaulin in question, it cannot do so by abridging the fundamental right to expression.

Also the Court said that in our jurisdiction, the determination of whether an issue involves a truly political and non-justiciable question lies in the answer to the question of whether there are constitutionally imposed limits on powers or functions conferred upon political bodies. If there are, then our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits.

A political question will not be considered justiciable if there are no constitutionally imposed limits on powers or functions conferred upon political bodies. Hence, the existence of constitutionally imposed limits justifies subjecting the official actions of the body to the scrutiny and review of this court.

In this case, the Bill of Rights gives the utmost deference to the right to free speech. Any instance that this right may be abridged demands judicial scrutiny. It does not fall squarely into any doubt that a political question brings.

2. No. The Court held that the argument on exhaustion of administrative remedies is not proper in this case.

Despite the alleged non-exhaustion of administrative remedies, it is clear that the controversy is already ripe for adjudication. Ripeness is the "prerequisite that something had by then been accomplished or performed by either branch or in this case, organ of government before a court may come into the picture."

Petitioners' exercise of their right to speech, given the message and their medium, had understandable relevance especially during the elections. COMELEC's letter threatening the filing of the election offense against petitioners is already an actionable infringement of this right. The impending threat of criminal litigation is enough to curtail petitioners' speech.

In the context of this case, exhaustion of their administrative remedies as COMELEC suggested in their pleadings prolongs the violation of their freedom of speech.

3. No. Respondents cite the Constitution, laws, and jurisprudence to support their position that they had the power to regulate the tarpaulin. However, the Court held that all of these provisions pertain to candidates and political parties. Petitioners are not candidates. Neither do they belong to any political party. COMELEC does not have the authority to regulate the enjoyment of the preferred right to freedom of expression exercised by a non-candidate in this case.

4. Yes. The Court held that every citizen's expression with political consequences enjoys a high degree of protection.

Moreover, the respondent's argument that the tarpaulin is election propaganda, being petitioners' way of endorsing candidates who voted against the RH Law and rejecting those who voted for it, holds no water.

The Court held that while the tarpaulin may influence the success or failure of the named candidates and political parties, this does not necessarily mean it is election propaganda. The tarpaulin was not paid for or posted "in return for consideration" by any candidate, political party, or party-list group.

By interpreting the law, it is clear that personal opinions are not included, while sponsored messages are covered. The content of the tarpaulin is a political speech. Political speech refers to speech "both intended and received as a contribution to public deliberation about some issue," "fostering informed and civic minded deliberation." On the other hand, commercial speech has been defined as speech that does "no more than propose a commercial transaction." The expression resulting from the content of the tarpaulin is, however, definitely political speech.

5. It is content-based regulation. Content-based restraint or censorship refers to restrictions "based on the subject matter of the utterance or speech." In contrast, content-neutral regulation includes controls merely on the incidents of the speech such as time, place, or manner of the speech.

The Court held that the regulation involved at bar is content-based. The tarpaulin content is not easily divorced from the size of its medium.

Content-based regulation bears a heavy presumption of invalidity, and this court has used the clear and present danger rule as measure.

Under this rule, "the evil consequences sought to be prevented must be substantive, 'extremely serious and the degree of imminence extremely high.'" "Only when the challenged act has overcome the clear and present danger rule will it pass constitutional muster, with the government having the burden of overcoming the presumed unconstitutionality."

Even with the clear and present danger test, respondents failed to justify the regulation. There is no compelling and substantial state interest endangered by the posting of the tarpaulin as to justify curtailment of the right of freedom of expression. There is no reason for the state to minimize the right of non-candidate petitioners to post the tarpaulin in their private property. The size of the tarpaulin does not affect anyone else's constitutional rights.

6. Yes. The Court held that even though the tarpaulin is readily seen by the public, the tarpaulin remains the private property of petitioners. Their right to use their property is likewise protected by the Constitution.

Any regulation, therefore, which operates as an effective confiscation of private property or constitutes an arbitrary or unreasonable infringement of property rights is void, because it is repugnant to the constitutional guaranties of due process and equal protection of the laws.

The Court in Adiong case held that a restriction that regulates where decals and stickers should be posted is "so broad that it encompasses even the citizen's private property." Consequently, it violates Article III, Section 1 of the Constitution which provides that no person shall be deprived of his property without due process of law.

7. No. The Court held that the church doctrines relied upon by petitioners are not binding upon this court. The position of the Catholic religion in the Philippines as regards the RH Law does not suffice to qualify the posting by one of its members of a tarpaulin as religious speech solely on such basis. The enumeration of candidates on the face of the tarpaulin precludes any doubt as to its nature as speech with political consequences and not religious speech.

With religion looked upon with benevolence and not hostility, benevolent neutrality allows accommodation of religion under certain circumstances. Accommodations are government policies that take religion specifically into account not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance. Their purpose or effect therefore is to remove a burden on, or facilitate the exercise of, a person's or institution's religion. As Justice Brennan explained, the "government may take religion into account . . . to exempt, when possible, from generally applicable governmental regulation individuals whose religious beliefs and practices would otherwise thereby be infringed, or to create without state involvement an atmosphere in which voluntary religious exercise may flourish."

HON. RAMON JESUS P. PAJE, et al v. HON. TEODORO A. CASIÑO, et al.
G.R. Nos. 207257, 207257, 207276, 207282 and 207366, February 03, 2015, EN BANC (Del Castillo, J.)

The Department of Environment and Natural Resources, issued an Environmental Compliance Certificate for a proposed coal-fired power plant at Subic, Zambales to be implemented by RP Energy.

Hon. Teodoro Casino and a number of legislators filed a Petition for Writ of Kalikasan against RP energy, SBMA, and Hon. Ramon Paje as the DENR secretary on the ground that actual environmental damage will occur if the power plant project is implemented and that the respondents failed to comply with certain laws and rules governing or relating to the issuance of an ECC and amendments thereto.

The Court of Appeals denied the petition for the Writ of Kalikasan and invalidated the ECC. Both the DENR and Casino filed an appeal, the former imputing error in invalidating the ECC and its amendments, arguing that the determination of the validity of the ECC as well as its amendments is beyond the scope of a Petition for a Writ of *kalikasan*; while the latter claim that it is entitled to a Writ of Kalikasan.

ISSUES:

1. Whether the parties may raise questions of fact on appeal on the issuance of a writ of Kalikasan; and
2. Whether the validity of an ECC can be challenged via a writ of Kalikasan

RULING:

1. Yes, the parties may raise questions of fact on appeal on the issuance of a writ of Kalikasan because the Rules on the Writ of *kalikasan* (Rule 7, Section 16 of the Rules of Procedure for Environmental Cases)allow the parties to raise, on appeal, questions of fact— and, thus, constitutes an exception to Rule 45 of the Rules of Court— because of the extraordinary nature of the circumstances surrounding the issuance of a writ of *kalikasan*.

2. Yes, the validity of an ECC can be challenged via a writ of Kalikasan because such writ is principally predicated on an actual or threatened violation of the constitutional right to a balanced and healthful ecology, which involves environmental damage of a magnitude that transcends political and territorial boundaries.

A party, therefore, who invokes the writ based on alleged defects or irregularities in the issuance of an ECC must not only allege and prove such defects or irregularities, but must also provide a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules. Otherwise, the petition should be dismissed outright and the action re-filed before the proper forum with due regard to the doctrine of exhaustion of administrative remedies.

In the case at bar, no such causal link or reasonable connection was shown or even attempted relative to the aforesaid second set of allegations. It is a mere listing of the perceived defects or irregularities in the issuance of the ECC.

REYNALDO JACOMILLE v. HON. JOSEPH EMILIO ABAYA
G.R. No. 212831, 22 April 2015, SECOND DIVISION (Mendoza, J.)

Recently, the LTO formulated the Motor Vehicle License Plate Standardization Program (*MVPSP*) to supply the new license plates for both old and new vehicle registrants. The DOTC published in newspapers of general circulation the Invitation To Bid for the supply and delivery of motor vehicle license plates for the MVPSP and stated that the source of funding in the amount of P3,851,600,100.00 would be the General Appropriations Act (GAA). However, a perusal of R.A. No. 10352 or the General Appropriations Act of 2013 (GAA 2013), would show that Congress appropriated only the amount of P187,293,000.00 under the specific heading of Motor Vehicle Plate-Making Project. The DOTC proceeded with the bidding process, but delayed in the implementation of the project. The Senate Committee on Public Services conducted an inquiry in aid of legislation on the reported delays in the release of motor vehicle license plates, stickers and tags by the LTO.

Petitioner, by counsel and assisted by Retired Justice Leonardo A. Quisumbing, instituted this taxpayer suit, averring that he was a diligent citizen paying his correct taxes to the Philippine Government regularly; that he was a registered vehicle owner, as evidenced by the Certificate of Registration of his motor vehicle and a registered licensed driver; that he would be affected by the government issuance of vehicle plates thru its MVPSP upon his renewal of the registration of his vehicle; that not being a participant to the bidding process, he could not avail of the administrative remedies and procedure provided under Republic Act (R.A.) No. 9184 or the Government Procurement Reform Act, and its Implementing Rules and Regulations (*IRR*); that as far as he was concerned, there was no appeal or any plain or speedy remedy available to him.

For the respondents, the OSG stated that the issues presented had been rendered moot and academic as the gap in the budget of MVPSP was already bridged and covered by the full and specific funding by GAA 2014 in the amount of P4,843,753,000.00 for the item "Motor Vehicle Registration and Driver's Licensing Regulatory Services." With the signing of MVPSP on February 21, 2014, after the enactment of GAA 2014, the OSG claimed that all objections that petitioner might have, whether right or wrong, had been rendered naught.

On the other hand, JKG-Power Plates averred that petitioner had no *locus standi*. It pointed out that petitioner had admitted that he was not one of the bidders in MVPSP and so he would not suffer any direct injury. Likewise, the present case was not a proper subject of taxpayer suit because no taxes would be spent for this project. The money to be paid for the plates would not come from taxes, but from payments of vehicle owners, who would pay P450.00 for every pair of motor vehicle license plate, and P120.00 for every motorcycle license plate. Out of the P450.00, the cost of the motor vehicle plate would only be P380.00. In effect, the government would even earn P70.00 from every pair of plate.

ISSUES:

1. Whether the petition should be dismissed for being moot and academic, considering the assailed deficiencies in appropriation have been substantially complied with.

2. Whether the petitioner has *locus standi* to bring his case in court.

3. Whether the petitioner established a taxpayer's suit.

RULING:

1. NO. The rule is well-settled that for a court to exercise its power of adjudication, there must be an actual case or controversy – one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution. The case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereon would be of no practical u se or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. xxx Nevertheless, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. After all, the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation .of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.

In the case at bench, the issues presented must still be passed upon because paramount public interest is involved and the case is capable of repetition yet evading review. MVPSP is a nationwide project which affects new and old registrants of motor vehicles and it involves P3,851,600,100.00 of the taxpayers' money. Also, the act complained of is capable of repetition because the procurement process under R.A. No. 9184 is regularly made by various government agencies. Hence, it is but prudent for the Court to rule on the substantial merits of the case.

2. YES. *Locus standi* is defined as the right of appearance in a court of justice on a given question. The fundamental question is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

In the present case, petitioner justifies his locus standi by claiming that the petition raises issues of transcendental importance and that he institutes the same as a taxpayer's suit. It must be noted that the Court has provided the following instructive guides to determine whether a matter is of transcendental importance, namely: "(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised."

Petitioner sufficiently showed that his case presents a matter of transcendental importance based on the above-cited determinants. He elucidated that, first, around P3.851 billion in public funds stood to be illegally disbursed; second, the IRR of R.A. No. 9184 and R.A. No. 7718 were violated and the contract for MVPSP was awarded to respondent JKG Power Plates despite the utter disregard of the said laws; third, there was no other party with a more direct and specific interest who had raised the issues therein; and fourth, MVPSP had a wide range of impact because all registered motor vehicles owners would be affected.

3. YES. A person suing as a taxpayer must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation. Contrary to the assertion of JKG-Power

Plates, MVPSP clearly involves the expenditure of public funds. While the motor vehicle registrants will pay for the license plates, the bid documents and contract for MVPSP indicate that the government shall bear the burden of paying for the project. Every portion of the national treasury, when appropriated by Congress, must be properly allocated and disbursed. Necessarily, an allegation that public funds in the amount of P3.851 billion shall be used in a project that has undergone an improper procurement process cannot be easily brushed off by the Court.

RESIDENT MARINE MAMMALS OF THE PROTECTED SEASCAPE TANON STRAIT v. SECRETARY ANGELO REYES
G.R. No. 180771, 21 April 2015, EN BANC (Leonardo-De Castro, J.)

June 13, 2002, the Government of the Philippines, acting through the DOE, entered into a Geophysical Survey and Exploration Contract-102 (GSEC-102) with JAPEX. This contract involved geological and geophysical studies of the Tañon Strait.

May 9 to 18, 2005, JAPEX conducted seismic surveys in and around the Tañon Strait. A multi-channel sub-bottom profiling covering approximately 751 kilometers was also done to determine the area's underwater composition.

January 31, 2007, the Protected Area Management Board of the Tañon Strait (PAMB-Tañon Strait) issued Resolution No. 2007-001, wherein it adopted the Initial Environmental Examination (IEE) commissioned by JAPEX, and favorably recommended the approval of JAPEX's application for an ECC.

March 6, 2007, the EMB of DENR Region VII granted an ECC to the DOE and JAPEX for the offshore oil and gas exploration project in Tañon Strait. Months later, on November 16, 2007, JAPEX began to drill an exploratory well, with a depth of 3,150 meters, near Pinamungajan town in the western Cebu Province. This drilling lasted until February 8, 2008.

Petitioners then applied to this Court for redress, via two separate original petitions both dated December 17, 2007, wherein they commonly seek that respondents be enjoined from implementing SC-46 for, among others, violation of the 1987 Constitution.

ISSUE:

Whether or not the service contract is prohibited on the ground that there is no general law prescribing the standard or uniform terms, conditions, and requirements for service contracts involving oil exploration and extraction.

RULING:

No, the disposition, exploration, development, exploitation, and utilization of indigenous petroleum in the Philippines are governed by Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972. This was enacted by then President Ferdinand Marcos to promote the discovery and production of indigenous petroleum through the utilization of government and/or local or foreign private resources to yield the maximum benefit to the Filipino people and the revenues to the Philippine Government.

Contrary to the petitioners' argument, Presidential Decree No. 87, although enacted in 1972, before the adoption of the 1987 Constitution, remains to be a valid law unless otherwise repealed.

Moreover, in cases where the statute seems to be in conflict with the Constitution, but a construction that it is in harmony with the Constitution is also possible, that construction should be

preferred. This Court, in *Pangandaman v. Commission on Elections* expounding on this point, pronounced: *It is a basic precept in statutory construction that a statute should be interpreted in harmony with the Constitution and that the spirit, rather than the letter of the law determines its construction; for that reason,* **a statute must be read according to its spirit and intent.**

Note that while Presidential Decree No. 87 may serve as the general law upon which a service contract for petroleum exploration and extraction may be authorized, as will be discussed below, the exploitation and utilization of this energy resource in the present case may be allowed only through a law passed by Congress, since the Tañon Strait is a NIPAS area.

REPUBLIC OF THE PHILIPPINES v. HEIRS OF BORBON
G.R. No. 165354, 12 January 2015, FIRST DIVISION (Bersamin, J.)

In February 1993, NAPOCOR entered the property owned by the respondents heirs of Saturnino Borbon located in Barangay San Isidro Batangas City, having a total area of 14,257 square meters. Said entrance was done to construct and maintain transmission lines of the 230 KV Mahabang Parang-Pinamucan Power Transmission Project. NAPOCOR filed a complaint for expropriation with the RTC of Batangas only on May 26, 1995, seeking the acquisition of an easement of right of way over a portion of the property involving an area of 6,326 square meters. NAPOCOR alleged that negotiations with the respondents were done and that no agreement was reached, further, that it is willing to deposit P9,790.00, which represents the assessed value of the portion sought to be appropriated. NAPOCOR prayed for a writ of possession so that it may enter and take control, to demolish improvements and to construct transmission lines.

Respondents filed a motion to dismiss countering that NAPOCOR had not negotiated with them before entering the property and that they entered without consent. Such entrance destroyed fruits without payment, and that other portions of the land were also affected since the transmission lines passed through the center the land thereby dividing the land into three lots. Further that the presence of high tension transmission lines rendered the entire property inutile for future use. Respondents do not object as long as just compensation is paid, not only to the portion directly affected but also to the entire property as its value greatly diminished. Further, they raised the land is classified not agricultural but as industrial.

Two commissioners submitted a report indicating that said property was classified back in 1994 as Industrial land located within industrial 2 zoning. They valued the land at P550.00 per square meter. While the third commissioners report recommended a 10% easement fee of the assessed value on the tax declaration plus cost of damages.

Respondents objected by saying that NAPOCOR should compensate them at P550.00 per square meter and for the entire property. NAPOCOR on the other hand submitted its objection saying that at the time of the taking, the land was still classified as agricultural and that it should only compensate for the portion sought.

RTC ruled ordering NAPOCOR to compensate respondents for the entire property and applied recommendation of the two commissioners valuing the land at P550.00/square meter. CA upon appeal of NAPOCOR affirmed RTC ruling but modified the coverage of the payment to only 6,326 square meter. NAPOCOR appealed to SC.

Pending appeal, on January 3, 2014 NAPOCOR filed a manifestation and motion to discontinue appropriation proceedings because property sought to be expropriated is no longer necessary for public use, that the public purpose for which the property would be used thereby ceased to exist.

Issue:

Whether or not expropriation proceeding should continue.

Ruling:

Supreme Court ruled that the dismissal of the expropriation procedure is proper, but, must be upon such terms as the court deems just and equitable.

The exercise of the power of eminent domain is not unlimited, it has two mandatory requirements which are; (1) that it is for a particular public purpose; and (2) that just compensation is paid. The court said that the element of public use must be maintained throughout the proceeding for absence of which, the expropriator must return the property to the owner, if the latter so desires it, citing the case of *Mactan-Cebu International Airport Authority v Lozada Sr*.

The court points out that NAPOCOR entered the property without consent and without payment of just compensation. Neither was there any deposit as required by law. NAPOCOR also destroyed some fruit trees and plants without payment, divided the property into 3 lots as its transmission lines passed through the center of the property, thereby rendering the land inutile for future use, it would be unfair if NAPOCOR will not be liable.

There will be no payment of just compensation as there was no taking. Instead, NAPOCOR should compensate respondents for the disturbance of their property rights at the time of the entry in 1993, by paying them actual or other compensatory damages.

1-UNITED TRANSPORT KOALISYON v. COMMISSION ON ELECTIONS
G.R. No. 206020, 14 April 2015, (Reyes, J.)

In 2013, the COMELEC promulgated Resolution 9615 providing rules that would implement Sec 9 of RA 9006 or the Fair Elections Act. One of the provisions of the Resolution provide that the posting of any election propaganda or materials during the campaign period shall be prohibited in public utility vehicles (PUV) and within the premises of public transport terminals. 1 UTAK, a party-list organization, questioned the prohibition as it impedes the right to free speech of the private owners of PUVs and transport terminals.

Issue:

1. Whether or not the COMELEC may impose the prohibition on PUVs and public transport terminals during the election pursuant to its regulatory powers delegated under Art IX-C, Sec 4 of the Constitution
2. Whether or not the regulation is justified by the "captive audience doctrine"
3. Whether or not the regulation constitutes prior restraints on free speech
4. Whether or not the regulation is a valid content-neutral regulation

Ruling:

1. No. The COMELEC may only regulate the franchise or permit to operate and not the ownership per se of PUVs and transport terminals. The posting of election campaign material on vehicles used for public transport or on transport terminals is not only a form of political expression, but also an act of ownership – it has nothing to do with the franchise or permit to operate the PUV or transport terminal.

2. No. A government regulation based on the captive-audience doctrine may not be justified if the supposed "captive audience" may avoid exposure to the otherwise intrusive speech. Here, the commuters are not forced or compelled to read the election campaign materials posted on PUVs and transport terminals. Nor are they incapable of declining to receive the messages contained in the posted election campaign materials since they may simply avert their eyes if they find the same unbearably intrusive. Hence, the doctrine is not applicable.

3. Yes. It unduly infringes on the fundamental right of the people to freedom of speech. Central to the prohibition is the freedom of individuals such as the owners of PUVs and private transport terminals to express their preference, through the posting of election campaign material in their property, and convince others to agree with them.

4. No. The prohibition under the certain provisions of RA 9615 are content-neutral regulations since they merely control the place where election campaign materials may be posted, but the prohibition is repugnant to the free speech clause as it fails to satisfy all of the requisites for a valid content-neutral regulation.

5. The restriction on free speech of owners of PUVs and transport terminals is not necessary to a stated governmental interest. First, while Resolution 9615 was promulgated by the COMELEC to implement the provisions of Fair Elections Act, the prohibition on posting of election campaign materials on PUVs and transport terminals was not provided for therein. Second, there are more than sufficient provisions in our present election laws that would ensure equal time, space, and opportunity to

candidates in elections. Hence, one of the requisites of a valid content-neutral regulation was not satisfied.

ATTY. ALICIA RISOS-VIDAL v. COMMISSION ON ELECTIONS
G.R. No. 206666, 21 January 2015, (Leonardo-De Castro J.)

On September 12, 2007, the Sandiganbayan convicted former President Estrada, a former President of the Republic of the Philippines, for the crime of plunder and was sentenced to suffer the penalty of Reclusion Perpetua and the accessory penalties of civil interdiction during the period of sentence and perpetual absolute disqualification.

On October 25, 2007, however, former President Gloria Macapagal Arroyo extended executive clemency, by way of pardon, to former President Estrada explicitly states that "He is hereby restored to his civil and political rights."

On November 30, 2009, former President Estrada filed a Certificate of Candidacy for the position of President but was opposed by three petitions seeking for his disqualification. None of the cases prospered and MRs were denied by Comelec *en banc*. Estrada only managed to garner the second highest number of votes on the May 10, 2010 synchronized elections.

On October 2, 2012, former President Estrada once more ventured into the political arena, and filed a Certificate of Candidacy,[10] this time vying for a local elective post, that of the Mayor of the City of Manila.

Petitioner Risos-Vidal filed a Petition for Disqualification against former President Estrada before the COMELEC because of Estrada's Conviction for Plunder by the Sandiganbayan Sentencing Him to Suffer the Penalty of Reclusion Perpetua with Perpetual Absolute Disqualification. Petitioner relied on Section 40 of the Local Government Code (LGC), in relation to Section 12 of the Omnibus Election Code (OEC)

In a Resolution dated April 1, 2013, the COMELEC, Second Division, dismissed the petition for disqualification holding that President Estrada's right to seek public office has been effectively restored by the pardon vested upon him by former President Gloria M. Arroyo.

Estrada won the mayoralty race in May 13, 2013 elections. Petitioner-intervenor Alfredo Lim garnered the second highest votes intervene and seek to disqualify Estrada for the same ground as the contention of Risos-Vidal and praying that he be proclaimed as Mayor of Manila.

Issue:

Whether or not the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that former President Estrada is qualified to vote and be voted for in public office as a result of the pardon granted to him by former President Arroyo.

Ruling:

Yes. Estrada was granted an absolute pardon that fully restored all his civil and political rights, which naturally includes the right to seek public elective office, the focal point of this controversy. The wording of the pardon extended to former President Estrada is complete, unambiguous, and unqualified. It is likewise unfettered by Articles 36 and 41 of the Revised Penal Code. The only reasonable, objective, and constitutional interpretation of the language of the pardon is that the same in fact conforms to Articles 36 and 41 of the Revised Penal Code.

It is insisted that, since a textual examination of the pardon given to and accepted by former President Estrada does not actually specify which political right is restored, it could be inferred that former President Arroyo did not deliberately intend to restore former President Estrada's rights of suffrage and to hold public office, orto otherwise remit the penalty of perpetual absolute disqualification. Even if her intention was the contrary, the same cannot be upheld based on the pardon's text.

The pardoning power of the President cannot be limited by legislative action.

The 1987 Constitution, specifically Section 19 of Article VII and Section 5 of Article IX-C, provides that the President of the Philippines possesses the power to grant pardons, along with other acts of executive clemency

The proper interpretation of Articles 36 and 41 of the Revised Penal Code.

A close scrutiny of the text of the pardon extended to former President Estrada shows that both the principal penalty of reclusion perpetua and its accessory penalties are included in the pardon. The sentence which states that "(h)e is hereby restored to his civil and political rights," expressly remitted the accessory penalties that attached to the principal penalty of reclusion perpetua. Hence, even if we apply Articles 36 and 41 of the Revised Penal Code, it is indubitable from the text of the pardon that the accessory penalties of civil interdiction and perpetual absolute disqualification were expressly remitted together with the principal penalty of reclusion perpetua.

The disqualification of former President Estrada under Section 40 of the LGC in relation to Section 12 of the OEC was removed by his acceptance of the absolute pardon granted to him

While it may be apparent that the proscription in Section 40(a) of the LGC is worded in absolute terms, Section 12 of the OEC provides a legal escape from the prohibition – a plenary pardon or amnesty. In other words, the latter provision allows any person who has been granted plenary pardon or amnesty after conviction by final judgment of an offense involving moral turpitude, inter alia, to run for and hold any public office, whether local or national position.

PEOPLE OF THE PHILIPPINES v. RUDY NUYOK
G.R. No. 195424. June 15, 2015, FIRST DIVISION (Bersamin, J.)

AAA was 13 years old when Nuyok raped her in June, July, August, and September of 2005. At the time, she resided in the house of her grandmother, BBB, in Babac, Poblacion, Malalag, Davao del Sur. Nuyok, her paternal uncle, also lived in the same house.

On October 2005, AAA reported the rapes to ABC, her mother. Upon learning of the crime committed against AAA, ABC immediately brought her back to live with her. There, AAA was aided in bringing the rape charges against the Nuyok.

For his part, Nuyok denied having raped AAA, and imputed ill motives against ABC. Likewsise, Nuyok claims that he cannot be convicted for rape, considering that there were fatal defects in the three Informations filed against him. In particular, having only stated "in July 2005," "in August 2005" and "in September 2005," it did not specify the dates of commission of the rape. He asserts that such failure to specify the definite dates affected the veracity of the allegations therein, as well as the credibility of AAA as the victim.

ISSUE:

Was the Nuyok's right to be informed of the nature of the charges against him violated?

RULING:

NO, Nuyok's constitutional right to be informed of nature of the charges against him was not violated.

In criminal cases, where the life and liberty of the accused is at stake, due process requires that the accused be informed of the nature and cause of the accusation against him; hence, any accused not clearly charged in the complaint or information for the offense could not be convicted of it, for to convict him so would be to violate his constitutional right. In view of his innocence being presumed, he should likewise be presumed not to know anything about the crime he was being charged of committing. The information must then aver the facts and circumstances bearing on the culpability and liability of the accused so that he can properly prepare for and undertake his defense. However, it is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless such date and time are essential ingredients of the offenses charged.

The failure to specify the exact date or time when the rapes were committed did not ipso facto render the informations defective. Neither the date nor the time of the commission of rape is a material ingredient of the crime, for the essence of the crime is carnal knowledge of a female against her will through force or intimidation. Precision as to the time when the rape is committed has no bearing on its commission. Consequently, the date or the time of the commission of the rape need not be stated in the complaint or information with absolute accuracy, for it is sufficient that the complaint or information states that the crime was committed at any time as near as possible to the date of its actual commission.

DAVAO CITY WATER DISTRICT *v.* RODRIGO L. ARANJUEZ,*et al.*
G.R. No. 194192, June 16, 2015, EN BANC (Perez, J.)

As early as 16 May 2007, the members and officers of NAMADACWAD have been staging pickets in front of the DCWD Office during their lunch breaks to air their grievances about the non-payment of their Collective Negotiation Agreement (CNA) incentives and their opposition to DCWD's privatization and proposed One Hundred Million Peso Loan. Came the anniversary of DCWD, officers and members sported t-shirts with inscriptions "CNA Incentive *Ihatag Na, Dir. Braganza Pahawa Na!*" at the beginning of the Fun Run at Victoria Plaza at around 6:30 in the morning and continued to wear the same inside the premises of the DCWD office during the office hours. Also, one of the members of the Board of Directors of NAMADACWAD Gregorio S. Cagula (Cagula), with the help of some of its members, attached similar inscriptions and posters of employees' grievances to a post in the motor pool area, an area not among the officially designated places for posting of grievances as prescribed by DCWD's Office Memorandum dated 8 February 1996 and pursuant to CSC Memorandum Circular No. 33 Series of 1994 (MC No. 33).

DCWD argues that since the concerted or mass action was done within government office hours, such act was not permissible, therefore prohibited. Otherwise stated, a concerted activity done within the regular government office hours is automatically a violation of Section 6 of Resolution No. 021316. On the other hand, Aranjuez,*et. al.* argued that the act staged was covered by their constitutional rights to assemble and petition for redress of grievances.

Issue:

Was the act covered by the constitutional rights to assemble and petition for redress of grievances?

Ruling:

YES. It is clear that the collective activity of joining the fun run in t-shirts with inscriptions on CNA incentives was not to effect work stoppage or disrupt the service.

As pointed out by the respondents, they followed the advice of GM Gamboa "to be there" at the fun run. Respondents joined, and did not disrupt the fun run. They were in sports attire that they were allowed, nay required, to wear. Else, government employees would be deprived of their constitutional right to freedom of expression. This, then, being the fact, the Supreme Court ruled against the findings of both the CSC and Court of Appeals that the wearing of t-shirts with grievance inscriptions constitutes as a violation of Reasonable Office Rules and Regulations. It is correct to conclude that those who enter government service are subjected to a different degree of limitation on their freedom to speak their mind; however, it is not tantamount to the relinquishment of their constitutional right of expression otherwise enjoyed by citizens just by reason of their employment. Unarguably, a citizen who accepts public employment "must accept certain limitations on his or her freedom." But there are some rights and freedoms so fundamental to liberty that they cannot be bargained away in a contract for public employment. It is the Court's responsibility to ensure that citizens are not deprived of these fundamental rights by virtue of working for the government.

AKSYON MAGSASAKA-PARTIDO TINIG NG MASA (AKMA-PTM) v. COMMISSION ON ELECTIONS ABANTE KATUTUBO (ABANTE KA), FLROILAN M. BACUNGAN AND HERMENEGILDO DUMLAO
G.R. No. 207134. June 16, 2015, EN BANC (Villarama Jr., J.)

Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTM) was among the accredited candidates for party-list representative during the national and local elections held on May 13, 2013

The Commission on Elections (COMELEC) partially proclaimed 14 party-list groups, which obtained at least 2% of the total votes cast for the party-list system and were thus entitled to ne guaranteed seat each, and fourteen party list groups as initial winners in the party-list election.

There were 58 available seats for party-list. The COMELEC proclaimed that not all of the 58 available party list can be allocated so as not to prejudice the proclamation of other parties, organizations, or coalitions, which may later on be established to be entitled to additional seats.

AKMA-PTM contends that the proclamation of initial winners with additional seats on the second round was hasty and premature because at the time the canvassing for party-list was still ongoing, there were still uncanvassed and untransmitted results from Mindanao, as well as uncanvassed overseas and local absentee votes, and the results of the special elections in several areas of the country had yet to be transmitted. It contends that there is an invalid and unjust allocation of additional seats to the "two-percenters", to the prejudice of other party-list groups, such as AKMA-PTM.

ISSUES:

DID COMELEC GRAVELY ABUSE ITS DISCRETION IN ALLOCATING THE ADDITIONAL SEATS FOR THE PARTY-LIST CANDIDATES PROCLAIMED AS WINNERS?

RULING:

NO. COMELEC is authorized by law to proclaim the winning candidates if the remaining uncanvassed election returns will not affect the result of the elections.

An incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation. A canvass is not reflective of the true vote of the electorate unless the board of canvassers considers all returns and omits none. However, this is true only where the election returns missing or not counted will affect the results of the election.

In this case, COMELEC based its ruling on its national canvass reports for party-lists. As of May 28, 2013, AKMA-PTM garnered 164,980 votes and ABANTE KA had 111,429 votes. On July 18, 2013, AKMA-PTM's votes slightly increased to 165,784, while ABANTE KA had a total number of 111,625. Therefore, there was no significant change in the rankings, as per the latest canvass.

ATTY. CHELOY E. VELICARIA-GARAFIL v. OFFICE OF THE PRESIDENT and HON. SOLICITOR GENERAL JOSE ANSELMO I. CADIZ
G.R. No. 203372, June 16, 2015, EN BANC (Carpio, J.)

Prior to the May 2010 elections, President Gloria Macapagal-Arroyo issued more than 800 appointments including the petitioners in several government offices. Section 15, Article VII of the 1987 Constitution provides for a ban on midnight appointments. For purposes of the 2010 elections, March 10, 2010 was the cutoff date for valid appointments and the next day, 11 March 2010, was the start of the ban. An exception is provided under such provision which allows temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. None of the petitioners claim that their appointments fall under this exception. President Aquino issued EO 2 recalling, withdrawing, and revoking appointments issued by President Macapagal-Arroyo which violated the constitutional ban. The officers and employees who were affected by EO 2 were informed that they were terminated from service effective the next day. Several petitions were filed seeking to declare the executive order as unconstitutional and for the declaration of their appointment as legal.

ISSUE:

IS VELICARIA-GARAFIL'S APPOINTMENT VALID?

RULING:

No. The following elements should always concur in the making of a valid (which should be understood as both complete and effective) appointment: (1) authority to appoint and evidence of the exercise of the authority; (2) transmittal of the appointment paper and evidence of the transmittal; (3) a vacant position at the time of appointment; and (4) receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications. The concurrence of all these elements should always apply, regardless of when the appointment is made, whether outside, just before, or during the appointment ban. These steps in the appointment process should always concur and operate as a single process. There is no valid appointment if the process lacks even one step.

In this case, petitioners have failed to show compliance with all four elements of a valid appointment. They cannot prove with certainty that their appointment papers were transmitted before the appointment ban took effect. On the other hand, petitioners admit that they took their oaths of office during the appointment ban. The President's exercise of his power to appoint officials is provided for in the Constitution and laws. Considering that appointment calls for a selection, the appointing power necessarily exercises a discretion. There should be evidence that the President intended the appointment paper to be issued. Release of the appointment paper through the MRO is an unequivocal act that signifies the President's intent of its issuance. For purposes of verification of the appointment paper's existence and authenticity, the appointment paper must bear the security marks and must be

accompanied by a transmittal letter from the MRO. Also, an appointment can be made only to a vacant office. An appointment cannot be made to an occupied office. The incumbent must first be legally removed, or his appointment validly terminated, before one could be validly installed to succeed him. Lastly, acceptance is indispensable to complete an appointment. Assuming office and taking the oath amount to acceptance of the appointment. The appointments made by President Arroyo are void.

RE: LETTER OF COURT OF APPEALS JUSTICE VICENTE S.E. VELOSO FOR ENTITLEMENT TO LONGEVITY PAY FOR HIS SERVICES AS COMMISSION MEMBER III OF THE NATIONAL LABOR RELATIONS COMMISSION
A.M. No. 12-8-07-CA, June 16, 2015, EN BANC (Brion, J.)

This case involves the letter-requests of CA Associate Justice Remedios Salazar-Fernando, CA Associate Justice Angelita A. Gacutan and CA Associate Justice Vicente Veloso for their claim of longevity pay for services rendered within and outside the Judiciary as part of their compensation package. They anchored their claim under Section 42 of B.P. Blg. 129 and the Court's ruling in In Re: Request of Justice Bernardo P. Pardo. In such case, Justice Pardo was an incumbent CA Justice when he was appointed COMELEC Chairman, and was appointed to the Supreme Court after his service with the COMELEC, without any interruption in his service. Accordingly, the court considered Justice Pardo's one-time service outside of the judiciary as part of his service in the judiciary for purposes of determining his longevity pay.

Issue:

Whether or not they are entitled to longevity pay for their services rendered outside the judiciary.

Ruling:

No. Section 42 of B.P. Blg. 129 provides that longevity pay should be given to the Justices and Judges of courts for each five years of continuous, efficient and meritorious service in the judiciary. However, the service outside of the judiciary is considered continuous, efficient and meritorious service in the judiciary, if a judge or justice left the judiciary to served in a single non-judicial governmental post and then he returned to the judiciary.

Hence, in this case, Associate Justice Salazar-Fernando was an incumbent MTC Judge, then she served as Chairman of LTFRB, LRTA, and OTC, then she was appointed as Commissioner of COMELEC, then as a consultant of COMELEC, and only then that she was appointed as Associate Justice of CA. Thus, significant gaps in her judicial service intervened which did not comply with the requirement of service in a single non-judicial position. On the other hand, Associate Justices Gacutan and Veloso served as Commissioners of NLRC before they were appointed in the CA. However, NLRC is an agency attached to the DOLE, an Executive Department, and hence such is not considered as continuous, efficient and meritorious service in the Judiciary for the purpose of longevity pay.

MACARIO CATIPON, JR. v. JEROME JAPSON
G.R. No. 191787. June 22, 2015, SECOND DIVISION (Del Castillo, J.)

Macario Catipon Jr., though lacking 1.5 units in Military Science, was allowed to join the graduation ceremonies for B.S. Criminology students of the Baguio Colleges Foundation, with a restriction that he must cure the deficiency before he can be considered a graduate. He joined the Social Security System in 1985. In September, 1993, he took the Civil Service Professional Examination (CSPE) on the belief that the Civil Service Commission still allowed CSPE applicants to substitute length of service government service for any academic deficiency they may have, unaware that in January, 1993, the CSC had issued Civil Service Commission Memorandum Circular No. 42, Series of 1991 and Office Memo. No. 63, Series of 1992 which discontinued the policy. He took the CSPE tests on October 17, 1993, obtained a rating of 80.52% and was later promoted to Senior Analyst and OIC Branch Head of the SSS. He completed his 1.5 units deficiency in Military Science in 1995.

In March, 2003, Jerome Japson filed a letter-complaint with the CSC-CAR Regional Director, alleging that Macario made deliberate false entries in his CSPE application, by stating therein that he graduated in 1993, when he actually graduated only in 1995 after removing his deficiency in Military Science. As a non-graduate in 1993, Macario was not qualified to take the CSPE examination, thus Macario was charged with Dishonesty, Falsification of Official documents, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service by the CSC-CAR after preliminary investigation. In his Answer, Macario alleged good faith, lack of malice and honest mistake; he alleged that he was of the honest belief that length of service may substitute academic deficiency in taking the CSPE exam.

The CSC-CAR Regional Director, noting that all the entries in the application form submitted by Macario for the CSPE exam were typewritten, except for the entries on *"Year Graduated"*, *"School Where Graduated"*, and *"Degree Finished"* ruled that Macario consciously drafted the application form and meticulously prepared it before submitting to the CSC. But the pre-drafted application form showed Macario's confusion as to how the entries should be filled up; in sum, the CSC-CAR Regional Director noted, Macario had tried to show the real state of his educational attainment, mitigating his liability, and did not show a blatant disregard of an established rule or a clear intent to violate the law. Thus, the Regional Director exonerated him on all charges except as to the charge for Conduct Prejudicial to the Best Interest of the Service, where he was found guilty and penalized with suspension of six months and one to one year. Macario appealed to the Civil Service Commission, after his motion for reconsideration was denied by the CSC-CAR Regional Director.

To forestall his impending suspension, Macario filed a Petition for Review to assail the CSC-CAR Regional Director's ruling, which the Court of Appeals denied. It ruled that instead of filing a Petition for Review directly with the CA, Macario should have interposed an appeal to the Civil Service Commission pursuant to Sections 5(A)(1), 43 and 49 of the CSC Uniform Rules on Administrative Cases; by filing the petition directly with the CA, Macario violated the doctrine of exhaustion of administrative remedies; the absence of deliberate intent or willful desire to defy or disregard established rules or norms in the service does not preclude a finding of guilt for conduct prejudicial to the best interest of the service; and that petitioner did not act with prudence and care, but instead was negligent, in the filling up of his CSPE application form and in failing to verify beforehand the requirements for the examination. Macario elevated the case to the Supreme Court.

He argues that he filed the petition for review in view of his imminent suspension, and to prevent serious injury and damage to him; that he should be completely exonerated from the charges

against him, since conduct prejudicial to the best interest of the service must be accompanied by deliberate intent or a willful desire to defy or disregard established rules or norms in the service – which is absent in his case; and that his career service professional eligibility should not be revoked in the interest of justice and in the spirit of the policy which promotes and preserves civil service eligibility.

ISSUE:

Did Macario violate the doctrine of exhaustion of administrative remedies?

RULING:

YES, Macario violated the doctrine of exhaustion of administrative remedies in filing his petition for review directly with it from the CSC-CAR Regional Director.

The doctrine of exhaustion of administrative remedies requires that "before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons.

Indeed, the administrative agency concerned – in this case the Commission Proper – is in the "best position to correct any previous error committed in its forum. When Macario's recourse lies in an appeal to the Commission Proper in accordance with the procedure prescribed in MC 19, the CA may not be faulted for refusing to acknowledge him before it.

BAGUAN M. MAMISCAL v. CLERK OF COURT MACALINOG S. ABDULLAH, SHARI'A CIRCUIT COURT, MARAWI CITY
A.M. No.SCC-13-18-J, July 1, 2015, SECOND DIVISION (Mendoza, J.)

Mamiscal and Adelaidah decided to have divorce repudiated Adelaidahs (talaq) embodied in an agreement (kapasadan) but later on they reconciled. Despite such, Adelaidah still filed the Certificate of Divorce (COD) with the office of Abdullah for registration. Albeit the same was not signed by Mamiscal it was annotated in the certificate that it was executed in the presence of two witnesses and in accordance with Islamic Law. Abdullah then issued the Certificate of Registration of Divorce finalizing the same. It was opposed through a motion by Mamiscal contended that the kapasadan and the COD was invalid because he did not prepare such and that there were no witnesses to its execution but it was denied by Abdullah opined that it was his ministerial duty to receive the COD and the attached kapasadan. Mamiscal then filed a complaint with the SC against Abdullah charging the same with partiality, violation of due process, dishonesty, and conduct unbecoming of a court employee.

ISSUE:

Does the Supreme Court have jurisdiction to impose administrative sanction against Abdullah for his acts?

RULING:

NO. Shari'a Circuit Court which, under the Code of Muslim Personal Laws of the Philippines (Muslim Code) enjoys exclusive original jurisdiction to resolve disputes relating to divorce.

The civil registrar is the person charged by law for the recording of vital events and other documents affecting the civil status of persons. The Civil Registry Law embraces all acts of civil life affecting the status of persons and is applicable to all persons residing in the Philippines. Under Article 185 of the Muslim Code provides that neglect of duty by registrars. Any district registrar or circuit registrar who fails to perform properly his duties in accordance with this Code shall be penalized in accordance with Section 18 of Act 3753 states that "any local registrar who fails to properly perform his duties in accordance with the provisions of this Act and of the regulations issued hereunder, shall be punished for the first offense, by an administrative fine in a sum equal to his salary for not less than fifteen days nor more than three months, and for a second or repeated offense, by removal from the service."

Prescinding from the foregoing, it becomes apparent that SC Court does not have jurisdiction to impose the proper disciplinary action against civil registrars. While he is undoubtedly a member of the Judiciary as Clerk of Court of the Shari'a Circuit Court, a review of the subject complaint reveals that Mamiscal seeks to hold Abdullah liable for registering the divorce and issuing the CRD pursuant to his duties as Circuit Registrar of Muslim divorces. It has been said that the test of jurisdiction is the nature of the offense and not the personality of the offender. The fact that the complaint charges Abdullah for "conduct unbecoming of a court employee" is of no moment. Well-settled is the rule that what controls is not the designation of the offense but the actual facts recited in the complaint. Verily, unless jurisdiction has been conferred by some legislative act, no court or tribunal can act on a matter submitted to it.

EDUARDO CELEDONIA v. PEOPLE OF THE PHILIPPINES
G.R. No. 209137. July 1, 2015, SECOND DIVISION (Mendoza, J.)

On the evening of April 21, 2007, Adriano Marquez itnessed the robbery perpetrated in the house of Carmencita De Guzman while she was away to attend to the wake of her deceased husband. Marquez, whose house was opposite the house of De Guzman and Celedonio, which were adjacent to each other, identified Celedonio as the culprit. De Guzman reported it to the police and requested that Celedonio be investigated for possibly having committed the crime.

On their follow-up operation, Marquez pointed to a man on a motorcycle, claiming that it was Celedonio. The police immediately flagged down the motorcycle. PO1 Rommel Roque asked him if he was Eduardo Celedonio, but he did not reply and just bowed his head. PO2 Adrian Sugui informed Celedonio of a complaint for robbery against him. Celedonio still remained silent and just bowed his head. When asked about the location of the stolen property, he showed them the inside of the compartment of his motorcycle, which contained, among others, a wristwatch and a portable DVD players. When asked if it was the items stolen, Celedonio answered in the affirmative. Thereafter, he was arrested and informed of his constitutional rights.

After the prosecution rested its case, Celedonio filed his Demurrer to Evidence (with leave of court) citing as his ground the alleged illegality of his arrest and the illegal search on his motorcycle. The RTC denied the demurrer, stating that the question of the legality of Celedonio's arrest had been mooted by his arraignment and his active participation in the trial of the case. It considered the seizure of the stolen items as legal not only because of Celedonio's apparent consent to it, but also because the subject items were in a moving vehicle.

ISSUE:

Was the search conducted was illegal, thus rendering the articles recovered inadmissible.

RULING:

No illegal search was conducted upon Celedonio.

When the police officers asked where the stolen items were, they merely made a general inquiry, and not a search, as part of their follow-up operation. Records did not show that the police officers even had the slightest hint that the stolen items were in Celedonio's motorcycle compartment. Neither was there any showing that the police officers frisked Celedonio or rummaged over his motorcycle. There was no showing either of any force or intimidation on the part of the police officers when they made the inquiry.

Celedonio himself voluntarily opened his motorcycle compartment. Worse, when he was asked if the items were the stolen ones, he actually confirmed it. The police officers, therefore, were left without any recourse but to take him into custody for further investigation. At that instance, the police officers had probable cause that he could be the culprit of the robbery. He did not have any explanation as to how he got hold of the items. Moreover, taking into consideration that the stolen items were in a moving vehicle, the police had to immediately act on it.

MARIA ANGELA S. GARCIA v. COMMISSION ON ELECTIONS and JOSE P. PAYUMO III
G.R. No. 216691; July 21, 2015; VELASCO, JR., *J.*

Maria Angela S. Garcia (Garcia) and Payumo were candidates for the mayoralty race of Dinalupihan, Bataan during the May 13, 2013 national and local elections. In the poll's conclusion, Garcia was proclaimed winner for having garnered 31,138 votes as against Payumo's 13,202. On May 27, 2013, Payumo lodged an election protest with the RTC in Balanga, Bataan (RTC), on the ground of the alleged prevalence of fraud and irregularities in all the clustered precincts of Dinalupihan, amplified by the Precinct Count Optical Scan (PCOS) machines' unreliability, casting doubt on the results of the counting and canvassing of votes.

Garcia contends that the reckoning date of the 10-day reglementary period is from the actual date of proclamation, which is May 14, 2013. Meanwhile, Payumo counters that Garcia was proclaimed on May 15, 2013, and assuming *arguendo* that it was done on May 14, 2013, as Garcia insists the proclamation date to be, he cannot be faulted for relying on the date appearing on the *printed* COCP he received.

Issue:

Was Payumo's election protest was filed out of time?

Ruling:

YES. As the members of the MBOC individually declared, Garcia was proclaimed winner of the mayoralty race on May 14, 2013, not on May 15, 2013 as what erroneously appears on the *printed* COCP. Payumo's reliance on the date appearing on the *printed* COCP is misplaced. To be sure, Comelec Resolution No. 9700 is explicit that the *printed* COCP becomes necessary only for purposes of transmitting the results to the next level of canvassing, and not for proclaiming the winning candidates, insofar as local government units whose canvassing thresholds have been lowered are concerned. The *manual* COCP, in such cases, are more controlling.

Jurisprudence has established that the rule prescribing the 10-day reglementary period is mandatory and jurisdictional, and that the filing of an election protest beyond the period deprives the court of jurisdiction over the protest. Violation of this rule should neither be taken lightly nor brushed aside as a mere procedural lapse that can be overlooked. The rule is not a mere technicality but an essential requirement, the non-compliance of which would oust the court of jurisdiction over the case.

ALVIN COMERCIANTE Y GONZALES v. PEOPLE OF THE PHILIPPINES
G.R. No. 205926. July 22, 2015, FIRST DIVISION (Perlas-Bernabe, J.)

In the evening of Julu 30, 2003, Agent Eduardo Radan of the NARCOTICS group and PO3 Bienvy Calag II (PO3 Calag) were aboard a motorcycle, patrolling the area while on their way to visit a friend. While cruising, they spotted, at a distance of about ten meters, two men later identified as Comerciante and Erick Dasilla standing and showing "improper and unpleasant movements," with one of them handing plastic sachets to the other. Thinking that the sachets may contain shabu, they immediately stopped and approached Comerciante and Dasilla. After introducing themselves to be police officers, PO3 Calag arrested the both of them and confiscated two plastic sachets containing what was later confirmed to be shabu.

In his defense, Comerciante averred that PO3 Calag was looking for a certain "Barok," who was a notorious drug pusher in the area, when suddenly, he and Dasilla, who were just standing in front of a jeepney along Private Road, were arrested and taken to a police station. There, the police officers claimed to have confiscated illegal drugs from them and were asked money in exchange for their release. When they failed to accede to the demand, they were brought to another police station to undergo inquest proceedings, and thereafter, were charged with illegal possession of dangerous drugs.

ISSUE:

Was the search and seizure of the shabu in violation of Commerciante's constitutional right?

RULING:

YES, it was in violation of his constitutional right against unlawful searches and seizure.

Section 2, Article III of the Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause. In the absence of such warrant, such search and seizure becomes, as a general rule, "unreasonable" within the meaning of said constitutional provision.

To protect people from unreasonable searches and seizures, Section 3(2), Article III of the Constitution provides an exclusionary rule which instructs that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.

While the Revised Rules on Criminal Procedure provides for three exceptions, the same cannot be applied in the present case. PO3 Calag himself admitted that he was aboard a motorcycle cruising at a speed of around 30 kilometers per hour when he saw Comerciante and Dasilla standing around and showing "improper and unpleasant movements," with one of them handing plastic sachets to the other. On the basis of the foregoing, he decided to effect an arrest.

It is highly implausible for PO3 Calag, even assuming that he had perfect vision, would be able to identify with reasonable accuracy miniscule amounts of shabu inside two very small plastic sachets held by Commerciante. Likewise, there could be no overt act that could rouse the suspicion in the mind of PO3 Calag that Commericante had just committed, was committing, or was about to commit a crime.

GIL G. CAWAD, ET AL. v. FLORENCIO B. ABAD, IN HIS CAPACITY AS SECRETARY OF DEPARTMENT OF BUDGET AND MANAGEMENT (DBM), et al.
G.R. No. 207145. July 28, 2015, EN BANC (Peralta, J.)

On March 26, 1992, Republic Act (R.A.) No. 7305, otherwise known as the *Magna Carta of Public Heath Workers* was signed into law in order to promote the social and economic well-being of health workers, their living conditions and terms of employment, to develop their skills and capabilities, and to encourage those with proper qualifications to remain in government service. Accordingly, public heath workers were granted allowances and benefits, which includes additional compensation.

Pursuant to Section 35 of the Magna Carta, the Secretary of Health promulgated its Implementing Rules and Regulations (IRR) on July 1992. Thereafter, in November 1999, the Department of Health (DOH), in collaboration with various government agencies and health workers' organizations, promulgated a revised IRR, consolidating all additional and clarificatory rules issued by the former Secretaries of Health, dating back from the date of effectivity of the Magna Carta.

ISSUE:

Is the issuance of the DBM-DOH Joint Circular No.1, series of 2012 null and void for being an undue exercise of legislative power?

RULING:

YES.

Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights under which adverse claims are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with authority to determine the law and adjudicate the respective rights of the contending parties.

In this case, respondents did not act in any judicial, quasi-judicial, or ministerial capacity in their issuance of the assailed joint circulars. In issuing and implementing the subject circulars, respondents were not called upon to adjudicate the rights of contending parties to exercise, in any manner, discretion of a judicial nature. The issuance and enforcement by the Secretaries of the DBM, CSC and DOH of the questioned joint circulars were done in the exercise of their quasi-legislative and administrative functions. It was in the nature of subordinate legislation, promulgated by them in their exercise of delegated power. Quasi-legislative power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of powers from the separation of the branches of the government.

The DBM-DOH Joint Circular, insofar as it lowers the hazard pay at rates below the minimum prescribed by Section 21 of R.A. No. 7305 and Section 7.1.5(a) of its Revised IRR is invalid. For being an undue exercise of legislative power.

JUAN PONCE ENRILE v. SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES
G.R. No. 213847, August 18, 2015, EN BANC (Bersamin, *J.*)

The Ombudsman charged Juan Ponce Enrile and several others with plunder with the Sandiganbayan. On the same day that the warrant for his arrest was issued, Enrile voluntarily surrendered and was later on confined at the Philippine National Police General Hospital. Thereafter, Enrile filed his *Motion for Detention at the PNP General Hospital* ,and his *Motion to Fix Bail*, claiming that he should be allowed to post bail because: (a) the Prosecution had not yet established that the evidence of his guilt was strong; (b) although he was charged with plunder, the penalty as to him would only be *reclusion temporal*, not *reclusion perpetua*; and (c) he was not a flight risk, and his age and physical condition must further be seriously considered. The Sandiganbyan denied the motion.

Issue:

Did the Sandiganbayan gravely abuse its discretion in denying Enrile's motion.

Ruling:

No. For purposes of bail, the presence of mitigating circumstance/s is not taken into consideration. These circumstances will only be appreciated in the imposition of the proper penalty after trial should the accused be found guilty of the offense charged.

Admittedly, the accused's age, physical condition and his being a flight risk are among the factors that are considered in fixing a reasonable amount of bail. However, as explained above, it is premature for the Court to fix the amount of bail without an anterior showing that the evidence of guilt against accused Enrile is not strong.

JOSE J. FERRER, JR. *v.* CITY MAYOR HERBERT BAUTISTA, CITY COUNCIL OF QUEZON CITY, CITY TREASURER OF QUEZON CITY and CITY ASSESSOR OF QUEZON CITY
G.R. No. 210551, June 30, 2015, EN BANC (Peralta, J.)

The Quezon City Council enacted Ordinance which imposes upon real properties a Socialized Housing Tax which shall accrue to the Socialized Housing Programs of the Quezon City Government. Jose Ferrer, a registered owner of a residential property in Quezon City filed the instant petition for certiorari, assailing the subject ordinance. He asserts that it does not find basis in the social justice principle enshrined in the Constitution. For him, the SHT cannot be viewed as a "charity" from real property owners since it is forced, not voluntary; thereby burdening them with the expenses to provide funds for housing of informal settlers.

Issue:

Should the imposition of SHT be struck down for arbitrary intrusion into private rights of real property owners?

Ruling:

NO. The Constitution explicitly espouses the view that the use of property bears a social function and that all economic agents shall contribute to the common good. In this case, the imposition of SHT on real property is primarily for urban development and housing program; thus, for the general welfare. Removing slum areas in Quezon City is not only beneficial to the underprivileged and homeless constituents but advantageous to the real property owners as well. The situation will improve the value of the their property investments, fully enjoying the same in view of an orderly, secure, and safe community, and will enhance the quality of life of the poor, making them law-abiding constituents and better consumers of business products.

Consequently, the levy of SHT is primarily in the exercise of police power for the general welfare of the entire city. In the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government. In this case, it is taxation that made the implement of the state's police power.

CHEVRON PHILIPPINES INC v. COMMISSIONER OF INTERNAL REVENUE
G. R. No. 210836, 1 September 2015, *EN BANC* (Bersamin, J.)

Chevron sold and delivered petroleum products to Clark Development Corporation (CDC) in the period from August 2007 to December 2007. Chevron did not pass on to CDC the excise taxes paid on the importation of the petroleum products sold to CDC in taxable year 2007; hence, on June 26, 2009, it filed an administrative claim for tax refund or issuance of tax credit certificate in the amount of P6,542,400.00. Considering that respondent Commissioner of Internal Revenue (CIR) did not act on the administrative claim for tax refund or tax credit, Chevron elevated its claim to the CTA by petition for review on June 29, 2009. The case, docketed as CTA Case No. 7939, was raffled to the CTA's First Division.

The CTA First Division denied Chevron's judicial claim for tax refund or tax credit through its decision dated July 31, 2012, and later on also denied Chevron's Motion for Reconsideration on November 20, 2012.

In due course, Chevron appealed to the CTA En Banc (CTA EB No. 964), which, in the decision dated September 30, 2013, affirmed the ruling of the CTA First Division, stating that there was nothing in Section 135(c) of the NIRC that explicitly exempted Chevron as the seller of the imported petroleum products from the payment of the excise taxes; and holding that because it did not fall under any of the categories exempted from paying excise tax, Chevron was not entitled to the tax refund or tax credit.

ISSUE:

The lone issue for resolution is whether Chevron was entitled to the tax refund or the tax credit for the excise taxes paid on the importation of petroleum products that it had sold to CDC in 2007.

RULING:

Chevron's Motion for Reconsideration is meritorious. Pilipinas Shell concerns the manufacturer's entitlement to refund or credit of the excise taxes paid on the petroleum products sold to international carriers exempt from excise taxes under Section 135(a) of the NIRC. However, the issue raised here is whether the importer (i.e., Chevron) was entitled to the refund or credit of the excise taxes it paid on petroleum products sold to CDC, a tax-exempt entity under Section 135(c) of the NIRC. Notwithstanding that the claims for refund or credit of excise taxes were premised on different subsections of Section 135 of the NIRC, the basic tax principle applicable was the same in both cases - that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed.

Accordingly, the excise taxes that Chevron paid on its importation of petroleum products subsequently sold to CDC were illegal and erroneous, and should be credited or refunded to Chevron in accordance with Section 204 of the NIRC.

Pursuant to Section 135(c), petroleum products sold to entities that are by law exempt from

direct and indirect taxes are exempt from excise tax. The phrase which are by law exempt from direct and indirect taxes describes the entities to whom the petroleum products must be sold in order to render the exemption operative. Section 135(c) should thus be construed as an exemption in favor of the petroleum products on which the excise tax was levied in the first place. The exemption cannot be granted to the buyers - that is, the entities that are by law exempt from direct and indirect taxes - because they are not under any legal duty to pay the excise tax. Consequently, the payment of the excise taxes by Chevron upon its importation of petroleum products was deemed illegal and erroneous upon the sale of the petroleum products to CDC. Section 204 of the NIRC explicitly allowed Chevron as the statutory taxpayer to claim the refund or the credit of the excise taxes thereby paid.

FIRE OFFICER I DARWIN S. SAPPAYANI v. ATTY. RENATO G. GASMEN
A.C. No. 7073, 1 September 2015, EN BANC (Perlas-Bernabe, J.)

In his Complaint-Affidavit, Sappayani alleged that Atty. Gasmen notarized documents which he purportedly executed, particularly, a Special Power of Attorney (SPA) in favor of one Newtrade Goodwill Corporation (NGC) through Romeo N. Maravillas (Maravillas) and an Application for Loan and Promissory Note (loan application) with Air Materiel Wing Savings and Loan Association, Inc. (AMWSLAI). The SPA, which was notarized by Atty. Gasmen on March 29, 2000, authorized NGC through Maravillas to complete the loan application with AMWSLAI and thereafter, receive its proceeds. Thus, by virtue of said notarized documents, AMWSLAI released to Maravillas, as representative of NGC, a loan amounting to P157,301.43.

However, Sappayani denied executing said documents, claiming that his signature found on the SPA was forged as he did not know Maravillas. Neither did he authorize Maravillas to enter into any transaction on his behalf. Sappayani added that it was physically impossible for him to personally appear before Atty. Gasmen and execute the documents at the AMWSLAI office in Quezon City, as he was then training as a new recruit at the Bureau of Fire Protection at General Santos City.

After more than two (2) years, Atty. Gasmen filed his Comment dated May 26, 2008 and claimed, among others, that the notarization of the SPA and loan application was done only after the release of the proceeds of the loan to Maravillas, who then released the same to one Zenaida C. Razo (Razo), the marketing representative of NGC for Region V. According to Atty. Gasmen, Razo was also the one responsible for taking the purported loan of Sappayani, the proceeds of which the latter never received. Moreover, he asserted that prior to notarization, Sappayani's signature on the SPA was compared with his signature specimen cards with AMWSLAI, of which he was an honorary member. Finally, he claimed that by practice, notarization of loan applications at AMWSLAI was done "on a ministerial basis" albeit with "proper safeguards," and that documents were notarized only after the loan is released and the AMWSLAI President has approved the same. As such, notarization was merely a way of completing the loan documentation requirements of the Bangko Sentral ng Pilipinas (BSP).

In a Report and Recommendation dated March 5, 2010, IBP Commissioner Atty. Albert P. Sordan, EnP (Commissioner Sordan) found Atty. Gasmen guilty of violating Section 2 (b), Rule IV of the 2004 Rules on Notarial Practice (Notarial Rules), Section 20 (a) Rule 138 of the Rules of Court, and Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the Code of Professional Responsibility (CPR). Commissioner found that the signature of Sappayani on the SPA was forged, and that Atty. Gasmen failed to exercise reasonable diligence or that degree of vigilance expected of a bonus pater familias. Thus, when he notarized a forged SPA and untruthfully certified that Sappayani was the very same person who personally appeared before him, he violated the Notarial Rules and, as a lawyer, the CPR.

ISSUE:

The issue for the Court's resolution is whether or not the IBP correctly found Atty. Gasmen liable for violation of the Notarial Rules and the CPR.

RULING:

The findings of the IBP are well taken.

One of the obligations of a notary public is to authenticate documents acknowledged before him, certifying the truth thereof under his seal of office. When acknowledging a document, it is required that the person who signed or executed the same, appears in person before the notary public and represents to the latter that the signature on the document was voluntarily affixed by him for the purposes stated in the document, declaring the same as his free and voluntary act and deed. Thereafter, the notary public affixes his notarial seal on the instrument which certifies the due execution of the document, and resultantly, converts a private document into a public document which on its face, is entitled to full faith and credit. In the discharge of his powers and duties, the notary public's certification is one impressed with public interest, accuracy and fidelity such that he owes it to the public to notarize only when the person who signs the document is the same person who executed it and personally appeared before him to attest to his knowledge of the contents stated therein. Thus, the Court has repeatedly emphasized the necessity of an affiant's personal appearance and makes the failure to observe such rule punishable.

Notarization is not an empty, meaningless, or routinary act. It is impressed with substantial public interest, and only those who are qualified or authorized may act as such. It is not a purposeless ministerial act of acknowledging documents executed by parties who are willing to pay fees for notarization. Moreover, notarization of a private document, such as an SPA in this case, converts the document into a public one which, on its face, is given full faith and credit. Thus, the failure of Atty. Gasmen to observe the utmost care in the performance of his duties caused not only damage to those directly affected by the notarized document, but also undermined the integrity of a notary public and tainted the function of notarization.

INTESTATE ESTATE OF JOSE UY v. ATTY. PACIFICO M. MAGHARI III
A.C. No. 10525, 1 September 2015, EN BANC (Leonen, J.)

This resolves a Complaint for disbarment directly filed before this court by complainant Wilson Uy, the designated administrator of the estate of Jose Uy. This Complaint charges respondent Atty. Pacifico M. Maghari, III (Maghari) with engaging in deceitful conduct and violating the Lawyer's Oath. Specifically, Maghari is charged with the use of information that is false and/or appropriated from other lawyers in signing certain pleadings. Wilson Uy's counsel noticed that based on the details indicated in the March 8, 2012 Motion, Maghari appeared to have only recently passed the bar examinations. This prompted Wilson Uy to check the records of Spec. Proc No. 97-241. Upon doing so, he learned that since 2010, Maghari had been changing the professional details indicated in the pleadings he has signed and has been copying the professional details of Atty. Natu-El. (Numerous Motions were filed using false details)

Wilson Uy then filed a Motion to declare Magdalena Uy in indirect contempt (as by then she had still not complied with the Subpoena ad Testificandum) and to require Maghari to explain why he had been usurping the professional details of another lawyer. Respondent does not deny the existence of the errant entries indicated by complainant. However, he insists that he did not incur disciplinary liability.

ISSUE:

Whether or not respondent shall be disbared for using another lawyer's professional detail?

RULING:

Yes. The Supreme Court holds that he should be disbarred.

The duplicitous entries speak for themselves. The errors are manifest and respondent admits their existence. This court would perhaps be well counseled to absolve respondent of liability or let him get away with a proverbial slap on the wrist if all that was involved were a typographical error, or otherwise, an error or a handful of errors made in an isolated instance or a few isolated instances. So too, if the error pertained to only ' one of the several pieces of information that lawyers are required to indicate when signing pleadings.

The truth is far from it. First, respondent violated clear legal requirements, and indicated patently false information. Second, the way he did so demonstrates that he did so knowingly. Third, he did so repeatedly. Before our eyes is a pattern of deceit. Fourth, the information he used was shown to have been appropriated from another lawyer. Not only was he deceitful; he was also larcenous. Fifth, his act not only of usurping another lawyer's details but also of his repeatedly changing information from one pleading to another demonstrates the intent to mock and ridicule courts and legal processes. Respondent toyed with the standards of legal practice.

Also noteworthy here, respondent also violated Bar Matter No. 287, Section 139(e) of the Local Government Code, Bar Matter No. 1132, and Bar Matter No. 1922, a total of seven (7) times. The sheer multiplicity of instances belies any claim that we are only dealing with isolated errors. Regardless whether isolated or manifold, these inaccuracies alone already warrant disciplinary sanctions. However,

respondent aacted with dishonest, deceitful, and even larcenous intent. Thus, warranting disciplinary actions.

FELICIANO P. LEGASPI v. COMMISSION ON ELECTIONS, ALFREDO GERMAR and ROGELIO P. SANTOS, JR.,
G. R. No. 216572, 1 September 2015, EN BANC (Perez, J.)

Respondents Alfredo Germar (Germar) and Rogelio P. Santos, Jr. (Santos), along with one Roberto C. Esquivel (Esquivel), were among the candidates fielded by the Liberal Party (LP) to vie for local elective posts in Norzagaray, Bulacan, during the 13 May 2013 elections. Germar ran for the position of mayor, Santos ran for the position of councilor, and Esquivel ran for the position of vice-mayor. Petitioner Feliciano P. Legaspi, on the other hand, was the National Unity Party's (NUP's) bet for mayor of Norzagaray during the 2013 polls.

After the votes cast by the Norzagaray electorate were tallied, Germar emerged as the highest vote getter in the mayoralty race. Santos, for his part, also appeared to have secured enough votes to be the second councilor of the municipality. Esquivel, though, failed in his bid to become vice-mayor of Norzagaray. Upon learning about the results of the tally, petitioner immediately filed before the Municipal Board of Canvassers (MBC) of Norzagaray a motion to suspend the proclamation of Germar and Santos as winning candidates. Such motion, however, proved to be futile. At exactly 7:45 a.m. on 14 May 2013, despite the petitioner's motion, the MBC proclaimed Germar and Santos as duly elected mayor and councilor of the municipality of Norzagaray, respectively. A few hours after the said proclamation, petitioner filed before the COMELEC a Petition for Disqualification against Germar, Santos, and Esquivel. In it, petitioner accused Germar, Santos, and Esquivel of having engaged in rampant vote buying during the days leading to the elections.

At the COMELEC first division and special first division issued a resolution disqualifying Germar and Santos for the positions of mayor and councilor, respectively, of Norzagaray. Thereafter, respondents filed a Motion for reconsideration with the COMELEC en banc. In view of the foregoing, COMELEC en banc issued a resolution denying the motion for reconsideration with respect to the criminal aspect of SPA No. 13-323 (DC), but ordering the conduct of a rehearing insofar as the electoral aspect of the case was concerned. After the rehearing, the COMELEC en banc took another vote but it still failed to muster a majority consensus on the electoral aspect of SPA No. 13-323 (DC). The final vote of the COMELEC en banc on the matter remained at the exact 3-2 split that it was before the rehearing. Commissioner Parreño maintained his "no part" stance, while newly appointed Commissioner Arthur D. Lim also opted to take no part and did not vote. Thus, on 28 January 2015, the COMELEC en banc issued an Order directing the dismissal of the electoral aspect.

Unconvinced, petitioner filed the present petition before this Court.

ISSUE:

Whether or not COMELEC en banc gravely abused its discretion when it dismissed the electoral aspect?

RULING:

The petition is dismissed for lack of merit. The COMELEC did not err when it dismissed the electroal aspect.

The COMELEC en banc is first required to rehear the case or matter that it cannot decide or resolve by the necessary majority. When a majority still cannot be had after the rehearing, however, there results a failure to decide on the part of the COMELEC en banc. The provision then specifies the effects of the COMELEC en banc's, failure to decide.

If the action or proceeding is originally commenced in the COMELEC, ***such action or proceeding shall be dismissed;***

In appealed cases, ***the judgment or order appealed from shall stand affirmed****; or*

In incidental matters, ***the petition or motion shall be denied****.*

As can be gleaned above, the effects of the COMELEC en banc's failure to decide vary depending on the type of case or matter that is before the commission. Thus, under the provision, the first effect (i.e., the dismissal of the action or proceeding) only applies when the type of case before the COMELEC is an action or proceeding "originally commenced in the commission"; the second effect (i.e., the affirmance of a judgment or order) only applies when the type of case before the COMELEC is an "appealed case"; and the third effect (i.e., the denial of the petition or motion) only applies when the case or matter before the COMELEC is an "incidental matter."

Petitioner, misconstrues Section 6, Rule 18 of the COMELEC Rules.

The phrase "originally commenced in the commission" in Section 6, Rule 18 of the COMELEC Rules is worded in plain language and, therefore, must be construed in its ordinary and natural sense. It simply means what it says. The phrase is meant to cover any action or proceeding that is filed, at the first instance, before the COMELEC—whether sitting in division or en banc—as contradistinguished from cases that are merely appealed to it. Petitioner's view that restricts such phrase to include only those actions or proceedings that are originally filed with the COMELEC en banc itself (e.g., petition to declare failure of elections) has no basis and only obscures the otherwise clear import of the phrase's language.

In this case, the fact that SPA No. 13-323 (DC) is an action originally commenced in the COMELEC cannot at all be doubted. The records are crystal clear that the petition was first filed with the COMELEC and was raffled to the First Division for decision. It is a fresh petition—as it passed upon no other tribunal, body or entity prior to its filing with the COMELEC. Hence, for all intents and purposes, SPA No. 13-323 (DC) must be considered as an action "originally commenced in the commission" under Section 6, Rule 18 of the COMELEC Rules.

LAND BANK OF THE PHILIPPINES v. BELLE CORPORATION
G. R. No. 205271, 2 September 2015, THIRD DIVISION (Peralta, J.)

Respondent Belle Corporation (respondent) is a publicly-listed company primarily engaged in the development and operation of several leisure and recreational projects in Tagaytay City, Cavite, such as the Tagaytay Highlands. On November 20, 1996, it filed a Complaint, docketed as Civil Case No. TG-1672, for quieting of title and damages with prayer for temporary restraining order and/or preliminary mandatory injunction against Florosa A. Bautista (Bautista) and the Register of Deeds of Tagaytay City. Allegedly, respondent is the registered owner in possession of four (4) parcels of land known as Lots 1 to 4 of the consolidation and subdivision plan Pcs-04-010666 containing an aggregate area of 317,918 square meters, located at Barangay Sungay, Tagaytay City, under Transfer Certificate of Title(TCT) Nos. P-1863 to P-1866. On October 31, 1996, it received a demand letter from Bautista's counsel which ordered the immediate stoppage of its occupation and use of a substantial portion of the land that she purportedly owns. She claimed that respondent had illegally constructed a road on said property without her prior notice or permission. Before a response could be sent, Bautista caused the posting of a signboard on the entrance access road to Tagaytay Highlands International Golf Club and the Country Club of Tagaytay Highlands.

To support its cause, respondent averred that its title over a portion of the subject lot was originally registered as early as March 30, 1959 in the name of Tagaytay Development Company and Patricia S. Montemayor.

On May 5, 1997, Bautista filed an Answer with Compulsory Counterclaims and Opposition to the Prayer for Issuance of Preliminary Mandatory Injunction. She countered that respondent should be bound and strictly comply with the verification survey of the Department of Environment and Natural Resources (DENR) Regional Office No. IV, which was conducted pursuant to the parties' Joint Request for Verification Survey dated January 20, 1997.

Trial on the merits ensued. During the presentation of evidence by the defense, respondent was informed that Bautista is no longer the owner of the property covered by TCT No. P-671 as it was already foreclosed by petitioner Land Bank of the Philippines; that TCT No. P-3663 was issued in the bank's name; and, that the notice of lis pendens annotated in TCT No. P-671 was not carried over to the new title.

On June 21, 2001, respondent filed a Motion for Leave to File Amended Petition18 impleading petitioner as indispensable party. The trial court granted respondent's motion. Upon receiving the summons, petitioner filed an Answer (With Special and Affirmative Defenses, Compulsory Counterclaim, Cross Claim and Opposition to Injunction). After trial, the RTC ruled against respondent.

Upon appeal by respondent, the RTC Decision was annulled and set aside. Hence, the petition before the Supreme Court.

ISSUES:

1. Whether or not the honorable court of appeals seriously erred in holding that belle corporation is not bound by the findings and conclusions of the expert witness who was commissioned (by

belle cori-'oration and bautista) to conduct a joint verification survey of the disputed property.

2. Whether or not the honorable court of appeals correctly applied the law when it awarded attorney's fees to the respondent.

RULING:

1. The petition is unmeritorious.

We agree with respondent that the entries written in TCT No. T-1863 to T-1867 failed to accurately record the origin of said titles. Having depended on erroneous entries stated on the face of said titles, the result of the verification survey issued by Engr. Pangyarihan is, as a consequence, a mistake insofar as it states which between TCT No. T-1863 and TCT No. P-671 has precedence. Undoubtedly, the origins of TCT Nos. P-1863 to P-1867 are OCT Nos. 0-216 and 55. Whether the 7,693 sq. m. overlapping portion is actually located in Lots 1-C and 1-B (LRC) Psd 91 74 or in Lots 1 and 2, Psu-1 09694 is no longer material. Either way, respondent's title over such portion must prevail since OCT No. 0-216 and OCT No. 55 were registered on March 30, 1959 and July 31, 1941, respectively. In comparison, OCT No. OP-283, which is the mother title of TCT No. P-671 in the name of Bautista, was registered much later on February 4, 1977.

2. The foregoing considered, by reason of its bad faith, there is no merit on petitioner's conviction that attorney's fee cannot be recovered as cost in this case. One important matter, however. It cannot escape Our notice that the CA ordered Bautista and Liezel's Garments, Inc. to jointly pay petitioner 16,327,991.40, the amount for which the disputed property was sold to petitioner at public auction. Only the bank filed a petition for review before Us, which, as expected, did not raise the issue of propriety of such order. This notwithstanding, We deem it proper to rectify the directive. The Supreme Court is clothed with ample authority to review an issue, even not assigned as an error on appeal if it finds that its consideration is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice.

BANK OF THE PHILIPPINE ISLANDS v. TARCILA FERNANDEZ ; DALMIRO SIAN, THIRD PARTY
G. R. No. 173134, 2 September 2015, SECOND DIVISION (Brion, J.)

On September 24, 1991, Tarcila went to the BPI Shaw Blvd. Branch to pre-terminate these joint AND/OR accounts. She brought with her the certificates of time deposit and the passbook, and presented them to the bank. BPI, however, refused the requested pre-termination despite Tarcila's presentation of the covering certificates. Instead, BPI, through its branch manager, Mrs. Elma San Pedro Capistrano (Capistrano), insisted on contacting Manuel, alleging in this regard that this is an integral part of its standard operating procedure.

Shortly after Tarcila left the branch, Manuel arrived and likewise requested the pre-termination of the joint AND/OR accounts. Manuel claimed that he had lost the same certificates of deposit that Tarcila had earlier brought with her. BPI, through Capistrano, this time acceded to the pre-termination requests, blindly believed Manuel's claim, and requested him to accomplish BPI's pro-forma affidavit of loss.

Two days after, Manuel returned to BPI, Shaw Blvd. Branch to pre-terminate the joint AND/OR accounts. He was accompanied by Atty. Hector Rodriguez, the respondent Dalmiro Sian (Sian), and two (2) alleged National Bureau of Investigation (NBI) agents.

In place of the actual certificates of deposit, Manuel submitted BPI's pro-forma affidavit of loss that he previously accomplished and an Indemnity Agreement that he and Sian executed on the same day. The Indemnity Agreement discharged BPI from any liability in connection with the pre-termination. Notably, none of the co-depositors were contacted in carrying out these transactions.

A few days after these transactions, Tarcila filed a petition for "Declaration of Nullity of Marriage, etc." against Manuel, with the Regional Trial Court (RTC) of Pasig, docketed as JRDC No. 2098. Based on the records, this civil case has been archived. Tarcila never received her proportionate share of the pre-terminated deposits, prompting her to demand from BPI the amounts due her as a co-depositor in the joint AND/OR accounts.

In her complaint, Tarcila alleged that BPI's payments to Manuel of the pre-terminated deposits were invalid with respect to her share. She argued that BPI was in bad faith for allowing the pre-termination of the time deposits based on Manuel's affidavit of loss when the bank had actual knowledge that the certificates of deposit were in her possession.

In its answer, BPI alleged that the accounts contained conjugal funds that Manuel exclusively funded. BPI further argued that Tarcila could not ask for her share of the pre-terminated deposits because her share in the conjugal property is considered inchoate until its dissolution. BPI further denied refusing Tarcila's request for pre-termination as it processed her request but she left the branch before BPI could even contact Manuel.

ISSUES:

1. Whether or not BPI breached its obligation under the express terms of the certificates of deposit?

2. Whether or not BPI is guilty of bad faith?

RULING:

1. Yes. BPI breached its obligation.

The certificates of deposit contain provisions on the amount of interest, period of maturity, and manner of termination. Specifically, they stressed that endorsement and presentation of the certificate of deposit is indispensable to their termination. In other words, the accounts may only be terminated upon endorsement and presentation of the certificates of deposit. Without the requisite presentation of the certificates of deposit, BPI may not terminate them.

BPI thus may only terminate the certificates of deposit after it has diligently completed two steps. First, it must ensure the identity of the account holder. Second, BPI must demand the surrender of the certificates of deposit.

With these considerations in mind, we find that BPI substantially breached its obligations to the prejudice of Tarcila. BPI allowed the termination of the accounts without demanding the surrender of the certificates of deposits, in the ordinary course of business. Worse, BPI even had actual knowledge that the certificates of deposit were in Tarcila's possession and yet it chose to release the proceeds to Manuel on the basis of a falsified affidavit of loss, in gross violation of the terms of the deposit agreements.

2. Yes. CA is correct, BPI acted in bad faith.

The Supreme Court affirm the CA and the trial court's findings that BPI was guilty of bad faith in these transactions. Bad faith imports a dishonest purpose and conscious wrongdoing. It means a breach of a known duty through some motive or interest or ill will.

BPI did not only fail to exercise that degree of diligence required by the nature of its business, it also exercised its functions with bad faith and manifest partiality against Tarcila. The bank even recognized an affidavit of loss whose allegations, the bank knew, were false. This aspect of the transactions opens up other issues that we do not here decide because they are outside the scope of the case before us.

One aspect is criminal in nature because Manuel swore to a falsity and the act was with the knowing participation of bank officers. The other issue is administrative in character as these bank officers betrayed the trust reposed in them by the bank. We mention all these because these are disturbing acts to observe in a banking institution as large as the BPI.

TERESA D. TUAZON v. SPOUSES ANGEL AND MARCOSA ISAGON
G. R. No. 191432, 2 September 2015, SECOND DIVISION (Brion, J.)

During their lifetime, spouses Melencio Diaz and Dolores Gulay (Dolores) owned Lot 103 of the Santa Rosa Estate, Barangay Aplaya, Sta. Rosa, Laguna, consisting of 499 square meters (Lot 103). They had three daughters named Maria, Paciencia, and Esperanza. Melencio and Maria predeceased Dolores. On May 28, 1955, Dolores, Paciencia, and Esperanza adjudicated Lot 103 to Dolores through a Deed of Extrajudicial Settlement. Maria's children who were still minors at that time were not included in the settlement.

In 2000, the respondents started to construct a house on the disputed property despite Teresa's protest. For years, however, Teresa tolerated their possession and use of the contested area.

In 2007, Teresa filed a complaint against the respondents before the Lupon Tagapamayapa of Barangay Aplaya. The parties failed to reach any amicable settlement.

On January 24, 2007, Teresa sent a final demand letter to respondents to vacate and to pay rental fees. The respondents did not reply.

On September 11, 2007, Teresa filed a complaint for unlawful detainer against the respondents before the Municipal Trial Court in Cities (MTCC), City of Sta. Rosa, Laguna. She prayed that the respondents be ordered to vacate the subject property and to pay compensation for its use and occupancy.

In their answer, the respondents alleged that they were occupying the subject property as owners. They also alleged that Teresa fraudulently obtained TCT No. (N.A.) RT-1925.

The MTCC held that Teresa was the owner of the property as shown by TCT No. (N.A.) RT-1925, and as owner, she was entitled to enjoy the right of possession over the subject property. It added that a property registered under the Torrens system could not be collaterally attacked in an action for unlawful retainer.

On appeal, the Regional Trial Court (RTC) in Bifian, Laguna, affirmed in toto the decision of the MTCC. The RTC denied the respondents' motion for reconsideration.

The CA reversed the RTC's ruling. The CA noted that Angel Isagon executed a real estate mortgage in favor of Teresa over a portion of Lot 103 but had failed to redeem it. Citing Article 2088 of the Civil Code, the CA concluded that Teresa was a mere mortgagee and had no right to eject the respondents. Instead of foreclosing the property, Teresa filed this action for unlawful detainer. The CA added that a mortgage was not an instrument that transferred ownership; thus, the disputed property still belonged to the respondents.

Hence, the petition before the Supreme Court.

ISSUE:

Whether or not Teresa is the registered owner of the subjected property and not a mere mortgagee?

RULING:

The Supreme Court grants the petition.

An action for unlawful detainer is summary in nature and cannot be delayed by a mere assertion of ownership as a defense. When the parties to an ejectment case raise the issue of ownership, the court may pass upon that issue only if needed to determine who between the parties has a better right to possess the property. Furthermore, the adjudication on the issue of ownership is only provisional, and subject to a separate proceeding that the parties may initiate to settle the issue of ownership.`

A person who possesses a title issued under the Torrens system is entitled to all the attributes of ownership including possession. A certificate of title cannot be subject to a collateral attack in an action for unlawful detainer. A collateral attack is made when, in an action to obtain a different relief, the validity of a certificate of title is questioned.

The present case, the respondents alleged in their answer that the certificate of title issued in the name of Teresa was fraudulently obtained. This defense constitutes a collateral attack on the title and should not therefore be entertained. To directly assail the validity of TCT No. (N.A.) RT-1925, a direct action for reconveyance must be filed.

In the present case, based on the certificate of title, Teresa is the owner of the subject property and is entitled to its physical possession.

ROGELIO BATIN CABALLERO v. COMMISSION ON ELECTIONS AND JONATHAN ENRIQUE V. NANUD, JR.
G.R. No. 209835, 22 September 2015, EN BANC (PERALTA, J.)

Enrique Nanud filed a petition to cancel Rogelio Caballero's certificate of candidacy (COC) on the ground of false representation. It was alleged that Caballero was actually a Canadian citizen, hence ineligible to run for mayor. Caballero argued that he already took an Oath of Allegiance to the Republic and has renounced his Canadian citizenship.

Comelec nevertheless cancelled the Caballero's COC for failure to comply with the one year residency requirement, reasoning that Caballero's naturalization as a Canadian citizen resulted in the abandonment of his domicile of origin in Uyugan, Batanes. Caballero insisted that the requirement of the law in fixing the residence qualification of a candidate running for public office is not strictly on the period of residence in the place where he seeks to be elected but on the acquaintance by the candidate on his constituents' vital needs for their common welfare; and that his nine months of actual stay in Uyugan, Batanes prior to his election is a substantial compliance with the law.

ISSUE:

Whether or not Caballero abandoned his domicile.

RULING:

Yes. The term "residence" is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*). A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (*domicile of choice*). It consists not only in the intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.

In this case, Caballero was a natural born Filipino who was born and raised in Uyugan, Batanes. Thus, it could be said that he had his domicile of origin in Uyugan, Batanes. However, he later worked in Canada and became a Canadian citizen. Naturalization in a foreign country may result in an abandonment of domicile in the Philippines. This holds true in Caballero's case as permanent resident status in Canada is required for the acquisition of Canadian citizenship. Hence, Caballero had effectively abandoned his domicile in the Philippines and transferred his domicile of choice in Canada. His frequent visits to Uyugan, Batanes during his vacation from work in Canada cannot be considered as waiver of such abandonment.

Moreover, it was held that Caballero's retention of his Philippine citizenship under RA 9225 did not automatically make him regain his residence in Uyugan, Batanes. He must still prove that after becoming a Philippine citizen on September 13, 2012, he had reestablished Uyugan, Batanes as his new domicile of choice which is reckoned from the time he made it as such.

CHEVRON (PHILS.), INC. v. VITALIANO C. GALIT, et al.
G.R. No. 186114**, 7 October 2015, Third Division (Peralta, J.)**

Vitaliano Galit (Galit) filed against Caltex Philippines, Inc., now Chevron (Phils.), Inc., SJS and Sons Construction Corporation (SJS), and its president, Reynaldo Salomon (Salomon), a Complaint for illegal dismissal, underpayment/non-payment of 13th month pay, separation pay and emergency cost of living allowance. The Complaint was filed with the NLRC National Capital Region, North Sector Branch in Quezon City. Galit alleged that: he is a regular and permanent employee of Chevron since 1982, having been assigned at the company's Pandacan depot; he is an "all-around employee" whose job consists of cleaning the premises of the depot, changing malfunctioning oil gaskets, transferring oil from containers and other tasks that management would assign to him; in the performance of his duties, he was directly under the control and supervision of Chevron supervisors; on January 15, 2005, he was verbally informed that his employment is terminated but was promised that he will be reinstated soon; for several months, he followed up his reinstatement but was not given back his job.

SJS claimed that: it is a company which was established in 1993 and was engaged in the business of providing manpower to its clients on a "per project/contract" basis; Galit was hired by SJS in 1993 as a project employee and was assigned to Chevron, as a janitor, based on a contract between the two companies; contrary to Galit's allegation, he started working for SJS only in 1993; the manpower contract between SJS and Chevron eventually ended on November 30, 2004 which resulted in the severance of Galit's employment; SJS finally closed its business operations in December 2004; it retired from doing business in Manila on January 21, 2005; Galit was paid separation pay of P11,000.00.

The Labor Arbiter found that SJS is a legitimate contractor and that it was Galit's employer, not petitioner. The LA dismissed Galit's complaint for illegal dismissal against petitioner for lack of jurisdiction on the ground that there was no employer-employee relationship between petitioner and Galit. The LA likewise dismissed the complaint against SJS and Salomon for lack of merit on the basis of his finding that Galit's employment with SJS simply expired as a result of the completion of the project for which he was engaged. The NLRC affirmed the findings of the LA that SJS was a legitimate job contractor and that it was Galit's employer. However, the NLRC found that Gal it was a regular, and not a project employee, of SJS, whose employment was effectively terminated when SJS ceased to operate.

Contrary to the findings of the LA and the NLRC, the CA held that SJS was a labor-only contractor, that petitioner is Galit's actual employer and that the latter was unjustly dismissed from his employment.

ISSUE:

Whether there existed an employer-employee relationship between petitioner and Galit making it liable to the latter for the termination of his employment

RULING:

The provisions of the Job Contract between petitioner and SJS demonstrate that the latter possessed the following earmarks of an employer, to wit: (1) the power of selection and engagement of employees, under Sections 4.1 and 6.1(d); (2) the payment of wages, under Sections 4.1 and 6.1(c); (3) the power to discipline and dismiss, under Section 4.1; and, (4) the power to control the employee's conduct, under Sections 4.1, 4.2, and 5.1.

As to SJS' power of selection and engagement, Galit himself admitted in his own affidavit that it was SJS which assigned him to work at Chevron's Pandacan depot. As such, there is no question that it was SJS which selected and engaged Galit as its employee.

With respect to the payment of wages, the Court finds no error in the findings of the LA that Galit admitted that it was SJS which paid his wages. While Galit claims that petitioner was the one which actually paid his wages and that SJS was merely used as a conduit, Galit failed to present evidence to this effect. Galit, likewise, failed to present sufficient proof to back up his claim that it was petitioner, and not SJS, which actually paid his SSS, Philhealth and Pag-IBIG premiums. On the contrary, it is .unlikely that SJS would report Galit as its worker, pay his SSS, Philhealth and Pag-IBIG premiums, as well as his wages, if it were not true that he was indeed its employee.[30] In the same manner, the Quitclaim and Release, which was undisputedly signed by Galit, acknowledging receipt of his separation pay from SJS, is an indirect admission or recognition of the fact that the latter was indeed his employer. Again, it would be unlikely for SJS to pay Galit his separation pay if it is not the latter's employer.

Galit also did not dispute the fact that he was dismissed from employment by reason of the termination of the service contract between SJS and petitioner. In other words, it was not petitioner which ended his employment. He was dismissed therefrom because petitioner no longer renewed its contract with SJS and that the latter subsequently ceased to operate.

Anent the power of control, the Court again finds no cogent reason to depart from the findings of the NLRC that in case of matters that needed to be addressed with respect to employee performance, petitioner dealt directly with SJS and not with the employee concerned. In any event, it is settled that such power merely calls for the existence of the right to control and not necessarily the exercise thereof. In the' present case, the Job Contract between petitioner and SJS clearly provided that SJS "shall retain the right to control the manner and the means of performing the work, with [petitioner] having the control or direction only as to the results to be accomplished.

DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT (DILG), v. RAUL V. GATUZ
G. R. No. 191176, 14 October 2015, SECOND DIVISION (Brion, J.)

On February 21, 2008, Felicitas L. Domingo filed an administrative complaint before the Office of the Ombudsman against the respondent for Abuse of Authority and Dishonesty. The complaint was docketed as Administrative Case No. OMB-L-A-08-0126-C. In a decision dated November 17, 2008, the Office of the Deputy Ombudsman for Luzon found the respondent guilty of Dishonesty and imposed the penalty of three months suspension without pay. On May 20, 2009, the Deputy Ombudsman for Luzon indorsed its decision to the Secretary of the Interior and Local Government for immediate implementation. The Department received the indorsement on May 29, 2009. On June 30, 2009, the respondent received a copy of the Deputy Ombudsman's decision. The respondent moved for reconsideration on July 7, 2009.

The Department deferred the implementation of the decision in view of the respondent's pending motion for reconsideration. The Department also inquired with the Ombudsman about the effect of this Court's ruling in the then recent case of Office of the Ombudsman v. Samaniego. Samaniego held that in administrative cases where the Ombudsman imposes a penalty other than public censure or reprimand, suspension of not more than one month, or a fine not equivalent to one month salary, the filing of an appeal stays the execution of the decision.

On October 22, 2009, the Department issued a memorandum addressed to the DILG Regional Director for Region III, directing him to implement the respondent's suspension.

On November 17, 2009, the respondent filed a Petition for Declaratory Relief and Injunction with a Prayer for a Temporary Restraining Order or a writ of Preliminary Injunction before the RTC. The respondent asked the RTC to explain his rights pending the resolution of his motion for reconsideration and to restrain the Department from implementing his suspension.

ISSUE:

Whether or not that the case has been rendered moot because party has already appealed the Ombudsman case to the Court of Appeals?

RULING:

Supreme Court unanimously held *En Banc* that the decisions of the Ombudsman in disciplinary cases are immediately executory and cannot be stayed by the filing of an appeal or the issuance of an injunctive writ. This legal question has been settled with finality.

NATIONAL HOUSING AUTHORITY v. ERNESTO ROXAS
G. R. No. 171953, 21 October 2015, FIRST DIVISION (Bersamin, J.)

The NHA is charged, among others, with the development of the Dagat-dagatan Development Project (project) situated in Navotas, Metro Manila. On December 4, 1985, Roxas applied for commercial lots in the project, particularly Lot 9 and Lot 10 in Block 11, Area 3, Phase III A/B, with an area of 176 square meters, for the use of his business of buying and selling gravel, sand and cement products. The NHA approved his application, and issued on December 6, 1985 the order of payment respecting the lots. On December 27, 1985, the NHA issued the notice of award for the lots in favor of Roxas, at P1,500.00/square meter. On the basis of the order of payment and the notice of award, Roxas made his downpayment of P79,200.00. A relocation/reblocking survey resulted in the renumbering of Lot 9 to Lot 5 and Lot 10 to Lot 6 (subject lots). He completed his payment for the subject lots on December 20, 1991.

In the meanwhile, the NHA conducted a final subdivision project survey, causing the increase in the area of the subject lots from 176 to 320 square meters. The NHA informed Roxas about the increase in the area of the subject lots, and approved the award of the additional area of 144 square meters to him at P3,500.00/square meter. Although manifesting his interest in acquiring the additional area, he appealed for the reduction of the price to Pl,500.00/square meter, pointing out that Lot 5 and Lot 6 were a substitution unilaterally imposed by the NHA that resulted in the increase of 144 square meters based on the technical description, and that although he desired to purchase the increased area, the purchase must be in accordance with the terms and conditions contained in the order of payment and notice of award issued to him. After the NHA rejected his appeal, he commenced in the RTC this action for specific performance and damages, with prayer for the issuance of a writ of preliminary injunction. He amended the complaint to compel the NHA to comply with the terms and conditions of the order of payment and the notice of award.

The NHA countered in its answer that Roxas' prayer to include in the original contract the increase in lot measurement of 144 square meters was contrary to its existing rules and regulation; that he could not claim more than what had been originally awarded to him; and that at the very least, his right in the additional area was limited only to first refusal.

ISSUE:

Whether or not NHA is immuned from suit?

RULING:

The mantle of the State's immunity from suit did not extend to the NHA despite its being a government-owned and -controlled corporation. Under Section 6(i) of Presidential Decree No. 757, which was its charter, the NHA could sue and be sued. As such, the NHA was not immune from the suit of Roxas.

There is no question that the NHA could sue or be sued, and thus could be held liable under the judgment rendered against it. But the universal rule remains to be that the State, although it gives its consent to be sued either by general or special law, may limit the claimant's action only up to the

completion of proceedings anterior to the stage of execution. In other words, the power of the court ends when the judgment is rendered because government funds and property may not be seized pursuant to writs of execution or writs of garnishment to satisfy such judgments. The functions and public services of the State cannot be allowed to be paralyzed or disrupted by the diversion of public fund from their legitimate and specific objects, and as appropriated by law. The rule is based on obvious considerations of public policy. Indeed, the disbursements of public funds must be covered by the corresponding appropriation as required by law.

SPOUSES ROZELLE RAYMOND MARTIN and CLAUDINE MARGARET SANTIAGO v. RAFFY TULFO, BEN TULFO, AND ERWIN TULFO
G. R. No. 205039, 21 October 2015, FIRST DIVISION (Perlas-Bernabe, J.)

At around 11:40 in the morning of May 6, 2012, petitioners arrived at the Ninoy Aquino International Airport Terminal 3 (NAIA 3) aboard a Cebu Pacific Airline flight from a vacation with their family and friends. They waited for the arrival of their baggage but were eventually informed that it was offloaded and transferred to a different flight. Aggrieved, petitioners lodged a complaint before the Cebu Pacific complaint desk. As they were complaining, they noticed a man taking photos of Claudine with his cellular phone. Ray mart approached the man and asked what he was doing. Suddenly, the man, later identified as Ramon "Mon" Tulfo (Mon), allegedly punched and kicked Raymart, forcing the latter to fight back. When Claudine saw the commotion, she approached Mon and the latter likewise allegedly kicked and pushed her back against the counter. At that instance, Raymart rushed to defend his wife, while one Edoardo Benjamin Atilano (Atilano) joined in the brawl. Immediately thereafter, several airport security personnel came to stop the altercation and brought them to the Airport Police Department for investigation.

Days after the incident, respondents Raffy, Ben, and Erwin Tulfo (respondents), brothers of Mon, aired on their TV program comments and expletives against petitioners, and threatened that they will retaliate. Terrified by the gravity of the threats hurled, petitioners filed a petition for the issuance of a writ of amparo against respondents on May 11, 2012 before the RTC.

On May 23, 2012, Erwin Tulfo filed a Manifestation and Motion to Deny Issuance of Protection Order and/or Dismissal of the Petition Motu Proprio (May 23, 2012 Motion) which was opposed by petitioners for being a prohibited pleading.

On May 24, 2012, then Presiding Judge Bayani Vargas (JudgeVargas) issued a Resolution granting a TPO in favor of petitioners and directed respondents to file their return/answer.

In his return/answer, Ben Tulfo claimed that the statements he uttered did not involve any actual threat and that he merely expressed his strong sentiments to defend his brother.

On June 29, 2012, Judge Vargas submitted the case for resolution but eventually retired on July 11, 2012. Consequently, Judge Maria Filomena Singh (Judge Singh) was designated as the Acting Presiding Judge who assumed office and handled the present case.

ISSUE:

The essential issue in this case is whether or not the RTC's dismissal of petitioners' amparo petition was correct.

RULING:

The petition is bereft of merit.

In this case, it is undisputed that petitioners' amparo petition before the RTC does not allege any case of extrajudicial killing and/or enforced disappearance, or any threats thereof, in the senses above-described. Their petition is merely anchored on a broad invocation of respondents' purported violation of their right to life and security, carried out by private individuals without any showing of direct or

indirect government participation. Thus, it is apparent that their amparo petition falls outside the purview of A.M. No. 07-9-12-SC and, perforce, must fail. Hence, the RTC, through Judge Singh, properly exercised its discretion to motu proprio dismiss the same under this principal determination, regardless of the filing of the May 23, 2012 Motion. The court, indeed, has the discretion to determine whether or not it has the authority to grant the relief in the first place. And when it is already apparent that the petition falls beyond the purview of the rule, it has the duty to dismiss the petition so as not to prejudice any of the parties through prolonged but futile litigation.

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *v.* MA. MERCEDITAS NAVARRO-GUTIERREZ et. al.
G.R. No. 194159, 21 October 2015, FIRST DIVISION (Perlas-Bernabe, J.)

The instant case arose from an Affidavit-Complaint dated July 15, 2003 filed by the PCGG - through Rene B. Gorospe, the Legal Consultant in-charge of reviewing behest loan cases - against former officers/directors of the Development Bank of the Philippines (DBP) as well as former officers/stockholders of National Galleon Shipping Corporation (Galleon), charging them of violating Sections 3 (e) and (g) of RA 3019. In the Affidavit-Complaint, the PCGG alleged that on October 8, 1992, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 13,creating the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans (*Ad Hoc* Committee) in order to identify various anomalous behest loans entered into by the Philippine Government in the past. Later on, President Ramos issued Memorandum Order No. 619 on November 9, 1992, laying down the criteria which the Ad Hoc Committee may use as a frame of reference in determining whether or not a loan is behest in nature. Thereafter, the *Ad Hoc* Committee, with the assistance of a Technical Working Group (TWG) consisting of officers and employees of different government financial institutions (GFIs), examined and studied documents relative to loan accounts extended by GFIs to various corporations during the regime of the late President Ferdinand E. Marcos (President Marcos) -one of which is the loan account granted by the DBP to Galleon. *Ad Hoc* Committee concluded that the loans/accommodations obtained by Galleon from DBP possessed positive characteristics of behest loans, considering that: (*a*) Galleon was undercapitalized; (*b*) the loan itself was undercoUateralized; (*c*) the major stockholders of Galleon were known to be cronies of President Marcos; and id) certain documents pertaining to the loan account were found to bear "marginal notes" of President Marcos himself. Resultantly, the PCGG filed the instant criminal complaint against individual respondents, docketed as OMB-C-C-03-0500-I. Ombudsman found no probable cause against private respondents and, accordingly, dismissed the criminal complaint against them.

ISSUE:

Whether or not the OMB gravely abused its discretion in finding no probable cause to indict respondents of violating Sections 3 (e) and (g) of RA 3019.

RULING:

The petition is meritorious. At the outset, it must be stressed that the Court has consistently refrained from interfering with the discretion of the Ombudsman to determine the existence of probable cause and to decide whether or not an information should be filed. Nonetheless, the Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. it was error for the Ombudsman to simply discredit the TWG's findings contained in the Executive Summary which were adopted by the *Ad Hoc* Committee for being hearsay, self-serving, and of little probative value. It is noteworthy to point out that owing to the initiatory nature of preliminary investigations, the technical rules of evidence should not be applied in the course of its proceedings.

In this regard, it must be emphasized that in determining the elements of the crime charged for purposes of arriving at a finding of probable cause, only facts sufficient to support a *prima facie* case against the respondents are required, not absolute certainty. Probable cause implies mere probability of guilt, *i.e.*, a finding based on more than bare suspicion, but less than evidence that would justify a conviction.[66] To reiterate, the validity of the merits of a party's defense or accusations and the

admissibility of testimonies and evidences are better ventilated during the trial stage than in the preliminary stage.

In sum, the Court is convinced that there is probable cause to indict individual respondents of violating Sections 3 (e) and (g) of RA 3019. Hence, the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the criminal complaint against them.

CONCHITA CARPIO MORALES v. COURT OF APPEALS (SIXTH DIVISION) and JEJOMAR ERWIN S. BINAY, JR.,
G.R. Nos. 217126-27, 10 November 2015, SIXTH DIVISION (PERLAS-BERNABE, J.)

A complaint for Plunder and violation of RA 3019 or the the Anti-Graft and Corrupt Practices Act was filed before the Office of the Ombudsman against Jejomar Erwin S. Binay, Jr. and other public officers and employees of the City Government of Makati in connection with the five phases of the procurement and construction of the Makati City Hall Parking Building. Primarily, Binay, Jr. argued that he could not be held administratively liable since Phases I and II were undertaken before he was elected Mayor of Makati in 2010 and Phases III to V transpired during his first term. Binay Jr assails and that his re-election as City Mayor of Makati for a second term effectively condoned his administrative liability, if any, thus rendering the administrative cases against him moot and academic. Binay Jr. added that in view of the condonation doctrine his suspension from office would undeservedly deprive the electorate of his services.

ISSUE:

Whether or not the condonation doctrine can be applied to pardon a public official's administrative liability.

RULING:

NO. Condonation is a victim's express or implied forgiveness of an offense, especially by treating the offender as if there had been no offense. It is a jurisprudential creation that originated from the 1959 case of *Pascual v. Hon. Provincial Board of Nueva Ecija.* The decision in Pascual was based on American authorities who argued that when the people have elected 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.

However, the doctrine of condonation is actually bereft of legal bases. The concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the Constitution, is plainly inconsistent with the condonation doctrine. Election is not a mode of condoning an administrative offense. Furthermore, Sec 40 (b) of the LGC precludes condonation since, an elective local official who is meted with the penalty of removal could not be re-elected to an elective local position due to a direct disqualification from running for such post. Also, it cannot be inferred from Section 60 of the LGC that the grounds for discipline enumerated therein cannot anymore be invoked against an elective local official to hold him administratively liable once he is re-elected to office. In addition, it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. Thus, there could be no condonation of an act that is unknown.

However, the abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.

PHIL-AIR CONDITIONING CENTER, *v.* RCJ LINES AND ROLANDO ABADILLA, JR., G.R. No. 193821, 23 November 2015, SECOND DIVISION (Brion, J.)

Phil-Air Conditioning Center *(Phil-Air)* filed this petition for review on certiorari. On various dates between March 5, 1990, and August 29, 1990, petitioner Phil-Air sold to respondent RCJ Lines four Carrier Paris 240 air conditioning units for buses (*units*). The units included compressors, condensers, evaporators, switches, wiring, circuit boards, brackets, and fittings.

Phil-Air allegedly performed regular maintenance checks on the units pursuant to the one-year warranty on parts and labor. RCJ Lines issued three post-dated checks in favor of Phil-Air to partly cover the unpaid balance.

All the post-dated checks were dishonored when Phil-Air subsequently presented them for payment. Check No. 479759 was returned because it was drawn against insufficient funds, while Check Nos. 479760 and 479761 were returned because payments were stopped.

Before presenting the third check for payment, Phil-Air sent a demand letter to Rolando Abadilla, Sr. asking him to fund the post-dated checks. In view of the failure of RCJ Lines to pay the balance despite demand, Phil-Air filed on April 1, 1998 the complaint for sum of money with prayer for the issuance of a writ of preliminary attachment.

In its answer with compulsory counterclaim, RCJ Lines admitted that it purchased the units in the total amount of P1,240,000.00 and that it had only paid P400,000.00. It refused to pay the balance because Phil-Air allegedly breached its warranty.

RCJ Lines averred that the units did not sufficiently cool the buses despite repeated repairs. Phil-Air purportedly represented that the units were in accord with RCJ Lines' cooling requirements as shown in Phil-Air's price quotation. The price quotation provided that full payment should be made upon the units' complete installation. Complete installation, according to RCJ Lines, is equivalent to being in operational condition.

RCJ Lines claimed that it was also entitled to be reimbursed for costs and damages occasioned by the enforcement of the writ of attachment.

ISSUES:

1. Whether the claim of Phil-Air was barred by laches;
2. Whether Phil-Air should reimburse RCJ Lines for the counterbond premium and its alleged unrealized profits;
3. Whether RCJ Lines proved its alleged unrealized profits arising from the enforcement of the preliminary writ of attachment.

RULING:

1. Phil-Air's claim is not barred by laches. In general, there is no room to apply the concept of laches when the law provides the period within which to enforce a claim or file an action in court. Phil-Air's complaint for sum of money is based on a written contract of sale. The ten-year prescriptive period under Article 1144 of the Civil Code thus applies.

In the present case, both parties admit the existence and validity of the contract of sale. They recognize that the *price quotation* dated August 4, 1989, contained the terms and conditions of the sale contract. They also agree that the price and description of the units were indicated on the *sales invoice*.

Laches is defined as the failure or neglect for an unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

While the CA correctly held that prescription and estoppel by laches are two different concepts, it failed to appreciate the marked distinctions between the two concepts.

The court resolves whether the claimant asserted its claim within a reasonable time and whether its failure to do so warrants the presumption that it either has abandoned it or declined to assert it. The court determines the claimant's intent to assert its claim based on its past actions or lack of action. After all, what is invoked in instances where a party raises laches as a defense is the equity jurisdiction of the court.

On the other hand, if the law gives the period within which to enforce a claim or file an action in court, the court confirms whether the claim is asserted or the action is filed in court within the prescriptive period. The court determines the claimant's intent to assert its claim by simply measuring the time elapsed from the proper reckoning point (e.g., the date of the written contract) to the filing of the action or assertion of the claim.

In sum, where the law provides the period within which to assert a claim or file an action in court, the assertion of the claim or the filing of the action in court at *any time* within the prescriptive period is *generally* deemed reasonable, and thus, does not call for the application of laches. As we held in one case, *unless reasons of inequitable proportions are adduced*, any imputed delay within the prescriptive period is not delay in law that would bar relief.

Not all the elements of laches are present. To repeat, Phil-Air filed the complaint with the RTC on April 1, 1998. The time elapsed from August 4, 1989 (the date of the price quotation, which is the earliest possible reckoning point), is eight years and eight months, well within the ten-year prescriptive period. There was simply no delay (*second element of laches*) where Phil-Air can be said to have negligently slept on its rights. there is no basis for laches as the facts of the present case do not give rise to an inequitable situation that calls for the application of equity and the principle of laches.

2. Phil-Air is not directly liable for the counter-bond premium and RCJ Lines' alleged unrealized profits.

A writ of preliminary attachment is a provisional remedy issued by the court where an action is pending to be levied upon the property or properties of the defendant. The property is held by the sheriff as security for the satisfaction of whatever judgment that might be secured by the attaching party against the defendant.

The grant of the writ is conditioned not only on the finding of the court that there exists a valid ground for its issuance. The Rules also require the applicant to post a bond.

Section 4 of Rule 57 of the Rules of Civil Procedure (Rules) provides that "the party applying for the order must…give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs that may be adjudged to the adverse party and all damages that he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto."

The enforcement of the writ notwithstanding, the party whose property is attached is afforded relief to have the attachment lifted. There are various modes of discharging an attachment under Rule 57, viz.:

1. by depositing cash or posting a counter-bond under Section 12;
2. by proving that the attachment bond was improperly or irregularly issued or enforced, or that the bond is insufficient under Section 13;
3. by showing that the attachment is excessive under Section 13; and (4) by claiming that the property is exempt from execution under Section 2.

RCJ Lines availed of the first mode by posting a counter-bond.

Under the first mode, the court will order the discharge of the attachment after (1) the movant makes a cash deposit or posts a counterbond and (2) the court hears the motion to discharge the attachment with due notice to the adverse party.

The amount of the cash deposit or counter-bond must be equal to that fixed by the court in the order of attachment, exclusive of costs. The cash deposit or counter-bond shall secure the payment of any judgment that the attaching party may recover in the action.

The discharge under Section 12 takes effect upon posting of a counter-bond or depositing cash, and after hearing to determine the sufficiency of the cash deposit or counter-bond. On the other hand, the discharge under Section 13 takes effect only upon showing that the plaintiff's attachment bond was improperly or irregularly issued, or that the bond is insufficient. The discharge of the attachment under Section 13 must be made only after hearing.

As discussed above, it is patent that under the Rules, the attachment bond answers for all damages incurred by the party against whom the attachment was issued. Thus, Phil-Air cannot be held directly liable for the costs adjudged to and the damages sustained by RCJ Lines because of the attachment. Section 4 of Rule 57 positively lays down the rule that the attachment bond will pay "all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto."

The RTC, instead of declaring Phil-Air liable for the alleged unrealized profits and counter-bond premium, should have ordered the execution of the judgment award on the attachment bond. To impose direct liability to Phil-Air would defeat the purpose of the attachment bond, which was not dissolved despite the lifting of the writ of preliminary attachment.

The order to refund the counter-bond premium is likewise erroneous. The premium payment may be deemed a cost incurred by RCJ Lines to lift the attachment. Such cost may be charged against the attachment bond.

3. RCJ Lines failed to prove its alleged unrealized profits.

In Spouses Yu v. Ngo Yet Te, we held that if the claim for actual damages covers unrealized profits, the amount of unrealized profits must be established and supported by independent evidence of the mean income of the business undertaking interrupted by the illegal seizure.

Similarly, the evidence adduced by RCJ Lines to show actual damages fell short of the required proof. Its average daily income cannot be derived from the summary of daily cash collections from only two separate occasions, i.e., August 22-23 and September 2-3, 2000. The data submitted is too meager and insignificant to conclude that the buses were indeed earning an average daily income of P12,000.00.

More significant, the person who prepared the unsigned summary of daily cash collections was not presented before the RTC to verify and explain how she arrived at the computation. The dispatchers who prepared the collection reports were likewise not presented; some of the reports were also unsigned. While the summary was approved by Rolando Abadilla, Jr., in his testimony on the alleged unrealized profits was uncorroborated and self-serving.

Nonetheless, we recognize that RCJ Lines suffered some form of pecuniary loss when two of its buses were wrongfully seized, although the amount cannot be determined with certainty.

We note that in its prayer for the issuance of the writ of preliminary attachment, Phil-Air alleged that RCJ Lines was guilty of fraud in entering into the sale transaction. A perusal of the record, however, would show that Phil-Air failed to prove this bare assertion. This justifies an award of temperate or moderate damages in the amount of Php 50,000.00.

JOSEPH C. CHUA v. ATTY. ARTURO M. DE CASTRO
A.C. No. 10671, 25 November 2016, THIRD DIVISION, (Reyes, J.)

Before the Court is a Motion for Reconsideration (MR) filed by respondent Atty. Arturo M. De Castro (Atty. De Castro) of the Court's Resolution dated November 25, 2015 which found him liable for violation of the Code of Professional Responsibility (CPR) and was meted out the penalty of suspension from the practice of law for a period of three (3) months.

Chua alleged that his company, Nemar Computer Resources Corp. (NCRC) filed a collection case against Dr. Concepcion Aguila Memorial College, represented by its counsel Atty. De Castro. According to Chua, since the filing of the collection case on June 15, 2006, it took more than five (5) years to present one witness of NCRC due to Atty. De Castro's propensity to seek postponements of agreed hearing dates for unmeritorious excuses. Atty. De Castro's flimsy excuses would vary from simple absence without notice, to claims of alleged ailment unbacked by any medical certificates, to claims of not being ready despite sufficient time given to prepare, to the sending of a representative lawyer who would profess non-knowledge of the case to seek continuance, to a plea for the postponement without providing any reason therefore.

For his defense, Atty. De Castro countered that his pleas for continuance and resetting were based on valid grounds. Also, he pointed out that most of the resetting were [sic] without the objection of the counsel for NCRC, and that, certain resettings were even at the instance of the latter.

On April 16, 2013, the IBP Board of Governors issued a Resolution adopting and approving with modification the Report and Recommendation of the CBD. The Board of Governors modified the penalty meted out to [Atty. De Castro] [by] reducing the period of suspension from six (6) months to three (3) months.

On November 25, 2015, the Court affirmed the recommendation of the Integrated Bar of the Philippines (IBP) Board of Governors. The Court held that Atty. De Castro violated his oath of office in his handling of the collection case filed against his client. Undaunted with the Court's ruling, Atty. De Castro filed the present motion for reconsideration. He strongly disputes the allegations of Chua averring that the long delay in the disposition of the collection case before the Regional Trial Court (RTC) was due to the several postponements which were found meritorious by the RTC.

ISSUE:

Whether Atty. De Castro's suspension from the practice of law for three (3) months is proper.

RULING:

After a second hard look at the facts of the case, relevant laws, and jurisprudence, the Court finds merit in the motion for reconsideration. A lawyer indubitably owes fidelity to the cause of his clients, and is thus expected to serve the client with competence and utmost diligence. He is enabled to utilize every honorable means to defend the cause of his client and secure what is due the latter. Under the CPR, every lawyer is required to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

Upon careful consideration of the circumstances, the Court finds that the delay in the disposition of Civil Case No. 7939 was not solely attributable to Atty. De Castro. The trial court itself, either at its own initiative or at the instance of Chua's counsel, allowed the delays. Consequently, if not all of such delays were attributable to Atty: De Castro's doing, it would be unfair to hold him solely responsible for the delays caused in the case. Moreover, it appears that the trial court granted Atty. De Castro's several motions for resetting of the trial; and that at no time did the trial court sanction or cite him for contempt of court for abuse on account of such motions. Verily, if his explanations for whatever delays he might have caused were accepted by the trial court without any reservations or conditions, there would be no legitimate grievance to be justly raised against him on the matter.

While Atty. De Castro's repeated requests for resetting and postponement of the trial of the case may be considered as contemptuous if there was a showing of abuse on his part, the Court, however, finds that Chua failed to show that Atty. De Castro was indeed moved to cause delays by malice, or dishonesty, or deceit, or grave misconduct as to warrant a finding of administrative liability against him. The operative phrase for causing delay in any suit or proceeding under Rule 1.03 is *"for any corrupt motive or interest."* Considering that this matter concerned Atty. De Castro's state of mind, it absolutely behooved Chua to present sufficient evidence of the overt acts committed by Atty. De Castro that demonstrated his having deliberately intended thereby to do wrong or to cause damage to him and his business. That demonstration, however, was not made by Chua.

Notwithstanding the absence of malice, dishonesty, or ill motive, it is good to remind Atty. De Castro that as a member of the Bar, he is expected to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice and to be more circumspect whenever seeking the postponements of cases.

REYNALDO INUTAN, et al. v. NAPAR CONTRACTING ALLIED SERVICES, et al.
G. R. No. 19564, 25 November 2015, SECOND DIVISION (Del Castillo, J.)

Reynaldo Inutan, Helen Carte, Noel Ayson, Ivy Cabarle, Noel Jamili, Marites Hular, Rolito Azucena, Raymundo Tunog, Roger Bernal, Agustev Estre, Marilou Sagun and Enrique Ledesma, Jr. were employed by respondent Napar Contracting & Allied Services (Napar), a recruitment agency owned and managed by respondent Norman Lacsamana. Napar assigned petitioners at respondent Jonas International, Inc., a corporation engaged in manufacture with food products with respondent Philip Young as its president. They worked as factory workers, machine operator, quality control inspector, selector, mixer and warehouseman. Sometime in September 2002, petitioners and other co-workers filed before the arbitration branch of the National Labor Relations Commission (NLRC), three separate complaints for wage differentials, 13th month pay, overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, and unpaid emergency cost of leaving allowance (ECOLA) against respondents. Last July 13, 2003, then complainants and respondents entered into a joint compromise agreement which provides, among others, that the complainants be reassigned by Napar and be given work within 45 days or until Feb. 26, 2002. In accordance with the compromise agreement, complainants (now petitioners), on several instances reported to Napar. They were paid P7,000 each as part of the agreement but were required by Napar, (1) to submit their respective bio-data/resume and several documents such as police clearance, NBI clearance, barangay clearance, mayor's permit, health certificate, drug test results, community tax certificate, eye test results and medical/physical examination results; (2) to attend orientation seminars; (3) to undergo series of interviews; and (4) to take and pass qualifying examinations, before they could be posted to their new assignments. These requirements, according to Napar, are needed to properly assess complainants' skills for new placement with the agency's other clients. Complainants failed to fully comply, hence they were not given new assignments. Sensing Napar's insincerity in discharging its obligation in reassigning them, complainants filed anew before the Arbitration Branch of the NLRC four separate complaints for illegal dismissal and money claims.

ISSUE:

Did their complaints of the petitioners find merit?

RULING:

YES. At the outset, it must be emphasized that there was no indication that petitioners deliberately refused to comply with the procedures prior to their purported reassignment. Petitioners alleged that they reported to Napar several times waiting for their assignment and that Napar was giving them a run-around even as they tried to comply with the requirements. These matters were not disputed by respondents. Thus, we cannot agree that respondents were the ones who violated the compromise agreement. Moreover, we are not persuaded by Napar's assertion that petitioners' reassignment cannot be effected without compliance with the requirements set by it. Petitioners are regular employees of Napar; thus, their reassignment should not involve any reduction in rank, status or salary. As aptly noted by LA Espiritu, petitioners are not newly-hired employees. Considering further that they are ordinary factory workers, they do not need special training or any skills assessment procedures for proper placement. While we consider Napar's decision to require petitioners to submit documents and employment clearances, to attend seminars and interviews and take examinations, which according to Napar is imperative in order for it to effectively carry out its business objective, as falling within the ambit of management prerogative, this undertaking should not, however, deny petitioners their constitutional right of tenure. Besides, there is no evidence nor any allegation proffered that Napar has no available clients where petitioners can be assigned to work in the same position they previously occupied. Plainly, Napar's scheme of requiring petitioners to comply with reassessment procedures only seeks to prevent petitioners' immediate reassignment

MARISSA B. QUIRANTE v. OROPORT CARGO HANDLING SERVICES, INC., et al.
G.R. No. 209689, 2 December 2015, THIRD DIVISION, (Reyes, J.)

On Jan. 22, 2007, petitioner Marissa B. Quirante filed a complaint against respondent Oroport Cargo Handling Services, Inc. (Oroport) for illegal dismissal with prayer for reinstatement and payment of full backwages, damages and attorney's fees. She prevailed in her case before the Labor Arbiter, who rendered a decision declaring her dismissal as illegal, ordering Oroport to immediately reinstate her within 10 days from receipt of the decision; further ordering to pay her full backwages inclusive of other benefits in the amount of P97,941.28, moral damages in the amount of P50,000 and 10 percent attorney's fees in the amount of P14,794.12 or a total sum of P162,735.40. Oroport filed an appeal before the National Labor Relations Commission (NLRC). In lieu of a cash or surety bond, it submitted before the NLRC a bank certification issued by the Metropolitan Bank and Trust Company (Metrobank) stating that Oroport has a cash deposit of P97,941.28 in a regular savings account. The said deposit would be held by Metrobank pending the final disposition of Quirante's complaint before the NLRC. The NLRC reversed the decision of the Labor Arbiter. In her motion for reconsideration, Quirante raised the issue of Oroport's failure to post a cash or surety bond when it filed its appeal. The NLRC denied her motion. Quirante went to the Court of Appeals (CA) via a petition for certiorari, which denied it.

ISSUE:

Did the NLRC and CA err?

RULING:

Yes. In Mindanao Times Corp. v. Confesor, 625 Phil. 589 (2010), the employer, instead of posting a cash or surety bond, submitted to the NLRC a deed of assignment and a passbook. The Court is emphatic in its ruling that the employer's appeal was not perfected, hence, rendering the LA's decision final and executory, viz: Article 223 of the Labor Code provides that an appeal by the employer to the NLRC from a judgment of a labor arbiter which involves a monetary award may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC, in an amount equivalent to the monetary award in the judgment appealed from. x x x Further, Sec. 6 of the New Rules of Procedure of the NLRC provides: SECTION 6. BOND. In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees. x x x Clearly, an appeal from a judgment as that involved in the present case is perfected "only" upon the posting of a cash or surety bond. Accessories Specialist, Inc. v. Alabanza enlightens: The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the LA. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly limned in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it perfectly plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. The word "may" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is no room for construction. The filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the

NLRC. Non-compliance therewith renders the decision of the LA final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims. x x x (Prescinding from the above, OROPORT's submission before the NLRC of a Bank Certification, in lieu of posting a cash or surety bond, cannot be considered as substantial compliance with Article 223 of the Labor Code. The filing of the appeal bond is a jurisdictional requirement and the rules thereon mandate no less than a strict construction. For failure to properly post a bond, OROPORT's appeal was not perfected.

SOLIDBANK CORPORATION v. COURT OF APPEALS, ET. AL.
G.R. No. 166581, 7 December 2015 FIRST DIVISION (Sereno, C.J.)

On April 24, 1997, petitioner Danilo H. Lazaro filed a complaint against respondent Solidbank Corp. for illegal dismissal, non-payment of earned wages and bonus, reinstatement, backwages including moral and exemplary damages and attorney's fees. The Labor Arbiter (LA) dismissed the complaint but awarded some monetary claims to Lazaro. Both parties appealed to the National Labor Relations Commission (NLRC) for which a decision was promulgated on April 17, 2002. The NLRC affirmed with modification the LA decision by deleting the award of moral and exemplary damages. In a decision of Jan. 19, 2004, the Court of Appeals (CA) sat aside the NLRC decision and modified the LA's decision. On Feb. 3, 2004 and May 5, 2004, Solidbank filed its motion for reconsideration and supplemental motion for reconsideration, respectively. Lazaro also filed on Jan. 27, 2004 his motion for clarification and/or partial motion for reconsideration. On July 1, 2004, the CA issued an amended decision correcting the amount of separation pay, backwages, and unpaid salary for December 1996. Lazaro filed another motion for reconsideration/clarification on July 26, 2004, which the CA partially granted in a resolution of Jan. 14, 2005. Solidbank assailed the CA resolution arguing that it gravely abused its discretion in not denying Lazaro's "second" motion for reconsideration/clarification because it was filed without leave of court and in clear violation of the prohibition on filing a second motion for reconsideration.

ISSUE:

Is there merit to this argument?

RULING:

No. Anent the issue of Lazaro's "second" motion for reconsideration, we disagree with the bank's contention that it is disallowed by the Rules of Court. Upon thorough examination of the procedural history of this case, the "second" motion does not partake the nature of a prohibited pleading because the amended decision is an entirely new decision which supersedes the original, for which a new motion for reconsideration may be filed again. We pointed out in Planters Development Bank v. Sps. Lopez, G.R. No. 186332, 23 October 2013, 708 SCRA 481, 492-493, citing Magdalena Estate, Inc. v. Caluag, 120 Phil. 338, 341 (1964); See Lee v. Trocino, 607 Phil. 690, 696 (2009),that "there is also no merit to the respondents' argument that Planters Bank's motion for reconsideration is disallowed under Section 2, Rule 52 of the Rules of Court, x x x There is a difference between an amended judgment and a supplemental judgment. In an amended judgment, the lower court makes a thorough study of the original judgment and renders the amended and clarified judgment only after considering all the factual and legal issues. The amended and clarified decision is an entirely new decision which supersedes or takes the place of the original decision. On the other hand, a supplemental decision does not take the place of the original; it only serves to add to the original decision." We thus rule that the appellate court did not err in not denying Lazaro's Motion for Reconsideration/Clarification on the Amended Decision because its filing is allowed under the rules.

FARIDA YAP BITTE, et al. vs. SPOUSES FRED AND ROSA ELSA SERRANO JONAS
G.R. No. 212256, 9 December 2015, Second Division (Mendoza, J.)

Rosa Elsa executed a Special Power of Attorney (*SPA*) authorizing her mother, Andrea C. Serrano (*Andrea*), to sell the property subject of the dispute. Cipriano Serrano (*Cipriano*), the brother of Rosa Elsa, offered the property for sale to Spouses Benjamin and Farida Yap Bitte (*Spouses Bitte*) showing them the authority of Andrea. Cipriano received from Spouses Bitte the amount of P200,000.00 as advance payment for the property. Later, he received the additional amount of P400,000.00.

Spouses Bitte sought a meeting for final negotiation with Rosa Elsa, the registered owner of the subject property. At that time, Rosa Elsa was in Australia and had no funds to spare for her travel to the Philippines. To enable her to come to the country, Spouses Bitte paid for her round trip ticket. Shortly after her arrival here in the Philippines, Rosa Elsa revoked the SPA, through an instrument of even date, and handed a copy thereof to Andrea. Subsequently, Rosa Elsa withdrew from the transaction.

Spouses Bitte filed before the RTC a Complaint for Specific Performance with Damages seeking to compel Rosa Elsa, Andrea and Cipriano to transfer to their names the title over the subject property. While the case was pending, Andrea sold the subject property to Spouses Bitte, through a notarized deed of absolute sale.

Undisputed by the parties is the fact that Rosa Elsa earlier mortgaged the subject property to Mindanao Development Bank. Upon failure to pay the loan on maturity, the mortgage was foreclosed and sold at a public auction. Armed with the deed of absolute sale executed by Andrea, Spouses Bitte were able to redeem the property from the highest bidder for P1.6 Million Pesos. Thereafter, Spouses Bitte sold the property to Ganzon Yap (Ganzon), married to Haima Yap.

Spouses Jonas filed a complaint for Annulment of Deed of Absolute Sale, Cancellation of TCT and Recovery of Possession, Injunction, and Damages against Spouses Bitte. Rosa Elsa moved for the admission of an Amended Complaint in order to implead Spouses Yap because the title over the subject property had been subsequently registered in their names.

The RTC-Branch 13 rendered a Joint Decision confirming the dismissal of the case filed by Spouses Bitte and directing Spouses Bitte to pay Rosa Elsa the amount of PI,546,752.80, representing the balance of the sale of the subject.

The CA *reversed* the RTC's decision. In so ruling, the CA focused on the validity and enforceability of the deed of absolute sale executed by Andrea in the name of Rosa Elsa.

ISSUE:

Is the deed of absolute sale valid?

RULING:

The Court agrees with the CA that the genuineness and due execution of the deed of sale in favor Spouses Bitte were not established. Indeed, a notarized document has in its favor the presumption of regularity. Nonetheless, it can be impugned by strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects on the document.

In the case at bench, it is on record that the National Archives, Records Management and Archives Office, Regional Archives Division, Davao City, certified that it had no copy on file of the

Deed of Absolute Sale, dated February 25, 1997, sworn before Atty. Bernardino N. Bolcan, Jr., denominated as Doc. No. 988, Page No. 198, Book No. 30, Series of 1997. Their record shows that, instead, the document executed on said date with exactly the same notarial entries pertained to a Deed of Assignment of Foreign Letter of Credit in favor of Allied Banking Corporation. Such irrefutable fact rendered doubtful that the subject deed of absolute sale was notarized.

Without the presumption of regularity accorded to the deed coupled with the default of the party relying much on the same, the purported sale cannot be considered. It is as if there was no deed of sale between Spouses Bitte and Spouses Jonas. The genuineness and due execution of the deed of sale in favor of Spouses Bitte not having been established, the said deed can be considered non-existent.

NARRA NICKEL MINING AND DEVELOPMENT CORPORATION, et al. vs. REDMONT CONSOLIDATED MINES CORPORATION
G.R. No. 202877, December 2015, First Division (Perlas-Bernabe, J.)

Redmont Consolidated Mines Corporation (Redmont) filed an Application for an Exploration Permit (EP) over mining areas located in the Municipalities of Rizal, Bataraza, and Narra, Palawan. After an inquiry with the Department of Environment and Natural Resources (DENR), Redmont learned that said areas were already covered by existing Mineral Production Sharing Agreements (MPSA) and an EP, which were initially applied for by petitioners Narra Nickel Mining and Development Corporation (Narra Nickel), Tesoro Mining and Development, Inc. (Tesoro) and McArthur Mining, Inc. (McArthur) respective predecessors-in-interest with the Mines and Geosciences Bureau (MGB), Region IV-B, Office of the DENR.

Upon the recommendation of then DENR Secretary Jose L. Atienza, Jr., through a memorandum, petitioners' FTAA applications were all approved on April 5, 2010. Consequently, on April 12, 2010, the Republic - represented by then Executive Secretary Leandro R. Mendoza, acting by authority of then President Gloria Macapagal-Arroyo - and petitioners executed an FTAA covering the subject areas, denominated as FTAA No. 05-2010-IVB (MIMAROPA).

Prior to the grant of petitioners' applications for FTAA conversion, and the execution of the above-stated FTAA, Redmont filed three separate petitions for the denial of petitioners' respective MPSA and/or EP applications before the Panel of Arbitrators (POA) of the DENR-MGB. Redmont's primary argument was that petitioners were all controlled by their common majority stockholder, MBMI Resources, Inc. (MBMI) - a 100% Canadian-owned corporation - and, thus, disqualified from being grantees of MPSAs and/or EPs. The matter essentially concerning the propriety of denying petitioners' MPSAs and/or EPs in view of their nationality had made it all the way to this Court. In the Court's Decision, petitioners were declared to be foreign corporations under the application of the "Grandfather Rule." Petitioners moved for the reconsideration of the said Decision, which was, however, denied.

Redmont separately sought the cancellation and/or revocation of the executed FTAA through a Petition before the Office of the President (OP). Redmont asserted, among others, that the FTAA was highly anomalous and irregular, considering that petitioners and their mother company, MBMI, have a long history of violating and circumventing the Constitution and other laws, due to their questionable activities in the Philippines and abroad. Petitioners opposed Redmont's petition through a motion to dismiss, contending that: (a) there is no rule or law which grants an appeal from a memorandum of a department secretary; (b) the appeal was filed beyond the reglementary period; (c) the appeal was not perfected because copies of the appeal were not properly served on them; and (d) Redmont is not a real party-in-interest.

The OP granted Redmont's petition. The CA affirmed the OP Ruling. The CA ruled that the Republic, as represented by the OP, had the right to cancel the FTAA, even without judicial permission, because paragraph a (iii), Section 17.233 thereof provides that such agreement may be cancelled by either party on the ground of "any intentional and materially false statement or omission of facts by a [p]arty."34 Accordingly, it sustained the OP's finding that petitioners committed misrepresentations which warranted the cancellation and/or revocation of the FTAA.

ISSUE:

Whether the OP has quasi-judicial power to adjudicate the propriety of the cancellation and/or revocation of the FTAA

RULING:

In this case, the OP cancelled/revoked the subject FTAA based on its finding that petitioners misrepresented, *inter alia*, that they were Filipino corporations qualified to engage in mining activities. Again, this is obviously an administrative exercise of a contractual right under paragraph a (iii), Section 17.2 of the FTAA, which finds legal basis in Section 99 of RA 7942 that states: "[a]ll statements made in the exploration permit, mining agreement and financial or technical assistance shall be considered as conditions and essential parts thereof x x x." A material misrepresentation, if so found by ordinary courts of law as enunciated in *Gonzales* upon a case duly instituted therefor, would then constitute a breach of a contractual condition that would entitle the aggrieved party to cancel/revoke the agreement.

The scenario at hand does not involve a complaint for cancellation/revocation commenced before the ordinary courts of law. Hence, Redmont's recourse to the OP - that, on the assumption that it even had the legal standing to oppose an already executed FTAA which it was not a party to - was, by and of itself, done outside the correct course procedure. Observe that RA 7942 and its RIRR do not state that the OP has the power to take cognizance of a quasi-judicial proceeding involving a petition for cancellation of an existing FTAA. In fact, there is even no mention of a petition for cancellation or revocation to be taken by a third party before the OP. While it may be said that the OP has administrative control or supervision over its subordinate agencies, such as the POA, again the jurisdiction of that body pertains only to mining disputes, and not those which involve judicial questions cognizable by the ordinary courts of law.

Thus, at least with respect to cases affecting an FTAA's validity, the Court holds that the OP has no quasi-judicial power to adjudicate the propriety of its cancellation/revocation. At the risk of belaboring the point, the FTAA is a contract to which the OP itself represents a party, *i.e.*, the Republic. It merely exercised a contractual right by cancelling/revoking said agreement, a purely administrative action which should not be considered quasi-judicial in nature. Thus, absent the OP's proper exercise of a quasi-judicial function, the CA had no appellate jurisdiction over the case, and its Decision is, perforce, null and void.

CIVIL SERVICE COMMISSION v. MADLAWI B. MAGOYAG
G.R. No. 197792, 9 December 2015, Third Division (Peralta, J.)

Magoyang filed with the RTC of Lanao del Sur, 12th Judicial Region, Marawi City, a petition for correction of his date of birth from July 22, 1947 to July 22, 1954. The RTC granted the petition ordering the (1) Government Service Insurance System; (2) Bureau of Customs at Cagayan de Oro Port, Cagayan de Oro City; and (3) Local Civil Registrar of Tamparan, Lanao del Sur and the Civil Service Commission to immediately effect a correction of the entry of the live birth of petitioner in their records from July 22, 1947 to that of July 22, 1954.

Meanwhile, Magoyang, who was then the Deputy Collector of the Bureau of Customs in Cagayan de Oro City requested the CSC Regional Office No. X to correct his date of birth appearing in his employment records from July 22, 1947 to July 22, 1954. The said request was then forwarded to the CSC-National Capital Region (NCR) in view of the unavailability in CSC Regional Office No. X of the records of employees of the Bureau of Customs and, thereafter, the request was endorsed to the CSC pursuant to CSC Resolution No. 04-0966 (MC. 20, s. 2004).

In support of his request, he submitted copies of his certificate of live birth issued by the National Statistics Office (NSO), together with the Decision of the RTC and several supporting documents. He claims that the discrepancy in his date of birth arose when he applied for employment with Amanah Bank in 1974 when he mistakenly placed 1947 instead of 1954 as his year of birth in the application form. Thus, according to him, such wrong date appeared in the records of the GSIS and was maintained in the entire length of his stay in the government.

Petitioner CSC denied respondent's request on the ground that the RTC decision rendered on November 20, 2007 was not yet final and executory. Respondent filed a motion for reconsideration and attached to it was the Certificate of Finality of Judgment issued by the RTC but the CSC denied the said motion.

Aggrieved, respondent filed a Petition for Review under Rule 43 of the Rules of Court with the CA and the latter granted the petition and ordered the CSC to comply with the Decision of the RTC of Lanao del Sur.

ISSUE:

Did the CA err in ordering the CSC to comply with the RTC decision?

RULING:

No.

It must be remembered that, a petition for correction is an action *in rem*, an action against a thing and not against a person. The decision on the petition binds not only the parties thereto but the whole world. An *in rem* proceeding is validated essentially through publication. Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it. As such, petitioner is now legally bound to acknowledge and give effect to the judgment of the RTC. However, petitioner totally disregarded the finality of the RTC's judgment.

This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. It should also be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of justice.

Hence, based on the above disquisitions, the CA did not commit any reversible error in its questioned decision and resolution.

HON. HERMOGENES E. EBDANE, JR., et al. v. ALVARO Y. APURILLO, et al.
G.R. No. 204172, 9 December 2015, First Division (Perlas-Bernabe, J.)

Juanito R. Alama (Alama), DPWH Assistant Head of the BAC-Technical Working Group (BAC-TWG), received an anonymous complaint from an alleged concerned employee of the DPWH, Tacloban City, claiming that R.M. Padillo Builders (RMPB), a local contractor, won the bidding for the construction of the Lirang Revetment Project (subject project), despite its non-inclusion in the list of Registered Construction Firms (RCF) which were qualified to bid.

Atty. Oliver T. Rodulfo, DPWH Head of Internal Affairs Office, issued a Subpoena which directed Engr. Gervasio T. Baldos (Engr. Baldos), OIC District Engineer of the DPWH Tacloban City Sub-District Engineering Office (DPWH Sub-District Office), to answer/comment on the anonymous complaint and, accordingly, submit documents in relation to the award of the subject project to the allegedly unregistered contractor.

Atty. Rodulfo proceeded to investigate on the matter and, thereafter, forwarded his Investigation Report to Acting Sec. Ebdane, finding that RMPB was indeed not a duly registered contractor at the time of the bidding. Atty. Rodulfo, thus, recommended that the officials of the DPWH Sub-District Office be administratively charged with Gross Misconduct and that they be placed on preventive suspension for a period of ninety (90) days. Acting Sec. Ebdane then issued the Formal Charge against respondents, who were then DPWH Officials and BAC Members, for Grave Misconduct.

In their Answer, respondents argued, among others, that they were not in any position to answer the Formal Charge against them due to lack of basis. In this relation, they pointed out that aside from the fact that RMPB had firmly expressed in its duly sworn letter of intent that it was a registered contractor with the DPWH, it was not their duty to determine whether a contractor is a registered contractor with the DPWH Notarial Registry of Civil Works Contractors. As such, respondents prayed for the dismissal of the Formal Charge and the lifting of the preventive suspension order against them. Further, they expressly waived their rights to a formal hearing, and sought instead, that the case against them be decided based on the records submitted.

Without waiting for the DPWH's action, respondents filed a petition for certiorari and prohibition before the RTC, alleging that there was a violation of their right to due process since: (a) they were not made to comment on the anonymous complaint; and (b) no preliminary investigation was conducted prior to the issuance of the Formal Charge. The RTC-Branch 9 issued a temporary restraining order against the implementation of the preventive suspension order (Formal Charge), which was later converted by the RTC-Branch 34 to a writ of preliminary injunction.

The RTC-Branch 34 set aside the Formal Charge. It held that respondents' rights to administrative due process were violated when they were deprived of the opportunity to file their comment/memorandum prior to, or during the preliminary or fact-finding investigation conducted by Atty. Rodulfo, which violation was deemed to involve a purely legal question, hence, an exception to the rule on exhaustion of administrative remedies. The CA affirmed the RTC Resolution.

ISSUE:

Whether respondents' due process rights were violated

RULING:

In this case, the Court finds that while there were missteps in the proceedings conducted before the DPWH, namely: (a) respondents were not made to file their initial comment on the anonymous complaint; and (b) no preliminary investigation was conducted before the filing of the Formal Charge against them, contrary to the sequential procedure under the URACCS, they were, nonetheless, accorded a fair opportunity to be heard when the Formal Charge directed them:

> Wherefore, you are hereby directed to submit within ten (10) days from receipt hereof your detailed answer to the above stated charge in writing and under oath, together with whatever evidence you may desire to present in support of your defense.
>
> In your answer, you should state whether you elect to have a formal investigation of the charge against you or waive your right to such an investigation.
>
> If you fail to submit your answer within the period aforestated, you will be deemed in default and the case against you will be decided on the basis of the available records.
>
> x x x xhanRoblesVirtualawlibrary

Accordingly, respondent filed their **first Answer on January 13, 2006**, wherein they **had presented their position before the agency**, and more significantly, **expressly waived their rights to a formal hearing, as they sought instead, that the case against them be decided based on the records submitted:**

> **PRAYER**
>
> WHEREFORE, facts and premises, respondents most respectfully pray to the Hon. Secretary that the instant Formal Charge be **DISMISSED**, and pending such dismissal, respondents pray that the Order for the Preventive Suspension be **LIFTED** and **SET ASIDE**. **Herein respondents hereby waive their rights to a formal hearing and that the said case be decided based on records submitted**.
>
> MOST RESPECTFULLY SUBMITTED.[57] (Emphasis and underscoring supplied)

Hence, whatever procedural lapses the DPWH had committed, the same had already been cured by the foregoing filing.

Thus, having established that there was no violation of respondents' rights to administrative due process, the CA incorrectly exempted respondents from compliance with the rule on exhaustion of administrative remedies. They are therefore required to go through the full course of the administrative process where they are still left with remedies. As case law states, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.

MELANIE E. DE OCAMPO v. RPN-9/RADIO PHILIPPINES NETWORK, INC.
G.R. No. 192947, 9 December 2015, SECOND DIVISION (Leonen, J.)

Melanie E. De Ocampo filed a case against respondents Radio Philippines Network, Inc. (RPN-9) and several RPN-9 officers for illegal dismissal, unpaid salaries, damages and attorney's fees. On May 12, 2004, Executive Labor Arbiter (ELA) Manuel M. Manansala rendered a decision finding De Ocampo to have been illegally dismissed and ordered RPN-9 to pay her separation pay in lieu of reinstatement and full backwages. The National Labor Relations Commission (NLRC) affirmed the decision of the ELA, which became final and executory on May 27, 2006. De Ocampo's award in the total amount of P410,826.85 was fully satisfied through a writ of execution. This, notwithstanding, De Ocampo filed a motion to recompute the monetary award with motion to issue alias writ of execution. She sought the payment of an additional amount of P518,700.00 representing additional backwages, separation pay, and 13th month pay. She also prayed for an additional amount of P53,188.83, representing 12 percent interest per annum on the original monetary award. The ELA denied De Ocampo's motion on the ground that the May 12, 2004 decision fixing the amounts of the monetary award to her had become final and executory. The NLRC sustained the ELA. The Court of Appeals (CA) in turn sustained the NLRC.

ISSUE:

Is De Ocampo entitled to a recomputed award?

RULING:

No. As basic as the principle of finality of judgments is the rule that filing a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure "shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." Unlike an appeal, a pending petition for certiorari shall not stay the judgment or order that it assails. The 2005 Rules of Procedure of the National Labor Relations Commission, which were in effect when the material incidents of this case occurred, explicitly and specifically makes this principle applicable to decisions of labor arbiters and of the National Labor Relations Commission. Rule XI, Section 10 of the 2005 Rules of Procedure of the National Labor Relations Commission states: SECTION 10. Effect of Petition for Certiorari on Execution. — A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts. x x x The pivotal facts of this case are also settled. After the filing before the Court of Appeals of RPN-9's petition for certiorari, the Court of Appeals issued a temporary restraining order preventing, for a period of 60 days, the National Labor Relations Commission from enforcing its ruling. However, the sixty-day period lapsed without a writ of preliminary injunction being subsequently issued by the Court of Appeals. Thus, on May 27, 2006, the ruling of Executive Labor Arbiter Manansala, as affirmed by the National Labor Relations Commission, became final and executory on May 27, 2006. Conformably, Entry of Judgment was made on July 19, 2006. None of the four exceptions mentioned in Sacdalan v. Court of Appeals, G.R. No. 128967, May 20, 2004, 428 SCRA 586, that warrant a modification of judgments that have attained finality is availing in this case. What petitioner seeks is not a mere clerical correction. Rather, she seeks an overhaul of Executive Labor Arbiter Manansala's decision in order that it may award her a total additional sum of P571,888.83 representing backwages, separation pay, 13th month pay, and accrued interest. Petitioner does not merely seek an entry into the records of acts done but not entered (i.e., nunc pro tunc entries). Petitioner does not claim that Executive Labor Arbiter Manansala's decision is void, only that its computation of monetary awards is inadequate. Neither does petitioner allege that certain events

transpired after May 27, 2006 rendering Executive Labor Arbiter Manansala's decision unjust or inequitable. The decision having attained finality, and as this case does not fall under any of the recognized exceptional circumstances, there remains no opening for revisiting, amending, or modifying Executive Labor Arbiter Manansala's judgment

FILINVEST ALABANG, INC., v. CENTURY IRON WORKS, INC.,
G.R. No. 213229, 9 December 2015, FIRST DIVISION, (PERLAS-BERNABE, *J.)*

Filinvest Alabang, Inc. awarded various contracts to Century Iron Works, Inc., including a contract for the completion of the metal works required of Filinvest Festival Supermall supported by the evidence of the Agreement for Construction executed by both parties.

After the completion of said project, respondent tried to fully settle its credit with petitioner amounting to P1,392,088.68 broken down as follows: (a) balance of the retention fee amounting to P40,880.00; (b) additional deduction of P227,500.00 from the latter's total payments; and (c) the cost of an additional scenic elevator enclosure amounting to P1,123,708.68.

But despite demands, the latter allegedly withheld payment without any reasonable ground. This caused respondent to file a case for sum of money with damages before the RTC of Pasig City.

Petitioner argued that it had to retain the amount of P40,880 and P227,500 as damages due to the respondent's substandard workmanship; and that the subject contract is lump sum in nature, therefore, it cannot be made liable for the amount representing the additional scenic elevator enclosure absent any instruction authorizing the construction of the same.

The RTC granted respondent's claim for the amount of P227,500, but denied the rest. It ruled that the petitioner is already estopped from claiming damages due to its issuance of Certificate of Completion and Acceptance, signifying satisfaction as to the work done. Further, it found merit on the petitioner's averment that the subject contract, being lump sum in nature, it cannot be made liable for the amount representing the additional scenic elevator enclosure.

On appeal, the CA ordered the petitioner to pay the amount of P40,880 and P1,123,708.68 plus interest. The CA held that the subject contract is not fixed lump sum in nature. Dissatisfied, petitioner moved for reconsideration, however, denied. Hence, this petition.

ISSUE:

Whether or not the petitioner is liable to pay the amount of P40,880, P227,500 and P1,123,708.68 to the respondent

RULING:

YES. The Supreme Court ordered the petitioner to pay the respondent the entire amount plus interest. The petitioner's issuance of Certificate of Completion and Acceptance to the respondent estops the former from withholding the amount of P40,880 and P227,500 due to substandard workmanship.

As to the amount of P1,123,708.68, the petitioner should also pay the respondent. In a fixed lump sum contract, the project owner agrees to pay the contractor a specified amount for completing a scope of work involving a variety of unspecified items of work without requiring a cost breakdown.. Otherwise stated, in fixed lump sum contracts, the project owner's liability to the contractor is generally limited to what is stipulated therein.

However, Article 1724 of the Civil Code, which governs fixed lump sum contracts, does not preclude the parties from stipulating on additional works to the project covered by said contract which

would entail added liabilities on the part of the project owner. Said provision allows contractors to recover from project owners additional costs in fixed lump sum contracts, as well as the increase in price for any additional work due to a subsequent change in the original plans and specifications, provided that there exists: (a) a written authority from the developer or project owner ordering or allowing the written changes in work; and (b) written agreement of the parties with regard to the increase in price or cost due to the change in work or design modification.

The subject contract clearly is fixed lump sum in nature as the parties agreed that respondent shall "furnish all materials, labor, equipment, supervision and all other accessories, fixings and incidentals necessary to complete the Supply and Installation of Metal Works Requirements" of petitioner's Filinvest Festival Supermall. Thus, the foregoing shows that: (a) there was a written authority from petitioner for respondent to proceed with the construction of the additional scenic elevator enclosure; and (b) the parties have a written agreement as to the proper valuation of such additional works to be made on the project. As the construction of an additional scenic elevator enclosure was covered by a valid extra work order to the subject contract, respondent is entitled to recover from petitioner the cost of the same.

ASB REALTY CORPORATION, v. ORTIGAS & COMPANY LIMITED PARTNERSHIP
G.R. No. 202947, 9 December 2015, FIRST DIVISION (BERSAMIN, *J.)*

Ortigas & Company Limited Partnership (Ortigas), entered into a Deed of Sale with Amethyst Pearl Corporation (Amethyst) on June 29, 1994. This involved the parcel of land with an area of 1,012 square meters situated in Barrio Oranbo, Pasig City and registered under TCT No. 65118 of the Register of Deeds of Rizal for the consideration of Php 2,024,000.00. Consequently, the Register of Deeds of Rizal cancelled TCT No. 65118 and issued TCT No. PT-94175 in the name of Amethyst. And the conditions contained in the Deed of Sale were also annotated on TCT No. PT-94175 as encumbrances.

Thereafter, Amethyst, on December 28, 1996, assigned the subject property to its sole stockholder, petitioner ASB Realty Corporation, under a so-called Deed of Assignment in Liquidation in consideration of 10,000 shares of the petitioner's outstanding capital stock. Thus, the property was transferred to the petitioner free from any liens or encumbrances except those duly annotated on TCT No. PT-94175. The Register of Deeds of Rizal cancelled TCT No. PT-94175 and issued TCT No. PT-105797 in the name of the petitioner with the same encumbrances annotated on TCT No. PT-94175.

Due to alleged violation of the terms of the Deed of Absolute Sale, citing among others the constructions on the property which are commercial in nature, Ortigas filed a complaint for specific performance against the petitioner before the RTC in Pasig City. It argued that the violations committed by the petitioner empowers it to unilaterally cancel the Deed of Absolute Sale. It prayed for the reconveyance of the property or alternatively, for the demolition of the structures and improvements thereon.

The RTC rendered its decision and dismissed the complaint. Ortigas appealed to the CA, which initially affirmed the RTC decision. Upon Ortigas' Motion for Reconsideration, the CA reversed its previous decision and favored Ortigas.

The petitioner appealed to the CA but denied the petitioner's Motion for Reconsideration for being filed out of time. Hence, this petition.

ISSUE:

Whether or not Ortigas validly rescinded the Deed of Sale due to the failure of Amethyst and its assignee, the petitioner, to fulfill the covenants under the Deed of Sale.

RULING:

No. The court granted the petition. Rescission under Article 1191 of the Civil Code is proper if one of the parties to the contract commits a substantial breach of its provisions. It abrogates the contract from its inception and requires the mutual restitution of the benefits received; hence, it can be carried out only when the party who demands rescission can return whatever he may be obliged to restore.

Ortigas did not have a cause of action against the petitioner for the rescission of the Deed of Sale. The essential elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the defendant not to violate such right; and (3) an act or omission on the part of the defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other relief.

In the case at bar, the second and third elements were absent. The petitioner was not privy to the Deed of Sale because it was not the party obliged thereon. Its failure to comply with the covenants in the Deed of Sale did not constitute a breach of contract that gave rise to Ortigas' right of rescission. It was rather Amethyst that defaulted on the covenants under the Deed of Sale. The mere assignment of a bilateral executory contract does not automatically result to the assignee's assumption of the assignor's duties, so as to have the effect of creating a new liability on the part of the assignee to the other party to the contract assigned. Consequently, the burden to perform the covenants under the Deed of Sale remained with Amethyst; hence, the action to enforce the provisions of the contract or to rescind the contract should be against Amethyst.

QUANTUM FOODS, INC.**,** ***v.*** MARCELINO ESLOYO AND GLEN MAGSILA
G.R. No. 213696, 9 December 2015, FIRST DIVISION (**Perlas-Bernabe, J.)**

From a decision dated Dec. 27, 2007 of the Labor Arbiter (LA) finding respondents Marcelino Esloyo and Glen Magsila to have been illegally dismissed and granting a total monetary judgment of P1,817,856.71, petitioner Quantum Foods, Inc. (QFI) filed a notice of appeal and memorandum of appeal before the National Labor Relations Commission (NLRC) on Feb. 8, 2008. The memorandum was accompanied by: (a) a motion to reduce bond averring that it was encountering difficulty raising the amount of the bond and finding an insurance company that can cover said amount during the short period of time allotted for an appeal; and (b) a cash bond in the amount of P400,000.00 (partial bond). Subsequently, but before the NLRC could act on the motion to reduce bond, QFI posted a surety bond from an accredited insurance company fully covering the monetary judgment, which respondents vehemently opposed. In a decision dated Feb. 20, 2009, the NLRC denied respondents' motion to dismiss and gave due course to QFI's appeal, holding, among others, that there was substantial compliance with the bond requirement, and merit in QFI's appeal that would justify a liberal application of the requirement on the timely filing of the appeal bond. On a petition for certiorari, the Court of Appeals (CA), in a decision dated Jan. 18, 2011, reversed and set aside the NLRC's ruling and ruled that QFI's failure to post the required bond in an amount equivalent to the monetary judgment impeded the perfection of its appeal and rendered the LA's decision final and executory.

ISSUE:

Is the Court of Appeals wrong?

RULING:

Yes. In Nicol v. Footjoy Industrial Corp., 555 Phil. 275 (2007), the Court summarized the guidelines under which the NLRC must exercise its discretion in considering an appellant's motion for reduction of bond in this wise: "The bond requirement on appeals involving monetary awards has been and may be relaxed in meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period." x x x As to what constitutes "a reasonable amount of bond" that must accompany the motion to reduce bond in order to suspend the period to perfect an appeal, the Court, in McBurnie v. Ganzon, G.R. Nos. 178034, 178117, and 186984-85, October 17, 2013, 707 SCRA 646, 679, pronounced: To ensure that the provisions of Section 6, Rule VI of the NLRC Rules of Procedure that give parties the chance to seek a reduction of the appeal bond are effectively carried out, without however defeating the benefits of the bond requirement in favor of a winning litigant, all motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to 10 percent of the monetary award that is subject of the appeal, which shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission. In conformity with the NLRC Rules, the monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney's fees. Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended. (Emphasis and underscoring supplied) Hence, the posting of a P400,000.00 cash bond equivalent to more than 20 percent of the monetary judgment, together with the Motion to Reduce Bond within the reglementary period was sufficient to suspend the period to perfect the appeal. The posting of the said

partial bond coupled with the subsequent posting of a surety bond in an amount equivalent to the monetary judgment also signified QFI's good faith and willingness to recognize the final outcome of its appeal. In determining the reasonable amount of appeal bonds, however, the Court primarily considers the merits of the motions and the appeals. Thus, in Rosewood Processing, Inc. v. NLRC, 352 Phil. 1013(1998), the Court considered the posting of a P50,000.00 bond together with the motion to reduce bond as substantial compliance with the legal requirements of an appeal from a P789,154.39 monetary award "considering the clear merits which appear, res ipsa loquitor, in the appeal from the labor arbiter's decision and the petitioner's substantial compliance with rules governing appeals." It should be emphasized that the NLRC has full discretion to grant or deny the motion to reduce bond, and its ruling will not be disturbed unless tainted with grave abuse of discretion. Verily, an act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction, which clearly is not extant with respect to the NLRC's cognizance of QFI's appeal. Far from having gravely abused its discretion, the NLRC correctly preferred substantial justice over the rigid and stringent application of procedural rules. This, by all means, is not a case of grave abuse of discretion calling for the issuance of a writ of certiorari, warranting the reversal of the CA's ruling granting the certiorari petition and the remand of the case to the C A for appropriate action

ENCHANTED KINGDOM, INC. V. MIGUEL J. VERZO
G.R. No. 209559, 9 December 2015, SECOND DIVISION (Mendoza, J.)

On Aug. 19, 2009, respondent Miguel J. Verzo (Verzo) was hired by petitioner Enchanted Kingdom, Inc. (Enchanted) to work as section head-mechanical and instrumentation maintenance (SH-MIM) for its theme park in Sta. Rosa City, Laguna for a period of six months on probationary status. He was provided with a detailed list of responsibilities that he should fulfill. During the probationary period, Enchanted assessed Verzo's performance as not up to par. He was recommended by his immediate supervisor that he should not be considered for regularization. In Feb. 3, 2010, Enchanted furnished Verzo a copy of the cast member performance appraisal for regularization, which reported that he only obtained a score of 70 out of 100. Ln Feb. 15, 2010, Enchanted formally informed Verzo that he did not qualify for regularization because his work performance for the past five months did not meet the requirements of his position. Verzo filed a complaint for illegal dismissal, damages and attorney's fees against Enchanted. He claimed that it was only after he was formally hired that he was informed of his probationary status. And even after, despite being placed on a probationary status, he was not advised as to the standards required for his regularization.

ISSUE:

Will the complaint of the respondent prosper?

RULING:

No. Section 6(d), Rule I, Book VI of the Implementing Rules of the Labor Code provides that if the employer fails to inform the probationary employee of the reasonable standards on which his regularization would be based at the time of the engagement, then the said employee shall be deemed a regular employee, Thus: (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee. In Abbott Laboratories v. Alcaraz, G.R.No. 192571, July 23, 2013, 701 SCRA 682, the Court stated that when dealing with a probationary employee, the employer is made to comply with two (2) requirements: first, the employer must communicate the regularization standards to the probationary employee; and second, the employer must make such communication at the time of the probationary employee's engagement. If the employer fails to comply with either, the employee is deemed as a regular and not a probationary employee. x x x In the case at bench, the evidence is clear that when Verzo was first hired by Enchanted, he was placed on a probationary status. The letter, dated August 26, 2009, clearly reflects not only the agreement of both parties as to the probationary status of the employment and its duration, but also the fact that Enchanted informed Verzo of the standards for his regularization, Thus: x x x 2. You will be on a probationary status from August 19, 2009 to February 18, 2010. 3. As Section Head for Mechanical & Instrumentation Maintenance, you shall be responsible for mechanical and structural system assessments and inspection to evaluate conditions, operations and maintenance requirements of rides, facilities and buildings to ensure compliance with applicable codes, regulations and standards. Please see attach Job Description for the details of your responsibilities. x x x Clearly from the above, Enchanted informed Verzo that he was being placed on probation. Aside from the probationary nature of his employment, the agreement of the parties specifically showed: the duration of such status; the benefits to which he was entitled once regularized; and most importantly, the standard with which he must comply in order to be regularized

LILIOSA C. LISONDRA v. MEGACRAFT INTERNATIONAL CORPORATION AND SPOUSES MELECIO AND ROSEMARIE OAMIL
G.R. No. 204275, 9 December 2015, SECOND DIVISION (Carpio, J.)

Liliosa C. Lisondra filed a case for illegal dismissal against respondents Megacraft International Corp. and spouses Melecio and Rosemarie Oamil before the National Labor Relations Commission (NLRC), Cebu City. The Labor Arbiter (LA) found her constructively dismissed from the service. On appeal, the NLRC, Seventh Division, reversed the LA decision. Petitioner then filed a petition for certiorari before the Court of Appeals (CA). The CA dismissed the petition because it suffered "congenital infirmities". There was no proof of service of the petition to the agency a quo and to the adverse parties. While petitioner filed her Affidavit of Service, and incorporated the registry receipts, petitioner still failed to comply with the requirement on proper proof of service. Post office receipts are not the required proof of service by registered mail. They are merely evidence of the mail matter with the Post office of the sender, not the delivery of said mail matter by the Post office of the addressee.

ISSUE:

Did the CA err?

RULING:

Yes. The requirement on proof of service of pleadings, judgments and other papers is provided under Section 13, Rule 13 of the Rules of Court, which states: SEC. 13. Proof of service.—Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof of the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. (Emphasis supplied) Under this provision, if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing and the registry receipt, both of which must be appended to the paper being served. In this case, the Court of Appeals itself acknowledged that the petition was accompanied by the affidavit of service and registry receipts. The Court notes that mails sent through the post office are very rarely, if indeed they even happen, received by the intended recipient on the same day they were posted. The Rule itself acknowledges this, hence, the need to specify that "the registry return card shall be filed immediately upon its receipt by the sender." The more logical reading of the provision would be to require that the affidavit of service and registry receipt be attached to the pleading and such would comply with the rule on proper proof of service. However, a party is further required to submit the registry return card to the court "immediately upon its receipt by the sender." In Province of Leyte v. Energy Development Corporation, G.R. No. 203124, 22 June 2015, the Court explained the purpose for the rule: Essentially, the purpose of this rule is to apprise such party of the pendency of an action in the CA. Thus, if such party had already been notified of the same and had even participated in the proceedings, such purpose would have already been served. In this case, respondents were informed and even filed their Comment to the petition. Thus, the purpose of the rule had been achieved. It would have been "more prudent for the Court [of Appeals] to excuse a technical lapse and afford the parties a substantive review of the case in order to attain the ends of justice than to dismiss the same on mere technicalities."

VICMAR DEVELOPMENT CORPORATION, et al. v. CAMILO ELARCOSA, ET. AL., G.R. G.R. No. 202215, 9 December 2015, SECOND DIVISION (Del Castillo, J)

Camilo Elarcosa, and 35 others filed a complaint for illegal dismissal and money claims against petitioner Vicmar Development Corp. (Vicmar) and/or Robert Kua and Engr. Juanito C. Pagcaliwagan. They alleged that Vicmar, a domestic corporation engaged in manufacturing of plywood for export and for local sale, employed them in various capacities - as boiler tenders, block board receivers, waste feeders, plywood checkers, plywood sander, conveyor operator, ripsaw operator, lumber grader, pallet repair, glue mixer, boiler fireman, steel strap repair, debarker operator, plywood repair and reprocessor, civil workers and plant maintenance. They further alleged that Vicmar employed a number of them as early as 1990 and as late as 2003 through petitioner Pagcaliwagan; that Vicmar made them perform tasks necessary and desirable to its usual business; and that Vicmar paid their wages and controlled the means and methods of their work to meet the standard of its products. Thus, they are regular employees. Vicmar invoked the defense that it employed respondents as additional workforce when there was high demand for plywood thus, they were merely seasonal employees. They argued that Vicmar engaged independent contractors as a cost-saving measure; and these contractors exercised direct control and supervision over respondents.

ISSUE:

Does this defense find merit?

RULING:

No. Similarly, we cannot fault the CA in the instant case for giving credence to the assertions and documentary evidence adduced by respondents. Petitioners had the opportunity to discredit them had they presented material evidence, including payrolls and daily time records, which are within their custody, to prove that respondents were mere additional workforce engaged when there are extraordinary situations, such as high demands for plywood products or unexpected absences of regular employees; and that respondents were not assigned for more than one year to the same section or activity. Moreover, respondents were shown to have performed activities necessary in the usual business of Vicmar. Most of them were assigned to activities essential for plywood production, the central business of Vicmar. In the list above, more than half of the respondents were assigned to the boiler, where pieces of plywood were cooked to perfection. While the other respondents appeared to have been assigned to other sections in the company, the presumption of regular employment should be granted in their favor pursuant to Article 280 of the Labor Code since they had been performing the same activity for at least one year, as they were assigned to the same sections, and there is no indication that their respective activities ceased. The test to determine whether an employee is regular is the reasonable connection between the activity he performs and its relation to the employer's business or trade, as in the case of respondents assigned to the boiler section. Nonetheless, the continuous re-engagement of all respondents to perform the same kind of tasks proved the necessity and desirability of their services in the business of Vicmar. Likewise, considering that respondents appeared to have been performing their duties for at least one year is sufficient proof of the necessity, if not the indispensability of their activities in Vicmar's business.

KABATAAN PARTY LIST v. COMMISSION ON ELECTIONS
G.R. No. 221318, 16 December 2016, *EN BANC*, (PERLAS-BERNABE, *J.)*

RA 10367 mandates the COMELEC to implement a mandatory biometrics registration system for new voters in order to establish a clean, complete, permanent, and updated list of voters through the adoption of biometric technology.

RA 10367 likewise directs that "registered voters whose biometrics have not been captured shall submit themselves for validation." "Voters who fail to submit for validation on or before the last day of filing of application for registration for purposes of the May 2016 elections shall be deactivated x x x."

COMELEC issued Resolution No. 9721 as amended by Resolutions No. 9863 and 10013. Among others, the said Resolution provides that: "the registration records of voters without biometrics data who failed to submit for validation on or before the last day of filing of applications for registration for the purpose of the May 9, 2016 National and Local Elections shall be deactivated.

Herein petitioners filed the instant petition with application for temporary restraining order (TRO) and/or writ of preliminary mandatory injunction (WPI) assailing the constitutionality of the biometrics validation requirement imposed under RA 10367, as well as COMELEC Resolution Nos. 9721, 9863, and 10013, all related thereto.

ISSUES:

1. Whether or not the statutory requirement of biometrics validation is an unconstitutional requirement of literacy and property.
2. Whether or not biometrics validation passes the strict scrutiny test.
3. Whether or not Resolution No. 9863 which fixed the deadline for validation on October 31, 2015 violates Section 8 of RA 8189.

RULING:

1. No. The Court held that biometrics validation is not a "qualification" to the exercise of the right of suffrage, but a mere aspect of the registration procedure, of which the State has the right to reasonably regulate.

The Court reiterated their ruling in several cases that registration regulates the exercise of the right of suffrage. It is not a qualification for such right. The process of registration is a procedural limitation on the right to vote.

Thus, although one is deemed to be a "qualified elector," he must nonetheless still comply with the registration procedure in order to vote.

Thus, unless it is shown that a registration requirement rises to the level of a literacy, property or other substantive requirement as contemplated by the Framers of the Constitution -that is, one which propagates a socio-economic standard which is bereft of any rational basis to a person's ability to intelligently cast his vote and to further the public good -the same cannot be struck down as unconstitutional, as in this case.

2. Yes. In applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest, and the burden befalls upon the State to prove the same.

Presence of compelling state interest

Respondents have shown that the biometrics validation requirement under RA 10367 advances a compelling state interest. It was precisely designed to facilitate the conduct of orderly, honest, and credible elections by containing -if not eliminating, the perennial problem of having flying voters, as well as dead and multiple registrants. The foregoing consideration is unquestionably a compelling state interest.

Biometrics validation is the least restrictive means for achieving the above-said interest

Section 6 of Resolution No. 9721 sets the procedure for biometrics validation, whereby the registered voter is only required to: (a) personally appear before the Office of the Election Officer; (b) present a competent evidence of identity; and (c) have his photo, signature, and fingerprints recorded.

Moreover, RA 10367 and Resolution No. 9721 did not mandate registered voters to submit themselves to validation every time there is an election. In fact, it only required the voter to undergo the validation process one (1) time, which shall remain effective in succeeding elections, provided that he remains an active voter.

Lastly, the failure to validate did not preclude deactivated voters from exercising their right to vote in the succeeding elections. To rectify such status, they could still apply for reactivation.

3. No. Section 8 of RA 8189 provides that:

> System of Continuing Registration of Voters. – x x x No registration shall, however, be conducted during the period starting one hundred twenty (120) days before a regular election and ninety (90) days before a special election.

The Court held that the 120-and 90-day periods stated therein refer to the prohibitive period beyond which voter registration may no longer be conducted. The subject provision does not mandate COMELEC to conduct voter registration up to such time; rather, it only provides a period which may not be reduced, but may be extended depending on the administrative necessities and other exigencies.

LORD ALLAN JAY Q. VELASCO v. HON. SPEAKER FELICIANO R. BELMONTE, JR., SECRETARY GENERAL MARILYN B. BARUA-YAP and REGINA ONGSIAKO REYES
G.R. No. 211140, January 12, 2016, EN BANC (Leonardo-De Castro, J.)

The COC of Regina Reyes was cancelled in a petition filed for the purpose. Pending the resolution of Reyes' motion for reconsideration, elections were held. A day after the election, the COMELEC en banc affirmed the said resolution. Despite such decision, Reyes was still proclaimed as the representative of the lone district of Marinduque. In the meantime, the COMELEC's resolution became final and executory. Velasco filed a petition for certiorari assailing that the proceedings of the PBOC and the proclamation of Reyes were null and void. The COMELEC denied the aforementioned petition. The COMELEC en banc reversed the denial of Velasco's petition and declared null and void the proclamation of Reyes. However, Velasco alleged that despite all the letters and requests to Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap, they refused to recognize him as the duly elected Representative of the Lone District of Marinduque. Hence, the instant Petition for Mandamus with prayer for issuance of a temporary restraining order and/or injunction.

ISSUE:

Whether Speaker Belmonte and Sec. Gen. Barua-Yap can be compelled to administer oath and to delete the name of Reyes in the Roll of the members of the House of Representatives respectively.

RULING:

YES. The present Petition for Mandamus seeks to compel respondents Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap to acknowledge and recognize the final and executory Decisions and Resolution of this Court and of the COMELEC by administering the oath of office to Velasco and entering the latter's name in the Roll of Members of the House of Representatives. In other words, the Court is called upon to determine whether or not the prayed for acts, i.e., (i) the administration of the oath of office to Velasco; and (if) the inclusion of his name in the Roll of Members, are ministerial in character vis-a-vis the factual and legal milieu of this case. As the Court has previously stated, the administration of oath and the registration of Velasco in the Roll of Members of the House of Representatives for the Lone District of the Province of Marinduque are no longer a matter of discretion or judgment on the part of Speaker Belmonte, Jr. and Sec. Gen. Barua-Yap. They are legally duty-bound to recognize Velasco as the duly elected Member of the House of Representatives for the Lone District of Marinduque in view of the ruling rendered by the Court and the COMELEC'S compliance with the said ruling, now both final and executory.

SAGUISAG V. OCHOA, JR.
G.R. No. 212426 and G.R. No.212444, January 12, 2016, EN BANC (SERENO, CJ.)

The Philippines and the USA entered into their first military arrangement pursuant to the Treaty of General Relations - the 1947 MBA. In view of the impending expiration of the 1947 MBA in 1991, the Philippines and the U.S. negotiated for a possible renewal of their defense and security relationship. However, the Senate rejected the proposed treaty. The expiration of the MBA led to the suspension of the large-scale joint military exercise but they agreed to hold joint exercises at a substantially reduced level. The military arrangements between them were revived in 1999 when they concluded the first Visiting Forces Agreement (VFA). Then the two countries entered into a second counterpart agreement. The Enhanced Defense Cooperation Agreement (EDCA) authorizes the U.S. military forces to have access to and conduct activities within certain "Agreed Locations" in the country. It was not transmitted to the Senate on the executive's understanding that to do so was no longer necessary. The petitioners question the constitutionality of the EDCA arguing that it should have been in the form of a treaty concurred in by the Senate, not an executive agreement.

ISSUE:

Whether or not the Executive Department committed grave abuse of discretion in entering into EDCA in the form of an executive agreement.

RULING:

No. The duty to faithfully execute the laws of the land is inherent in executive power and is intimately related to the other executive functions which is also self-executory. In light of this constitutional duty, it is the President's prerogative to do whatever is legal and necessary for Philippine defense interests. Despite the President's roles as defender of the State and sole authority in foreign relations, the 1987 Constitution expressly limits his ability in instances when it involves the entry of foreign military bases, troops or facilities. However, a plain textual reading of Article XIII, Section 25, inevitably leads to the conclusion that it applies only to a proposed agreement between our government and a foreign government, whereby military bases, troops, or facilities of such foreign government would be "allowed" or would "gain entry" Philippine territory. It is evident that the constitutional restriction refers solely to the initial entry of the foreign military bases, troops, or facilities. Once entry is authorized, the subsequent acts are thereafter subject only to the limitations provided by the rest of the Constitution and Philippine law, and not to the Section 25 requirement of validity through a treaty. The VFA has already allowed the entry of troops in the Philippines. The power of the President to enter into binding executive agreements without Senate concurrence is already well-established in this jurisdiction. One of the distinguishing features of executive agreements is that their validity and effectivity are not affected by a lack of Senate concurrence. This distinctive feature was recognized as early as in Eastern Sea Trading (1961) which states that Treaties are formal documents which require ratification with the approval of two-thirds of the Senate. Executive agreements become binding through executive action without the need of a vote by the Senate or by Congress. Thus, no court can tell the President to desist from choosing an executive agreement over a treaty to embody an international agreement, unless the case falls squarely within Article VIII, Section 25.

TORRES *v.* DE LEON
G.R. No. 199440, January 18, 2016, THIRD DIVISION, (Peralta, J.)

PNRC, General Santos City Chapter, the PNRC Internal Auditing Office conducted an audit of the funds and accounts of the PNRC, General Santos City Chapter for the period November 6, 2002 to March 14, 2006, and based on the audit report submitted to respondent Corazon Alma G. De Leon (*De Leon*), petitioner incurred a "technical shortage" in the amount of P4,306,574.23. Hence, respondent De Leon in a Memorandum dated January 3, 2007, formally charged petitioner with Grave Misconduct for violating PNRC Financial Policies on Oversubscription, Remittances and Disbursement of Funds.

The CSC, on April 21, 2008, promulgated a Resolution dismissing petitioner's appeal and imposing upon her the penalty of dismissal from service. Petitioner filed a motion for reconsideration with the CSC, but the same was denied.Thus, petitioner filed a petition for review under Rule 43 with the CA, and in its assailed Decision dated June 30, 2011, the CA denied the said petition. Petitioner's motion for reconsideration was likewise denied on October 6, 2011.Hence, the present petition

ISSUES:

Does the CSC has appellate jurisdiction over the case?

RULING:

Yes. the PNRC, although not a GOCC, is *sui generis* in character, thus, requiring this Court to approach controversies involving the PNRC on a case-to-case basis. having jurisdiction over the PNRC, the CSC had authority to modify the penalty and order the dismissal of petitioner from the service. Under the Administrative Code of 1987,[6] as well as decisions[7] of this Court, the CSC has appellate jurisdiction on administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty (30) days, or fine in an amount exceeding thirty (30) days salary. The CA, therefore, did not err when it agreed with the CSC that the latter had appellate jurisdiction.

EDCA is consistent with the content, purpose, and framework of the MDT and the VFA. The admission and presence of U.S. military and civilian personnel in Philippine territory are already allowed under the VFA, the treaty supposedly being implemented by EDCA. What EDCA has effectively done, in fact, is merely provide the mechanism to identify the locations in which U.S. personnel may perform allowed activities pursuant to the VF A. As the implementing agreement, it regulates and limits the presence of U.S. personnel in the country. Moreover, EDCA does not allow the presence of U.S.-owned or -controlled military facilities and bases in the Philippines. As it is, EDCA is not constitutionally infirm. As an executive agreement, it remains consistent with existing laws and treaties that it purports to implement.

MARY ELIZABETH TY-DELGADO *v.* HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND PHILIP ARREZA PICHAY
GR. No. 219603, January 26, 2016, EN BANC (Carpio, J.)

In 2008, Philip Pichay was convicted of four counts of libel. In 2016, he filed his certificate of candidacy for the position of Member of the House of Representatives for the First Legislative District of Surigao del Sur for the 2013 elections. A petition for his disqualification was filed by Mary Elizabeth Ty-Delgado under Sec. 12 of the Omnibus Election Code on the ground that he was convicted of libel, a crime involving moral turpitude. When Pichay paid the fine in lieu of imprisonment, on February 17, 2011, the five-year period barring him to be a candidate had yet to lapse. When Pichay was proclaimed as the winner, she filed a petition for quo warranto before the HRET reiterating that Pichay's ineligibility. However, the HRET concluded that the circumstances surrounding Pichay's conviction for libel showed that the crime did not involve moral turpitude.

ISSUE:

Whether Pichay is disqualified to become a member of the House of Representatives.

RULING:

YES. A sentence by final judgment for a crime involving moral turpitude is a ground for disqualification under Section 12 of the Omnibus Election Code. Libel is listed as one of the crimes involving moral turpitude. In the present case, Pichay admits his conviction for four counts of libel. In Tulfo v. People of the Philippines (587 Phil. 64, 2008), the Court found Pichay liable for publishing the four defamatory articles, which are libelous per se, with reckless disregard of whether they were false or not.

Considering his ineligibility due to his disqualification under Section 12, which became final on June 1, 2009, Pichay made a false material representation as to his eligibility when he filed his certificate of candidacy for the 2013 elections. Pichay's disqualification under Sec. 12 is a material fact involving the eligibility of a candidate under Secs. 74 and 78 of the Omnibus Election Code. The HRET committed grave abuse of discretion amounting to lack of or excess of jurisdiction when it failed to disqualify Pichay for his conviction for libel, a crime involving moral turpitude.

TANADA *v.* HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL
G.R. No. 217012, March 1, 2016, EN BANC (Carpio, J.)

Wigberto Tanada filed twin petitions before the COMELEC to cancel the COC of Alvin John Tanada for false representations and to declare him as a nuisance candidate. They were both candidates for the position of Congress Representative. A COMELEC division denied both his petitions, but on reconsideration, the COMELEC en banc on April 13, 2013 granted to cancel the COC of Alvin John for false representations. The petition to declare him as nuisance candidate however was denied. Wigberto again sought reconsideration of the denial of his petition on the basis of a newly discovered evidence. Comes election day and the name of Alvin John remained in the ballots, whichafter Angelica Tan was the winning candidate, and Wigberto only second.

Wigberto filed before the PBOC a petition to correct manifest mistakes concerning the cancelled candidacy of Alvin John and a motion to consolidate Alvin John's votes with the votes he garnered. The PBOC denied the motion to consolidate the votes because Alvin John was *not* a nuisance candidate. PBOC then proclaimed Angelica as the winner.

On May 21, 2013, Wigberto filed a supplemental petition before the COMELEC to annul the proclamation of Tan, which was granted and affirmed by the COMELEC en banc. However, Angelica had by then taken her oath and assumed office past noon time of June 30, 2013, thereby rendering the adverse resolution on her proclamation moot.

On May 27, 2013, before the SC, Wigberto filed a certiorari assailing the April 25, 2013 COMELEC en banc's ruling declaring Alvin John *not* a nuisance candidate and an election protest claiming that fraud has been perpetrated. The SC, noting that the proclaimed candidate has already assumed office, dismissed the election protest and directed Wigberto to file the protest before the proper tribunal which is the HRET. The certiorari was also dismissed for being filed beyond the 5-day reglementary period.Before the HRET, the election protest was dismissed for being insufficient in form and substance and for lack of jurisdiction over John Alvin who was not a member of the House of Representatives.

ISSUES:

1. Are the votes for Alvin John should be credited in favor of Wigberto as a result of the cancellation of Alvin John's candidacy
2. the filing of a motion for reconsideration of the COMELEC en banc's ruling is proper
3. Does SC has jurisdiction to resolve issues on the conduct of canvassing after the proclamation of a winning candidate

RULING:

1. No, the votes cast for Alvin John whose COC was cancelled are stray votes only. A COC cancelled on ground of false representations under Sec 78 of the Omnibus Election Code, unlike in being a nuisance candidate in Sec 69, does not have the effect of crediting the votes in favor of another candidate.

2. No, the motion for reconsideration is a prohibited pleading. Rule 13 Sec 1(d) of the COMELEC Rules of Procedure specifically prohibits the filing of a motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases. Consequently, when a COMELEC en banc ruling become final and executory, it precludes a party from raising again in any other forum the nuisance candidacy as an issue.

3. No. The SC no longer has jurisdiction over questions involving the elections, returns and qualifications of candidates who have already assumed their office as members of House of Representatives. Issues concerning the conduct of the canvass and the resulting proclamation of candidates are matters which fall under the scope of the terms "election" and "returns" and hence, properly fall under the HRET's sole jurisdiction.

ORION WATER DISTRICT REPRESENTED BY ITS GENERAL MANAGER, CRISPIN TRIA Q. TRIA ET.A.L v. THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) G.R. NO. 195382, 15 JUNE 2016, THIRD DIVISION (Reyes, J)

The issue stemmed from a complaint for collection of money and damages filed by GSIS against Orion Water District (OWD), a local water district. GSIS alleged that OWD and its officers failed and refused to pay, remit or deliver the employees' personal share in the premiums of their life and retirement policies covering the period of July 1993 to July 31, 2000, amounting ' to Five Hundred Fifty-One Thousand Four Hundred Seven Pesos and , Sixteen Centavos (P55 l ,407 .16).

OWD filed a Motion to Dismiss6 alleging that the RTC has no jurisdiction over the subject matter of the case. It asseverated that since GSIS and OWD are both GOCCs, jurisdiction over disputes or controversies between them lies with the Secretary of Justice, pursuant to Sections 66 to 70,7 Chapter 14, Book IV of Executive Order (E.O.) No. 292.

RTC dismissed the order denying the motion for lack of merit.

The CA challenged the decision of the RTC contending that Sections 66 to 70, Chapter 14, Book IV of E.O. No. 292 are inapplicable since the dispute is not solely between GOCCs.

OWD then questioned jurisdiction of the subject matter of the cases.

ISSUE:

Is the contention of OWD meritorious that the case should have been submitted to the Secretary of Justice for administrative settlement pursuant to E.O. No. 292?

RULING:

NO. As properly held by the CA, the provisions of E.O. No. 292 are inapplicable in the instant case. It bears to stress that not all controversies between or among government offices, departments or instrumentalities fall under the mentioned provisions of E.O. No. 292.

To fully understand the scope of the law, reference must be made to Presidential Decree (P.D.) No. 242, the precursor of Chapter 14, Book IV of E.O. No. 292, from which the entirety of the provisions in question was lifted. Under P.D. No. 242, it was clearly articulated that it only applies to particular instances of disputes among government offices. Section 1 thereof states:

> SEC. l. Provisions of law to the contrary notwithstanding, all disputes, claims and controversies .solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.

That the law is not all-encompassing was elaborated in Philippine Veterans Investment Development Corporation v. Judge Velez,24 where the Court emphasized that P.D. No. 242 applies only to certain cases of disputes. It does not intrude into the jurisdiction of regular courts as it "only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including [GOCCs], so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreement

FIRST MEGA HOME CORP. v. GUIGUINTO WATER DISTRICT
G.R. No. 208383, 08 JUNE 2016, FIRST DIVISION (Perlas-Bernabe, J.)

First Mega Home Corporation (Mega Home) filed with NWRB a water permit for the installation of a deep well that would supply the water sources requirements of its gasoline station and commercial complex in Baranagay Malis, Guiguinto, Bulacan.

Respondent Guiguinto Water District filed a protest against WPA contending: Guiguinto). is at a critical level and the water exploration to be conducted by petitioner would hamper the water requirements of the said municipality and be detrimental to its water service; (b) petitioner disregarded and violated existing laws, rules, and regulations because it had already started drilling operations before

it sought the NWRB 's approval; and (c) respondent has the capacity to supply the petitioner's water requirements.

Mega world on the other hand averred that: (a) its water requirements would only be minimal, which could not possibly affect the water level in Guiguinto; and (b) it would not be cost-effective to source water from respondent since there is no existing water pipeline available within a one-kilometer radius where petitioner could connect.13 It further denied having started drilling operations and consequently moved for the issuance of a provisional authority to do so in order to cope with the timetable for its construction activities.

In the NWRB proceedings, it denied the petition of Mega home for violating the Water Code of the Philippines. The case was elevated to the Court of Appeals, who affirmed the decision of the NWRB.

ISSUE:

Whether or not the CA correctly upheld the NWRB's denial of petitioners' water pemit?

RULING:

YES. As general rule, government-owned or controlled corporations, their subsidiaries, other corporate off springs, and government acquired asset corporations (collectively referred to as GOCCs) are not allowed to engage the legal services of private counsels.43 Section 10,44 Chapter 3, Title III, 39 Book IV of Executive Order No. (EO) 292,45 otherwise known as the "Administrative Code of 1987 ," is clear that the OGCC shall act as the principal law office of GOCCs. Accordingly, Section 1 of AO No. 130, s. 1994 enjoined GOCCs to exclusively refer all legal matters pertaining to them to the OGCC, unless their respective charters expressly name the Office of the Solicitor General (OSG) as their legal counsel.

Nonetheless, in exceptional cases, private counsel can be hired with the prior written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, and the prior written concurrence of the Commission on Audit (COA). Case law holds that the lack authority on the part of a private lawyer to file a suit in behalf of any GOCC shall be a sufficient ground to dismiss the action filed by the said lawyer.

The present case, respondent failed to comply with the requirements concerning the engagement of private counsel before it hired the services of Dennis C. Pangan & Associates, which filed, on its behalf, a protest against petitioner's WPA. First, it failed to secure the prior conformity and acquiescence of the OGCC and the written concurrence of the COA, in accordance with existing rules and regulations. And second, it failed to establish the presence of extraordinary or exceptional circumstances that would warrant a deviation from the above-mentioned general rule, or that the case was of a

complicated or peculiar nature that would be beyond the range of reasonable competence expected from the OGCC.

KILUSANG MAYO UNO et al. v. HON. BENIGNO SIMEON C. AQUINO III
G.R. No. 210761, 28 June 2016, EN BANC (Brion, J.)

At the start of President Benigno Aquino's (Pres. Aquino) term, the Department of Health (DOH) launched the Aquino Health Agenda (AHA). The objective was to implement comprehensive reform in the health sector and, ultimately, to provide universal access to health care for all Filipinos including the poor. In line with the Agenda for a truly Universal Health Care program, PhilHealth adopted a new mission "to ensure adequate financial access of every Filipino to quality health care services through the effective and efficient administration of the National Health Insurance Program. " The Board, through Resolution No. 1571, Series of 2011, approved increases in annual premium contributions for the Calendar Year (CY) 2012 to enhance the NHIP benefit packages and to support the implementation of the Universal Health Care program.

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In 2013, the PhilHealth issued three assailed circulars to fully implement the premium rates. Hence, the corporation adjusted the minimum rates of the members.

Kilusang Mayo Uno (KMU) members then filed a claim that assailed that the circulars were issued with grave abuse of discretion since PhilHealth breached the limits to its delegated rule-making power because the new contribution schedule is neither reasonable, equitable, nor progressive as prescribed by NHIA. Moreover, the rate is said to be oppressive and does not attain the purpose sought. Lastly, then KMU pointed the unconscionable bonuses to PhilHealth executives and their unethical expenditure of funds

The Office of the President then countered that invoking the state immunity from suit of President Aquino as the sitting head of state. Philhealth then contends that the case must be dismissed since the contention of KMU is unmeritorious. Philhealth asserts that it acted within the power vested by the law creating it.

ISSUES:

1. Is the contention of KMU meritorious that PhilHealth acted with grave abuse of discretion?
2. Can the Supreme Court correct the bonuses granted to Philhealth executives?

RULING

1. No, the contention of KMU is unmeritorious. The Court dismissed the petition for lack of merit.

PhilHealth has the mandate of realizing the State's vision of affordable and accessible health services for all Filipinos, especially the poor. To realize this vision and effectively administer the Program, PhilHealth is empowered to promulgate its policies, and to formulate a contribution schedule that can realistically support its programs.

PhilHealth justified the increase in annual premium rates with the enhanced benefits and the expanded coverage of medical conditions. This reasonable decision to widen the coverage of the program -which led to increased premium rates -is a business judgment that this Court cannot interfere with.

Furthermore, the Court does not have administrative supervision over administrative agencies, nor is it an entity engaged in making business decisions. It cannot interfere in purely administrative matters nor substitute administrative policies and business decisions with our own. This would amount to judicial overreach. The courts' only concern is the legality, not the wisdom, of an agency's actions. Policy matters should be left to policy makers

2. No, the Court cannot correct the bonuses. This will amount to encroachment to the Commission on Audit's jurisdiction

KMU's allegations of unconscionable bonuses to PhilHealth executives and their unethical expenditure of funds, if true, are reprehensible. However, it is equally objectionable for the KMU to make such allegations without substantiating them. That they did not even bother to annex any document to support their factual claims are very irresponsible.

Further, even if the allegations were true, this Court does not have the power to audit the expenditures of the Government or any of its agencies and instrumentalities. The Constitution saw fit to vest this power on an independent Constitutional body: the Commission on Audit (COA).

The COA alone has the power to disallow unnecessary and extravagant government spending. The Separation of Powers doctrine, so fundamental in our system of government, precludes this Court from encroaching on the powers and functions of an independent constitutional body. Our participation in the audit process is limited to determining whether the COA committed grave abuse of discretion in rendering its audit decisions. We will not overstep the bounds of our jurisdiction.

Moreover, the alleged improprieties pertain to PhilHealth's manner of spending its funds, not to the assailed act of raising the premium rates. While the alleged improprieties may constitute grave abuse of discretion, it does not follow that PhilHealth gravely abused its discretion in issuing the assailed circulars. The argument is a non sequitur.

MUNICIPALITY OF CORDOVA v. PATHFINDER DEVELOPMENT CORPORATION AND TOPANGA DEVELOPMENT CORPORATION
G.R. No. 205544, 29 June 2016, THIRD DIVISION (Peralta, J.)

Pathfinder Development Corporation (Pathfinder) is the owner of real properties in Alegria, Cordova, Cebu. Sangguniang Bayan of the Municipality of Cordova enacted an ordinance expropriating several of the properties. It also authorized the Mayor of Cordova to initiate and execute the necessary expropriation proceedings.

The Mayor of Cordova filed an expropriation complaint against the owners of the properties.

Pathfinder then filed an action for Declaration of Nullity of Expropriation Ordinance.

The Regional Trial Court denied the motion and granted the writ in favor of the municipality.

The issue was raised in the Court of Appeals reversed the decision of the trial court contending that lower court acted with grave abuse of discretion in granting the writ. A motion for reconsideration was filed but likewise denied.

ISSUE

Did the CA committed a reversible error in giving due course to the petition under Rule 65?

RULING

Yes. The CA erred when it held that the RTC acted with grave abuse of discretion. Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare. It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare.

The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. Its exercise is proscribed by only two Constitutional requirements: first, that there must be just compensation, and second, that no person shall be deprived of life, liberty or property without due process of law.

The power of eminent domain is essentially legislative in nature but may be validly delegated to local government units. The basis for its exercise by the Municipality of Cordova, being a local government unit, is granted under Section 19 of Republic Act 7160.

Judicial review of the exercise of the power of eminent domain is limited to the following areas of concern:

a. the adequacy of the compensation;
b. the necessity of the taking; and

c. the public use character of the purpose of the taking.

DEPARTMENT OF TRANSPORTATION AND COMMUNICATION (DOTC) v. SPS. VICENTE ABECINA AND MARIA CLEOFE ABECINA
G.R. No. 206484, 29 June 2016, SECOND DIVISION (Brion, J.)

Spouses Vicente and Maria Cleofe Abecina (Sps Abecina) are registered owners of five parcels of land in Sitio Paltik, Barrio Sta. Rosa, Camrines Norte.

The Department of Transportation and Communication (DOTC) awarded Digitel Telecommunications Philippines, Inc. (Digitel) a contract for the management, operation, maintenance, and development under the National Telephone Program Phase I.

The DOTC and Digitel subsequently entered into several Facilities Management Agreements (FMA) for Digitel to manage, operate, maintain, and develop the RTDP and NTPI-1 facilities comprising local telephone exchange lines in various municipalities in Luzon. The FMAs were later converted into Financial Lease Agreements (FLA) in 1995.

Later on, the municipality of Jose Panganiban, Camarines Norte,donated a one thousand two hundred (1,200) square-meter parcel of land to the DOTC for the implementation of the RDTP in the municipality. However, the municipality erroneously included portions of the respondents' property in the donation. Pursuant to the FLAs, Digitel constructed a telephone exchange on the property which encroached on the properties of the respondent spouses.

Sometime in the mid-1990s, the spouses Abecina discovered Digitel's occupation over portions of their properties. They required Digitel to vacate their properties and pay damages, but the latter refused, insisting that it was occupying the property of the DOTC pursuant to their FLA. The Sps then filed accion publiciana before the court.

DOTC claimed immunity from suit and ownership over the subject properties.

RTC held the Sps as the lawful possessor.

DOTC elevated the case the case to the CA whereby it contends that the contract it entered into with Digitel is in pursuit of its governmental functions to promote and develop networks of communication systems, hence no waiver of state immunity. CA affirmed the RTC's decision.

ISSUE

Can DOTC invoke state immunity?

RULING

No. The State may not be sued without its consent. This fundamental doctrine stems from the principle that there can be no legal right against the authority which makes the law on which the right depends.

This generally accepted principle of law has been explicitly expressed in both the 1973 and the present Constitutions. But as the principle itself implies, the doctrine of state immunity is not absolute.

The State may waive its cloak of immunity and the waiver may be made expressly or by implication. Over the years, the State's participation in economic and commercial activities gradually expanded beyond its sovereign function as regulator and governor. The evolution of the State's activities and degree of participation in commerce demanded a parallel evolution in the traditional rule of state immunity.

Thus, it became necessary to distinguish between the State's sovereign and governmental acts (jure imperii) and its private, commercial, and proprietary acts (jure gestionis). Presently, state immunity restrictively extends only to acts jureimperii while acts juregestionis are considered as a waiver of immunity.

The Philippines recognizes the vital role of information and communication in nation building. As a consequence, we have adopted a policy environment that aspires for the full development of communications infrastructure to facilitate the flow of information into, out of, and across the country.To this end, the DOTC has been mandated with the promotion, development, and regulation of dependable and coordinated networks of communication.

The DOTC encroached on the respondents' properties when it constructed the local telephone exchange in Daet, Camarines Norte. Hence, they need to vacate the property owned by the Sps.

The Constitution identifies the limitations to the awesome and near-limitless powers of the State. Chief among these limitations are the principles that no person shall be deprived of life, liberty, or property without due process of law and that private property shall not be taken for public use without just compensation.37 These limitations are enshrined in no less than the Bill of Rights that guarantees the citizen protection from abuse by the State.

THE DIOCESE OF BACOLOD v. COMMISSION ON ELECTIONS
G.R. No. 205728. July 5, 2016, EN BANC (Leonen, J.)

Petitioner Diocese of Bacolod is a Roman Catholic diocese and is represented in this petition by its Bishop, the Most Rev. Vicente M. Navarra. Petitioner Bishop Navarra is also filing this petition in his individual and personal capacity as the questioned orders are personally directed at him and also as a concerned citizen, as the issues raised herein are matters of paramount and transcendental importance to the public which must be settled early given the far-reaching implications of the unconstitutional acts of the respondents.

Named as respondents are the Commission on Elections (COMELEC) and its Election Officer of Bacolod City Atty. Mavil V. Majarucon.

On 21 February 2013, the petitioners have caused to be placed on the front wall of the Bacolod Cathedral two sets of Tarpaulin, each sized 6x10 feet, with the message Conscience Vote (Team Buhay/Team Patay (Team Patay Tarpaulin). The Team Patay Tarpaulin contained the names of both Anti- and Pro-Reproductive Health Law senatorial candidates.

In their special civil action for Certiorari and Prohibition under Rule 65 of the Rules of Court, petitioners sought the nullification of the 22 February 2013 order issued by respondent Atty. Majarucon, which orders them to remove the supposed oversized Team Patay Tarpaulin of the Diocese of Bacolod. They also sought to nullify the 27 February 2013 order issued by the COMELEC, through its Law Department, which orders the immediate removal of the Team Patay Tarpaulin and threatening the petitioner Bishop of Bacolod with the filing of an election offense if he fails to cause its immediate removal.

On March 5, 2013, the Supreme Court En Banc issued a temporary restraining order enjoining the respondents COMELEC and Atty. Majarucon from removing the Team Patay Tarpaulin.

ISSUES

1. Respondents' orders directives to remove or cause the removal of the subject Team Patay Tarpaulin are unconstitutional and void for infringing on petitioners' right to freedom of expression on their own private property.
2. Respondents' orders/directives to remove or cause the removal of the subject Team Patay Tarpaulin are unconstitutional and void for violating the principle of separation of Church and State enshrined in Section 6 of Article II of the 1987 Constitution.

RULING:

1. The assailed Orders/Directives to remove or cause the removal of the subject Team Patay Tarpaulin are not electoral campaign materials and that the mention of the candidates in the infringes on the petitioners' right to freedom of expression on their own private property:

The subject Team Patay Tarpaulins "are not electoral campaign materials," stressing that the mentioning of candidates' name in the second tarpaulin was merely incidental to the petitioners' campaign against the RH Law, which they have firmly campaigned against even when it was just a bill being deliberated in Congress;

Subject Team Patay Tarpaulins are "covered by the broader constitutional guaranty of freedom of expression and of conscienceÂ and not by the more narrow and limited election laws, rules, and regulations"; petitioners "have the constitutional right to communicate their views and beliefs by posting the subject Team Patay Tarpaulins on the Bacolod Cathedral, a private property owned by the Diocese of Bacolod";

The RH Law and the candidates and party-lists running in the 2013 National Elections who supported and who opposed its passage into a law are matters of public concern and a legitimate subject of general interest and of discussion; citing the Supreme Court's jurisprudence in Chavez v. PCGG (G. R. No. 130716, December 9, 1998), the petitioners' argued that that public concern "embraces a broad spectrum of subjects which the public may want to know citing the Supreme Court's jurisprudence in Adiong v. COMELEC (G. R. No. 103956, March 31, 1992), the petitioners' further argued that "debate on public issues should be uninhibited, robust, and wide open."

The content and the message of the subject Team Patay Tarpaulin "plainly relates to broad issues of interest to the community especially to the members of the Catholic community" and that the subject tarpaulin "simply conveys the position of the petitioners on the RH bill and the public officials who supported or opposed it as it gains relevance in the exercise of the people's right of suffrage" in the advent of the 2013 polls;

Considering the petitioners' message, through the Team Patay Tarpaulin, was a matter of public concern, the message being conveyed and the mode used for its communication and expression to the public is entitled to protection under the Free

Expression clause of the Bill of Rights of the 1987 Constitution; not being candidates or political parties, the freedom of expression curtailed by the questioned prohibition, using the logic of the Supreme Court in Adiong v. COMELEC, is not so much that of the candidate or the political party; there is no compelling and substantial State interest that is endangered or which will be endangered by the posting of the subject Team Patay Tarpaulin which would justify the infringement of the preferred right of freedom of expression.

2. The assailed orders/directives to remove or cause the removal of the subject Team Patay Tarpaulin are unconstitutional and void for violating the principle of separation of Church and State enshrined in Section 6 of Article II of the 1987 Constitution:

Petitioners' petition against the RH Law "is not only a matter of exercise of its freedom of expression and of conscience but is also a matter of Catholic faith, morals, belief, and of duty"; The Diocese of Bacolod has taken on the issue of the RH Law as part of her mission as part of its continued advocacy and obedience to the Catholic Church's teachings; in line with what they believe to be their duty in the faith, the petitioners have declared the RH Law as being anti-life, anti-morals, anti-family, anti-marriage, and contrary to the teachings of the Catholic Church. Consequently, petitioners have called on its members and followers not to support any candidate who is anti-life, and to support those who are pro-life; Considering that the views and position of the petitioners on the RH Bill is inextricably connected to its Catholic dogma, faith, and moral teachings, the posting of the subject Team Patay Tarpaulin has already gone beyond mere exercise of freedom of expression and of conscience, but also of the right and privilege of the Church to propagate and spread its teachings which should be insulated from any form of encroachment and intrusion on the part of the State, and its agencies and officials;

Section 6 of the Article II of the 1987 Constitution monumentalizes the principle of separation of Church and State;

At the core of its advocacy against the RH Bill is the Gospel of Life which is a matter of Catholic doctrine, creed and dogma;

The petitioners believe, as a matter of faith, that in these times when there is a great conflict between a culture of death and a culture of life, the Church should have the courage to proclaim the culture of life for the common good of society;

The questioned orders are unpardonable intrusion into the affairs of the Church and constitute serious violations of the principle of separation of Church and State which the State and its officials, including the herein respondents, are bound to respect, observe, and hold sacred.

JUAN PONCE ENRILE v. SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES
G.R. No. 213847. July 12, 2016, EN BANC (Bersamin, J.)

The People of the Philippines represented by the Office of Special Prosecutor of the Office of the Ombudsman filed a Motion for Reconsideration to assail the decision promulgated by the Court granting the petition of Senator Juan Ponce Enrile, allowing him provisional remedies.

The People argue that the decision is inconsonant with deeply-embedded constitutional principles on the right to bail; that the express and unambiguous intent of the 1987 Constitution is to place persons accused of crimes punishable by reclusion perpetua on a different plane, and make their availment of bail a matter of judicial discretion, not a matter of right, only upon a showing that evidence of their guilt is not strong; and that the Court should have proceeded from the general proposition that the petitioner had no right to bail because he does not stand on equal footing with those accused of less grave crimes.

The People contend that the grant of provisional liberty to a person charged with a grave crime cannot be predicated solely on the assurance that he will appear in court, but should also consider whether he will endanger other important interests of the State, the probability of him repeating the crime committed, and how his temporary liberty can affect the prosecution of his case; that the petitioner's fragile state of health does not present a compelling justification for his admission to bail; that age and health considerations are relevant only in fixing the amount of bail; and that even so, his age and health condition were never raised or litigated in the Sandiganbayan because he had merely filed thereat a Motion to Fix Bail and did not thereby actually apply for bail

ISSUE

Is the contention of the petitioner meritorious?

RULING

No. The Court did not find any compelling or good reason to reverse its decision.

Bail exists to ensure society's interest in having the accused answer to a criminal prosecution without unduly restricting his or her liberty and without ignoring the accused's right to be presumed innocent. ft does not perform the function of preventing or licensing the commission of a crime. The notion that bail is required to punish a person accused of crime is, therefore, fundamentally misplaced. Indeed, the practice of admission to bail is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. The spirit of the procedure is rather to enable them to stay out of jail until a trial with all the safeguards has found and adjudged them guilty. Unless permitted this conditional privilege, the individuals wrongly accused could be punished by the period or imprisonment they undergo while awaiting trial, and even handicap them in consulting counsel, searching for evidence and witnesses, and preparing a defense. Hence, bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring his presence at trial

Hence, the contentions are unmeritorious.

GLORIA MACAPAGAL-ARROYO v. PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN
G.R. No. 220598/G.R. No. 220953. July 19, 2016, EN BANC (Bersamin, J.)

The Court resolves the consolidated petitions for certiorari separately filed by former President Gloria Macapagal-Arroyo and Philippine Charity Sweepstakes Office (PCSO) Budget and Accounts Manager Benigno B. Aguas.

On July 10, 2012, the Ombudsman charged in the Sandiganbayan former President Gloria Macapagal-Arroyo (GMA) and PCSO Budget and Accounts Manager Aguas (and some other officials of PCSO and Commission on Audit whose charges were later dismissed by the Sandiganbayan after their respective demurrers to evidence were granted, except for Uriarte and Valdes who were at large) for conspiracy to commit plunder, as defined by, and penalized under Section 2 (b) of Republic Act (R.A.) No. 7080, as amended by R.A. No. 7659.

The information reads: That during the period from January 2008 to June 2010 or sometime prior or subsequent thereto xxx accused Gloria Macapagal-Arroyo, the then President of the Philippines xxx Benigno Aguas, then PCSO Budget and Accounts Manager, all public officers committing the offense in relation to their respective offices and taking undue advantage of their respective official positions, authority, relationships, connections or influence, conniving, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally amass, accumulate and/or acquire, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of PHP365,997,915.00, more or less, [by raiding the public treasury].

Thereafter, accused GMA and Aguas separately filed their respective petitions for bail which were denied by the Sandiganbayan on the ground that the evidence of guilt against them was strong.

After the Prosecution rested its case, accused GMA and Aguas then separately filed their demurrers to evidence asserting that the Prosecution did not establish a case for plunder against them. The same were denied by the Sandiganbayan, holding that there was sufficient evidence to show that they had conspired to commit plunder. After the respective motions for reconsideration filed by GMA and Aguas were likewise denied by the Sandiganbayan, they filed their respective petitions for certiorari.

ISSUES:

1. Whether or not the special civil action for certiorari is proper to assail the denial of the demurrers to evidence.
2. 2. Whether or not the State sufficiently established the existence of conspiracy among GMA, Aguas, and Uriarte ;
3. Whether or not the State sufficiently established all the elements of the crime of plunder: (a) Was there evidence of amassing, accumulating or acquiring ill-gotten wealth in the total amount of not less than P50,000,000.00? (b) Was the predicate act of raiding the public treasury alleged in the information proved by the Prosecution?

RULING

1. The special civil action for certiorari is generally not proper to assail such an interlocutory order issued by the trial court because of the availability of another remedy in the ordinary course of law. Moreover, Section 23, Rule 119 of the Rules of Court expressly provides that "the order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment." It is not an insuperable obstacle to this action, however, that the denial of the demurrers to evidence of the petitioners was an interlocutory order that did not terminate the proceedings, and the proper recourse of the demurring accused was to go to trial, and that in case of their conviction they may then appeal the conviction, and assign the denial as among the errors to be reviewed. Indeed, it is doctrinal that the situations in which the writ of certiorari may issue should not be limited, because to do so "x x x would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that certiorari is more discretionary than either prohibition or mandamus. In the exercise of our superintending control over other courts, we are to be guided by all the circumstances of each particular case 'as the ends of justice may require.' So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice."

The exercise of this power to correct grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government cannot be thwarted by rules of procedure to the contrary or for the sake of the convenience of one side. This is because the Court has the bounden constitutional duty to strike down grave abuse of discretion whenever and wherever it is committed. Thus, notwithstanding the interlocutory character and effect of the denial of the demurrers to evidence, the petitioners as the accused could avail themselves of the remedy of certiorari when the denial was tainted with grave abuse of discretion.

2. The Prosecution did not properly allege and prove the existence of conspiracy among GMA, Aguas and Uriarte.

A perusal of the information suggests that what the Prosecution sought to show was an implied conspiracy to commit plunder among all of the accused on the basis of their collective actions prior to, during and after the implied agreement. It is notable that the Prosecution did not allege that the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.

We are not unmindful of the holding in Estrada v. Sandiganabayan [G.R. No. 148965, February 26, 2002, 377 SCRA 538, 556] to the effect that an information alleging conspiracy is sufficient if the information alleges conspiracy either: (1) with the use of the word conspire, or its derivatives or synonyms, such as confederate, connive, collude, etc; or (2) by allegations of the basic facts constituting the conspiracy in a manner that a person of common understanding would know what is being conveyed, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts. We are not talking about the sufficiency of the information as to the allegation of conspiracy, however, but rather the identification of the main plunderer sought to be prosecuted under R.A. No. 7080 as an element of the crime of plunder. Such identification of the main plunderer was not only necessary because the law required such identification, but also because it was essential in safeguarding the rights of all of the accused to be properly informed of the charges they were being made answerable for. The main purpose of requiring the various elements of the crime charged to be set out in the information is to enable all the accused to suitably prepare their defense because they are presumed to have no independent knowledge of the facts that constituted the offense charged.

Despite the silence of the information on who the main plunderer or the mastermind was, the Sandiganbayan readily condemned GMA in its resolution dated September 10, 2015 as the mastermind despite the absence of the specific allegation in the information to that effect. Even worse, there was no evidence that substantiated such sweeping generalization.

In fine, the Prosecution's failure to properly allege the main plunderer should be fatal to the cause of the State against the petitioners for violating the rights of each accused to be informed of the charges against each of them.

3. (a) No proof of amassing, or accumulating, or acquiring ill-gotten wealth of at least Php50 Million was adduced against GMA and Aguas.

The corpus delicti of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than Php50,000,000.00. The failure to establish the corpus delicti should lead to the dismissal of the criminal prosecution.

As regards the element that the public officer must have amassed, accumulated or acquired ill-gotten wealth worth at least P50,000,000.00, the Prosecution adduced no evidence showing that either GMA or Aguas or even Uriarte, for that matter, had amassed, accumulated or acquired ill-gotten wealth of any amount. There was also no evidence, testimonial or otherwise, presented by the Prosecution showing even the remotest possibility that the CIFs [Confidential/Intelligence Funds] of the PCSO had been diverted to either GMA or Aguas, or Uriarte.

(b) The Prosecution failed to prove the predicate act of raiding the public treasury (under Section 2 (b) of Republic Act (R.A.) No. 7080, as amended)

To discern the proper import of the phrase raids on the public treasury, the key is to look at the accompanying words: misappropriation, conversion, misuse or malversation of public funds [See Sec. 1(d) of RA 7080]. This process is conformable with the maxim of statutory construction noscitur a sociis, by which the correct construction of a particular word or phrase that is ambiguous in itself or is equally susceptible of various meanings may be made by considering the company of the words in which the word or phrase is found or with which it is associated. Verily, a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, therefore, be modified or restricted by the latter. To convert connotes the act of using or disposing of another's property as if it were one's own; to misappropriate means to own, to take something for one's own benefit; misuse means "a good, substance, privilege, or right used improperly, unforeseeably, or not as intended;" and malversation occurs when "any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially." The common thread that binds all the four terms together is that the public officer used the property taken. Considering that raids on the public treasury is in the company of the four other terms that require the use of the property taken, the phrase raids on the public treasury similarly requires such use of the property taken. Accordingly, the Sandiganbayan gravely erred in contending that the mere accumulation and gathering constituted the forbidden act of raids on the public treasury. Pursuant to the maxim of noscitur a sociis, raids on the public treasury requires the raider to use the property taken impliedly for his personal benefit.

As a result, not only did the Prosecution fail to show where the money went but, more importantly, that GMA and Aguas had personally benefited from the same. Hence, the Prosecution did not prove the predicate act of raids on the public treasury beyond reasonable doubt.

LEODEGARIO A. LABAO, JR. v. COMMISSION ON ELECTIONS AND LUDOVICO L. MARTELINO, JR.
G.R. No. 212615/G.R. No. 212989. July 19, 2016, EN BANC (Leonardo-De Castro, J.)

In a Petition for Disqualification dated May 8, 2013 filed before the COMELEC, Ludovico L. Martelino, Jr. (Ludovico) sought the disqualification of Labao, Jr. as candidate3 for Mayor of the Municipality of Mambusao, Capiz in the May 13, 2013 elections, on the ground that Labao, Jr. was a fugitive from justice. Ludovico essentially averred that there was an outstanding warrant for Labao, Jr.'s arrest in connection with the filing of an Information for Murder against him and four other persons; and that he had eluded arrest, thus, was at large.

Labao Jr. contends that he is no longer considered a fugitive from justice on the premise that there is no more warrant of arrest against him and the criminal charge was dimissed.

COMELEC disqualified Labao, Jr. contending that he is considered as fugitive from justice. The case was heard by COMELEC en banc; the body confirmed the decision of the COMELEC first division.

ISSUE

Did the COMELEC committed grave abuse of discretion for considering Labao as a fugitive from justice, hence disqualifying him from running as mayor?

RULING

YES. The Court finds that the pieces of evidence on record do not sufficiently establish Labao Jr.'s intention to evade being prosecuted for a criminal charge.

The COMELEC En Banc's resolution should be struck down for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Court is hard-pressed to label Labao, Jr.' s actions as evasion of prosecution for him to be considered a fugitive from justice that would disqualify him to run as a candidate for Mayor of Mambusao, Capiz

INTELLECTUAL PROPERTY ASSOCIATION OF THE PHILIPPINES v. HON. PAQUITO OCHOA, ET AL.
G.R. No. 204605. July 19, 2016, EN BANC (Bersamin, J.)

The Madrid System for the International Registration of Marks (Madrid System), which is the centralized system providing a one-stop solution for registering and managing marks worldwide, allows the trademark owner to file one application in one language, and to pay one set of fees to protect his mark in the territories of up to 97 member-states. The Madrid System is governed by the Madrid Agreement, concluded in 1891, and the Madrid Protocol, concluded in 1989.

The Madrid Protocol, which was adopted in order to remove the challenges deterring some countries from acceding to the Madrid Agreement, has two objectives, namely: (1) to facilitate securing protection for marks; and (2) to make the management of the registered marks easier in different countries. 4 In 2004; the Intellectual Property Office of the Philippines (IPOPHL), the government agency mandated to administer the intellectual property system of the country and to implement the state policies on intellectual property; began considering the country's accession to the Madrid Protocol. However, based on its assessment in 2005, the IPOPHL needed to first improve its own operations before making the recommendation in favor of accession. The IPOPHL thus implemented reforms to eliminate trademark backlogs and to reduce the turnaround time for the registration of marks

IPOHL mounted a campaign for information dissemination to raise awareness of the Madrid Protocol. After series of consultations it was recommended to the DFA that the Philippines should accede to the protocol.

After the review, DFA endorsed to the President the accession to the protocol. President Benigno Aquino III ratified the Madrid Protocol through instrument of accession.

Petitioner IPAP, an association of more than 100 law firms and individual practitioners of intellectual property law commenced a special civil action for certiorari and prohibition challenging the validity of the president's accession without the concurrence of the Senate. IPAP contends that Madrid Protocol is a treaty, not an executive agreement, hence, DFA Secretary Albert Del Rosario acted with grave abuse of discretion in determining the protocol as an executive agreement. Hence, the action was instituted.

ISSUE

Whether or not he President's ratification of the Madrid Protocol is valid and constitutional

RULING

Yes. DFA Secretary Del Rosario's determination and treatment of the Madrid Protocol as an executive agreement; being in apparent contemplation of the express state policies on intellectual property as well as within his power under Executive Order No. 459, are upheld. We observe at this point that there are no hard and fast rules on the propriety of entering into a treaty or an executive agreement on a given subject as an instrument of international relations.

The primary consideration in the choice of the form of agreement is the parties' intent and desire to craft their international agreement in the form they so wish to further their respective interests. The matter of form takes a back seat when it comes to effectiveness and binding effect of the enforcement of

a treaty or an executive agreement; inasmuch as all the parties; regardless of the form, become obliged to comply conformably with the time-honored principle of pacta sunt servanda. The principle binds the parties to perform in good faith their parts in the agreements.

The agreement then is an executive agreement; concurrence of the Senate is not necessary and the president can ratify it.

RENE A.V. SAGUISAG, ET AL. V. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., ET AL.
G.R. No. 212426/G.R. No. 212444. July 26, 2016, EN BANC (Sereno, J.)

Saguisag et.al seek to reverse the decision of the Court in the decision it rendered in the case of Saguisag et. al. v. Executive Secretary dated January 12, 2016, which questioned the constitutionality of the Enhanced Defense Cooperation Agreement (EDCA) between the Republic of the Philippines and the United States of America; wherein the Court dismissed the petition.

Petitioners claim this Court erred when it ruled that EDCA was not a treaty. In connection to this, petitioners move that EDCA must be in the form of a treaty in order to comply with the constitutional restriction under Section 25, Article· XVIII of the 1987 Constitution on foreign military bases, troops, and facilities.6 Additionally, they reiterate their arguments on the issues of telecommunications, taxation, and nuclear weapons.

ISSUE

Whether or not the contention of Saguisag et.al. is tenable?

RULING

No, the contention is untenable. The Court denied the motion of Saguisag et.al.

The principal reason for the Motion for Reconsideration is evidently petitioners' disagreement with the Decision that EDCA implements the VFA and MDT. They reiterate their arguments that EDCA's provisions fall outside the allegedly limited scope of the VF A and MDT because it provides a wider arrangement than the VFA for military bases, troops, and facilities, and it allows the establishment of U.S. military bases.

Specifically, petitioners cite the terms of the VFA referring to "joint exercises," such that arrangements involving the individual States-parties such as exclusive use of prepositioned materiel are not covered by the VFA. More emphatically, they state that prepositioning itself as an activity is not allowed under the VFA.

Evidently, petitioners left out of their quote the portion of the Decision which cited the Senate report on the VF A. The full quote reads as follows: Siazon clarified that it is not the VF A by itself that determines what activities will be conducted between the armed forces of the U.S. and the Philippines. The VF A regulates and provides the legal framework for the presence, conduct and legal status of U.S. personnel while are in the country for visits, joint exercises and other related activities.

Quite clearly, the VFA contemplated activities beyond joint exercises, which this Court had already recognized and alluded to in Lim v. Executive Secretary,even though the Court in that case was faced with a challenge to the Terms of Reference of a specific type of joint exercise, the Balikatan Exercise. One source petitioners used to make claims on the limitation of the VFA to joint exercises is the alleged Department of Foreign Affairs (DFA) Primer on the VF A, which they claim states that: Furthermore, the VF A does not involve access arrangements for United States armed forces or the pre-positioning in the country of U.S. armaments and war materials. The agreement is about personnel and not equipment or supplies.

The Court ruled in Saguisag, et. al. that the EDCA is not a treaty despite the presence of these provisions. The very nature of EDCA, its provisions and subject matter, indubitably categorize it as an executive agreement - a class of agreement that is not covered by the Article XVIII Section 25 restriction -in painstaking detail.

Hence, the Court denied the motion.

ALVIN VERGARA v. LOURDES GRECIA
G.R. No. 185638. August 10, 2016, THIRD DIVISION (Reyes, J.)

The subject land owned by respondents was taken by the *Sangguniang Panlungsod* of Cabanatuan (*Sanggunian*) for right-of-way and road widening projects. Mayor Vergara executed a Memorandum of Agreement (MOA) with Lourdes, whereby the *Sanggunian* bound itself to pay the respondents the amount of P17, 028, 900.00 in 12 years as the rate of P1,419,075.00 every year starting the first quarter of 2002 as payment. Four years after, no payment was ever made to the respondents.

The petitioners, however, argue that they are not obliged to pay the respondents because the subject land is burdened by encumbrances37 which showed that it is a subdivision lot which is beyond the commerce of man. Thus, the MOA between the petitioners and the respondents is null and void.

ISSUES:

1. Is the moa void on the ground that the subject land is not within the commerce of men?

2. Are petitioners liable to pay just compensation?

3. Is there a basis for the grant of interest?

RULING:

1. No. The alleged encumbrance in the respondents' title and the interpretation and application of section 50 of p.d. no. 1529 are no longer novel since this court had already made a definitive ruling on the matter in the case of *republic of the philippines v. Ortigas and company limited partnership*, where the court ruled that therein petitioners' reliance on section 50 of p.d. no. 1529 is erroneous since it contemplates roads and streets in a subdivided property, not public thoroughfares built on a private property that was taken from an owner for public purpose. A public thoroughfare is not a subdivision road or street.

Apparently, the subject land is within the commerce of man and is therefore a proper subject of an expropriation proceeding. Pursuant to this, the moa between the petitioners and the respondents is valid and binding. Thus, there is no need to discuss the matter of the petitioners' estoppel or the authority of mayor vergara to sign the moa.

2. Yes. The petitioners are liable to pay the full market value of the subject land.

There is no question raised concerning the right of the petitioners here to acquire the subject land under the power of eminent domain. But the exercise of such right is not unlimited, for two mandatory requirements should underlie the government's exercise of the power of eminent domain

namely: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.

Undisputedly, in this case, the purpose of the condemnation is public but there was no payment of just compensation to the respondents. The petitioners should have first instituted eminent domain proceedings and deposit with the authorized government depositary an amount equivalent to the assessed value of the subject land before it occupied the same. Due to the petitioners' omission, the respondents were constrained to file inverse condemnation proceedings to demand the payment of just compensation before the trial court. From 1989 until the present, the respondents were deprived of just compensation, while the petitioners continuously burdened their property.

3. Yes. The undue delay of the petitioners to pay the just compensation brought about the basis for the grant of interest.

Apart from the requirement that compensation for expropriated land must be fair and reasonable, compensation, to be "just", must also be made without delay. Without prompt payment, compensation cannot be considered "just" if the property is immediately taken as the property owner suffers the immediate deprivation of both his land and its fruits or income.

The rationale for imposing the interest is to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking. There is a need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. Settled is the rule that the award of interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance. This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades.

GOVERNMENT OF HONGKONG SPECIAL ADMINISTRATIVE REGION *v.* JUAN ANTONIO MUÑOZ
G.R. No. 207342, 16 August 2016 EN BANC (Bersamin, *J.*)

Juan Antonio Muñoz (Muñoz) is the Head of the Treasury Department of the Central Bank of the Philippines (CBP). Mr. Ho CHI ("CHI") on the other hand, was the Chief Executive of Standard Chartered Bank -The Mocatta Group (Hong Kong) ("MHK"). As a means for CBP to raise finance, series of "gold swaps" and gold backed loans between CBP and Mocatta (London) through MHK in Hong Kong took place. Several other transactions took place and as a result thereof, profits were later on transferred to the Sundry Creditors Account and were subsequently disbursed to the benefit of CHI and Muñoz personally.

Ten (10) criminal cases were then filed against Muñoz in Hong Kong -i.e., three (3) counts of accepting an advantage as an agent, contrary to Section 9(1) (a) of the Prevention of Bribery Ordinance, Cap. 201 and seven (7) counts of conspiracy to defraud, contrary to the common law of Hong Kong Special Administrative Region (HKSAR).

Invoking the Agreement between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons (RP-HK Agreement), HKSAR inquired from the Philippine Consulate General in Hong Kong on which agency of the Philippine Government should handle a request for extradition under the RP-HK Agreement. The Department of Justice (DOJ) received the request for the provisional arrest of Munoz. The National Bureau of Investigation (NBI), acting for and in behalf of HKSAR, initiated the proceedings for his arrest in the Regional Trial Court (RTC), which consequently issued the order of arrest. Muñoz challenged through *certiorari*, prohibition and *mandamus* the validity of the order for his arrest in the Court of Appeals, which declared the order of arrest null and void in its judgment.

Meantime, the DOJ, representing the HKSAR, filed a petition in the RTC for the surrender of Muñoz to the HKSAR to face the criminal charges against him in Hong Kong. Muñoz filed then a petition for bail. It was initially denied but was thereafter granted. The DOJ then assailed the granting of bail to Muñoz as a potential extraditee by petition for *certiorari*. Eventually, the RTC ruled on the main case of extradition by holding that the extradition request sufficiently complied with the RP-HK Agreement and Presidential Decree No. 1069. Muñoz then elevated the adverse decision. The CA concluded that the crime of accepting an advantage as an agent should be excluded from the charges under which Muñoz would be tried due to non-compliance with the double criminality rule.

ISSUES:

1. Did the extradition request of the Government of Hong Kong Special Administrative Region (HKSAR) sufficiently complied with the RP-HK Agreement and Presidential Decree No. 1069 (Philippine Extradition Law)?

2. Should the crime of *accepting an advantage as an agent* charged against Muñoz be excluded from the charges for which he would be tried in Hong Kong due to non-compliance with the double criminality rule?

RULING:

1. NO. The RP-HK Agreement is still in full force and effect as an extradition treaty. For purposes of the extradition of Muñoz, the HKSAR as the requesting state must establish the following six elements, namely: (1) there must be an extradition treaty in force between the HKSAR and the Philippines; (2) the criminal charges· that are pending in the HKSAR against the person to be extradited; (3) the crimes for which the person to be extradited is charged are extraditable within the terms of the treaty; (4) the individual before the court is the same person charged in the HKSAR; (5) the evidence submitted establishes probable cause to believe that the person to be extradited committed the offenses charged; and (6) the offenses are criminal in both the HKSAR and the Philippines (double criminality rule).

The first five of the elements inarguably obtain herein, as both the RTC and the CA found. First, the RP-Hong Kong Agreement subsists and has not been revoked or terminated by either parties. Secondly, there have been 10 criminal cases filed against Muñoz in Hong Kong, specifically: three counts of accepting an advantage as an agent and seven counts of conspiracy to defraud. Thirdly, the crimes of accepting an advantage as an agent and of conspiracy to defraud were extraditable under the terms of the RP-Hong Kong Agreement. Fourthly, Muñoz was the very same person charged with such offenses based on the documents relied upon by the DOJ, and the examination and determination of probable cause by the RTC that led to the issuance of the order for the arrest of Muñoz. And, fifth, there is probable cause to believe that Muñoz committed the offenses charged. However, it was as to the sixth element that the CA took exception as not having been established.

The Court upheld the conclusion and observation by the CA that the crime of accepting an advantage as an agent did not have the equivalent in this jurisdiction considering that when the unauthorized giving and receiving benefits happened in the private sector, the same was not a crime because there was no law that defined and punished such act as criminal in this jurisdiction.

2. YES. Under the double criminality rule, the extraditable offense must be criminal under the laws of both the requesting and the requested states. This simply means that the requested state comes under no obligation to surrender the person if its laws do not regard the conduct covered by the request for extradition as criminal.

The foreign law subject-matter of this controversy deals with bribery in both public and private sectors. However, it is also quite evident that the particular provision of the Prevention of Bribery Ordinance (POBO) allegedly violated by Muñoz, i.e., Section 9(1)(a), deals with private sector bribery - this, despite the interpretation under Section 2 of the POBO that an "agent includes a public servant and any person employed by or acting for another." Considering that the transactions were entered into by and in behalf of the Central Bank of the Philippines, an instrumentality of the Philippine Government, Muñoz should be charged for the offenses not as a regular agent or one representing a private entity but as a public servant or employee of the Philippine Government. The offense of accepting an advantage as an agent charged against him in the HKSAR is one that deals with private sector bribery, the conditions for the application of the double criminality rule are obviously not met. Accordingly, the crime of accepting an advantage as an agent must be dropped from the request for extradition. Conformably with the principle of specialty embodied in Article 17 of the RP-HK Agreement, Muñoz should be proceeded against only for the seven counts of conspiracy to defraud.

WILFREDO MOSQUEDA, et al. v. PILIPINO BANANA GROWERS & EXPORTERSASSOCIATION, INC., et al.
G.R. No. 189185/G.R. No. 189305. August 16, 2016, EN BANC (Bersamin, J.)

After several committee hearings and consultations with various stakeholders, the *Sangguniang Panlungsod* of Davao City enacted Ordinance No. 0309, Series of 2007, to impose a ban against aerial spraying as an agricultural practice by all agricultural entities within Davao City.

The ordinance was challenged by Pilipino Banana Growers and Exporters Association Incorporated after it took effect on March 23, 2007 – more than a month after it was approved by then Mayor Rodrigo Duterte challenging the constitutionality of the ordinance, and to seek the issuance of provisional reliefs through a temporary restraining order (TRO) and/or writ of preliminary injunction. They alleged that the ordinance exemplified the unreasonable exercise of police power, violated the equal protection clause, and amounted to the confiscation of property without due process of law; and lacked publication pursuant to Section 5116 of Republic Act No. 7160 (Local Government Code).

ISSUES:

1. Did the City of Davao act within the limits of its corporate powers in enacting the ordinance?

2. Is the ordinance violative of the due process clause?

3. Is the ordinance violative of the equal protection clause?

4. Is the enactment of the ordinance an ultra vires act?

RULING:

1. YES. The Sangguniang Bayan of Davao City enacted Ordinance No. 0309-07 under its corporate powers.

The corporate powers of the local government unit confer the basic authority to enact legislation that may interfere with personal liberty, property, lawful businesses and occupations in order to promote the general welfare. Such legislative powers spring from the delegation thereof by Congress through either the *Local Government Code* or a special law. The General Welfare Clause in Section 16 of the *Local Government Code* embodies the legislative grant that enables the local government unit to effectively accomplish and carry out the declared objects of its creation, and to promote and maintain local autonomy.

Section 16 comprehends two branches of delegated powers, namely: the *general legislative power* and the *police power proper*. General legislative power refers to the power delegated by Congress to the local legislative body, or the *Sangguniang Panlungsod* in the case of Dayao City, to enable the local legislative body to enact ordinances and make regulations. This power is limited in that the enacted ordinances must not be repugnant to law, and the power must be exercised to effectuate and discharge the powers and duties legally conferred to the local legislative body. The police power proper, on the other hand, authorizes the local government unit to enact ordinances necessary and proper for the health and safety,

prosperity, morals, peace, good order, comfort, and convenience of the local government unit and its constituents, and for the protection of their property.

In terms of the right of the citizens to health and to a balanced and healthful ecology, the local government unit takes its cue from Section 15 and Section 16, Article II of the 1987 Constitution. Following the provisions of the *Local Government Code* and the Constitution, the acts of the local government unit designed to ensure the health and lives of its constituents and to promote a balanced and healthful ecology are well within the corporate powers vested in the local government unit. Accordingly, the Sangguniang Bayan of Davao City is vested with the requisite authority to enact an ordinance that seeks to protect the health and well-being of its constituents.

Advancing the interests of the residents who are vulnerable to the alleged health risks due to their exposure to pesticide drift justifies the motivation behind the enactment of the ordinance. The City of Davao has the authority to enact pieces of legislation that will promote the general welfare, specifically the health of its constituents. Such authority should not be construed, however, as a valid license for the City of Davao to enact any ordinance it deems fit to discharge its mandate. A thin but well-defined line separates authority to enact legislations from the method of accomplishing the same.

2. YES. Ordinance No. 0309-07 violates the Due Process Clause.

A valid ordinance must not only be enacted within the corporate powers of the local government and passed according to the procedure prescribed by law. In order to declare it as a valid piece of local legislation, it must also comply with the following substantive requirements, namely: (1) it must not contravene the Constitution or any statute; (2) it must be fair, not oppressive; (3) it must not be partial or discriminatory; (4) it must not prohibit but may regulate trade; (5) it must be general and consistent with public policy; and (6) it must not be unreasonable.

In the State's exercise of police power, the property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the Government.[110] A local government unit is considered to have properly exercised its police powers only if it satisfies the following requisites, to wit: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive. The first requirement refers to the Equal Protection Clause of the Constitution; the second, to the Due Process Clause of the Constitution.

The impossibility of carrying out a shift to another mode of pesticide application within three months can readily be appreciated given the vast area of the affected plantations and the corresponding resources required therefor. To recall, even the RTC recognized the impracticality of attaining a full-shift to other modes of spraying within three months in view of the costly financial and civil works required for the conversion.

The required civil works for the conversion to truck-mounted boom spraying alone will consume considerable time and financial resources given the topography and geographical features of the plantations. As such, the conversion could not be completed within the short timeframe of three months. Requiring the respondents and other affected individuals to comply with the consequences of the ban within the three-month period under pain of penalty like fine, imprisonment and even cancellation of business permits would definitely be oppressive as to constitute abuse of police power.

The establishment of the buffer zone is required for the purpose of minimizing the effects of aerial spraying within and near the plantations. Although Section 3(e) of the ordinance requires the planting of diversified trees within the identified buffer zone, the requirement cannot be construed and deemed as confiscatory requiring payment of just compensation. A landowner may only be entitled to compensation if the taking amounts to a permanent denial of all economically beneficial or productive uses of the land. The respondents cannot be said to be permanently and completely deprived of their landholdings because they can still cultivate or make other productive uses of the areas to be identified as the buffer zones.

3. YES. Ordinance No. 0309-07 violates the Equal Protection Clause.

The occurrence of pesticide drift is not limited to aerial spraying but results from the conduct of any mode of pesticide application. Even manual spraying or truck-mounted boom spraying produces drift that may bring about the same inconvenience, discomfort and alleged health risks to the community and to the environment. A ban against aerial spraying does not weed out the harm that the ordinance seeks to achieve. In the process, the ordinance suffers from being "underinclusive" because the classification does not include all individuals tainted with the same mischief that the law seeks to eliminate. A classification that is drastically underinclusive with respect to the purpose or end appears as an irrational means to the legislative end because it poorly serves the intended purpose of the law.

The claim that aerial spraying produces more aerial drift cannot likewise be sustained in view of the petitioners' failure to substantiate the same. The respondents have refuted this claim, and have maintained that on the contrary, manual spraying produces more drift than aerial treatment. As such, the decision of prohibiting only aerial spraying is tainted with arbitrariness.

Aside from its being underinclusive, the assailed ordinance also tends to be "overinclusive" because its .impending implementation will affect groups that have no relation to the accomplishment of the legislative purpose. Its implementation will unnecessarily impose a burden on a wider range of individuals than those included in the intended class based on the purpose of the law.

It can be noted that the imposition of the ban is too broad because the ordinance applies irrespective of the substance to be aerially applied and irrespective of the agricultural activity to be conducted. The respondents admit that they aerially treat their plantations not only with pesticides but also vitamins and other substances. The imposition of the ban against aerial spraying of substances other than fungicides and regardless of the agricultural activity being performed becomes unreasonable inasmuch as it patently bears no relation to the purported inconvenience, discomfort, health risk and environmental danger which the ordinance, seeks to address. The burden now will become more onerous to various entities including the respondents and even others with no connection whatsoever to the intended purpose of the ordinance.

The overinclusiveness of Ordinance No. 0309-07 may also be traced to its Section 6 by virtue of its requirement for the maintenance of the 30- meter buffer zone. This requirement applies regardless of the area of the agricultural landholding, geographical location, topography, crops grown and other distinguishing characteristics that ideally should bear a reasonable relation to the evil sought to be avoided. As earlier discussed, only large banana plantations could rely on aerial technology because of the financial capital required therefor.

Evidently, the ordinance discriminates against large farmholdings that are the only ideal venues for the investment of machineries and equipment capable of aerial spraying. It effectively denies the

affected individuals the technology aimed at efficient and cost-effective operations and cultivation not only of banana but of other crops as well. The prohibition against aerial spraying will seriously hamper the operations of the banana plantations that depend on aerial technology to arrest the spread of the Black Sigatoka disease and other menaces that threaten their production and harvest. As earlier shown, the effect of the ban will not be limited to Davao City in view of the significant contribution of banana export trading to the country's economy.

4. YES. Ordinance No. 0309-07 is an ultra vires act.

Although the *Local Government Code* vests the municipal corporations with sufficient power to govern themselves and manage their affairs and activities, they definitely have no right to enact ordinances dissonant with the State's laws and policy. The *Local Government Code* has been fashioned to delineate the specific parameters and limitations to guide each local government unit in exercising its delegated powers with the view of making the local government unit a fully functioning subdivision of the State within the constitutional and statutory restraints. The *Local Government Code* is not intended to vest in the local government unit the blanket authority to legislate upon any subject that it finds proper to legislate upon in the guise of serving the common good.

The function of pesticides control, regulation and development is within the jurisdiction of the FPA under Presidential Decree No. 1144. The FPA was established in recognition of the need for a technically oriented government entity that will protect the public from the risks inherent in the use of pesticides. To perform its mandate, it was given under Section 6 of Presidential Decree No. 1144 the following powers and functions with respect to pesticides and other agricultural chemicals

Evidently, the FPA was responsible for ensuring the compatibility between the usage and the application of pesticides in agricultural activities and the demands for human health and environmental safety. This responsibility includes not only the identification of safe and unsafe pesticides, but also the prescription of the safe modes of application in keeping with the standard of good agricultural practices.

In enacting Ordinance No. 0309-07 without the inherent and explicit authority to do so, the City of Davao performed an *ultra vires* act. As a local government unit, the City of Davao could act only as an agent of Congress, and its every act should always conform to and reflect the will of its principal.

MANUEL ROXAS v. JEJOMAR BINAY
P.E.T. No. 004. August 16, 2016 (Bersamin, J.)

On July 9, 2010, Roxas filed a protest after the Congress proclaimed Binay as the Vice President duly elected in the May 2010 national elections. On May 9, 2016, the Philippines elected a new set of national and local officials and on June 30, 2016 Leonora Robredo was proclaimed the newly elected Vice President.

ISSUE:

Should the protest filed by roxas be dismissed on the ground of mootness?

RULING:

Yes. The term of the office of vice president being contested by the parties had expired at noon of june 30, 2016. Vice president robredo has assumed the office thereby contested. Clearly, the protest and the counter-protest that are the subject matter of this case have become moot and academic. As such, the tribunal is constrained to dismiss the protest and the counter-protest. It is settled rule that the tribunal should not anymore proceed in this case because any decision that may be rendered hereon will have no practical or useful purpose, and cannot be enforced. Proceeding in this case until its resolution will then be an exercise in futility considering that there is no longer any practical reason why the tribunal should still determine who had won as vice president in the 2010 national and local elections if the term of such office had already expired.

BARANGAY MAYAMOT, ANTIPOLO CITY v. ANTIPOLO CITY
G.R. No. 187349. August 17, 2016, THIRD DIVISION (Jardaleza, J.)

In 1984, *Batas Pambansa Bilang* (BP Blg.) 787 to 794 were passed creating eight (8) new barangays in the then Municipality of Antipolo. Each law creating the new barangay contained provisions regarding the *sitios* comprising it, its boundaries, and mechanism for ratification of the law.

The Sangguniang Bayan of Antipolo passed Resolution No. 97-89, "Defining the Territorial Boundaries of the Eight (8) Newly Created Barangays and the Eight (8) Former Existing Barangays of the Municipality of Antipolo, Rizal." Resolution No. 97-89 approved the barangay boundaries specified and delineated in the plans/maps prepared by the City Assessor.

Barangay Mayamot filed a Petition for Declaration of Nullity and/or Annulment of Resolution No. 97-89 and Injunction against Antipolo City, Sangguniang Panglungsod of Antipolo, Barangays Sta. Cruz, Bagong Nayon, Cupang, and Mambugan, the City Assessor and the City Treasurer before the RTC of Antipolo City. Barangay Mayamot claimed that while BP Blg. 787 to 794 did not require Barangay Mayamot to part with any of its territory, the adoption of Resolution No. 97-89 reduced its territory to one-half of its original area and was apportioned to Barangays Sta. Cruz, Bagong Nayon, Cupang, and Mambugan. It also claimed that the City Assessor's preparation of the plan and the Sangguniang Panglungsod's adoption of Resolution No. 97-89 were not preceded by any consultation nor any public hearing.

The RTC dismissed the petition for on the ground that it has no original jurisdiction to try and decide a barangay boundary dispute.

ISSUE:

Is the RTC correct in dismissing the petition?

RULING:

YES. Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases. The nature of an action and its subject matter, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs. The designation or caption is not controlling more than the allegations in the complaint. It is not even an indispensable part of the complaint. Also, jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.

In this case, it is of no moment that Barangay Mayamot's petition before the RTC was captioned as one for nullity of Resolution No. 97-89. To recall, Barangay Mayamot claimed that as a result of the consolidation and integration of the boundaries of the old barangays and newly-created barangays and issuance of Resolution No. 97-89 approving the consolidation and integration, a portion of its territory was apportioned to Barangays Bagong Nayon, Sta. Cruz, Cupang, and Mambugan. In other words, the allegations and issues raised by Barangay Mayamot are centered on the alleged inconsistency between its perceived actual and physical territory and its territory and boundaries, as defined and identified after the

Bureau of Lands Cadastral Survey No. 29-047 and the provisions of BP Blg. 787 to 794 were consolidated and integrated by respondent City Assessor into the map of Antipolo. Thus, contrary to Barangay Mayamot's argument that the issue is the validity of Resolution No. 97-89, the issue to be resolved is the boundary dispute between Barangay Mayamot on the one hand, and Barangays Bagong Nayon, Sta. Cruz, Cupang, and Mambugan, on the other hand.

There is a boundary dispute when a portion or the whole of the territorial area of a Local Government Unit (LGU) is claimed by two (2) or more LGUs. Here, Barangay Mayamot is claiming a portion of the territory of Barangays Bagong Nayon, Sta. Cruz, Cupang and Mambugan. Unfortunately for petitioner, the resolution of a boundary dispute is outside the jurisdiction of the RTC.

Based on the foregoing, it is clear that the RTC is without jurisdiction to settle a boundary dispute involving barangays in the same city or municipality. Said dispute shall be referred for settlement to the *sangguniang panglungsod* or *sangguniang bayan* concerned. If there is failure of amicable settlement, the dispute shall be formally tried by the *sanggunian* concerned and shall decide the same within sixty (60) days from the date of the certification referred to. Further, the decision of the *sanggunian* may be appealed to the RTC having jurisdiction over the area in dispute, within the time and manner prescribed by the Rules of Court.

THOMAS BEGNAEN v. SPOUSES LEO CALIGTAN AND ELMACALIGTAN
G.R. No. 189852. August 17, 2016, FIRST DIVISION (Sereno, C.J.)

Thomas Begnaen (Begnaen) filed a complaint against Spouses Leo and Elma Caligtan (Sps. Caligtan) for "Land Dispute and Enforcement of Rights" before the Regional Hearing Office (RHO) of the NCIP at La Trinidad, Benguet. The RHO dismissed the complaint on the ground that the case should have gone to the council of elders and not through the Barangay Lupon, as mandated by the Indigenous Peoples' Rights Act (IPRA).

Begnaen, however, filed against the Sps. Caligtan a complaint for Forcible Entry before the Municipal Circuit Trial Court (MCTC) alleging that he was the owner of the subject land situated. He claimed that on two occasions, respondents - by using force, intimidation, stealth, and threat -entered a portion of the subject property, hurriedly put up a chicken-wire fence, and started building a shack thereon without Begnaen's knowledge and consent. On the other hand, Sps Caligtan averred that they owned the subject land as part of the land they had purchased from a certain Leona Vicente in 1959 pursuant to age-old customs and traditions.

MCTC dismissed the ejectment without prejudice to the filing of a case before the RHO of the NCIP, which the MCTC recognized had primary, original, and exclusive jurisdiction over the matter pursuant to the IPRA. On appeal, RTC reversed MCTC ruling that MCTC has jurisdiction over the matter and that IPRA must be read to harmonize with B.P. Big. 129. The CA, however, reinstated MCTC's ruling upholding the jurisdiction of the NCIP over the present case.

ISSUE:

Is NCIP vested with jurisdiction over the case?

RULING:

NO. The Supreme Court struck down as void the latest iteration of the NCIP rule purporting to confer original and exclusive jurisdiction upon the RHO. The NCIP cannot be said to have even primary jurisdiction over all the ICC/IP cases. We do not find such specificity in the grant of jurisdiction to the NCIP in Section 66 of the IPRA. Neither does the IPRA confer original and exclusive jurisdiction to the NCIP over all claims and disputes involving rights of ICCs/IPs.

Furthermore, NCIP Administrative Circular 44 expands the jurisdiction of the NCIP as original and exclusive in Sections 5 and 1, respectively of Rule III is of no moment. The power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment.

It ought to be stressed that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of the law into effect. The administrative regulation must be within the scope and purview of the law. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature. Indeed, administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. They are intended to carry out, not to supplant or to modify, the law.

In view of the foregoing, We find the CA to have erred in reversing the RTC's findings on the jurisdiction of regular courts and declaring that the NCIP "has original and exclusive jurisdiction over the instant case to the exclusion of the regular courts." Be that as it may, We nevertheless find the MCTC's dismissal; of petitioner-appellant's case for forcible entry against respondents-appellees to be warranted.

The NCIP-RHO, being the agency that first took cognizance of petitioner-appellant's complaint, has jurisdiction over the same to the exclusion of the MCTC. Even as We squarely ruled on the concurrent jurisdiction of the NCIP and the regular courts in *Lim,* this Court likewise said: "We are quick to clarify herein that even as we declare that in some instances the regular courts may exercise jurisdiction over cases which involve rights of ICCs/IPs, the governing law for these kinds of disputes necessarily include the IPRA and the rights the law bestows on ICCs/IPs."

While the doctrine of concurrent jurisdiction means equal jurisdiction to deal with the same subject matter, We have consistently upheld the settled rule that the body or agency that first takes cognizance of; the complaint shall exercise jurisdiction to the exclusion of the others.

The dismissal was pursuant to Section 9, Rule IV of NCIP Administrative Circular No. 1-03, which dictates that "No case shall be brought before the RHO or the Commission unless the parties have exhausted all remedies provided for under customary laws," By doing so, the NCIP-RHO did not divest itself of its jurisdiction over the case; it merely required compliance with the mandatory settlement proceedings. As aptly observed by the MCTC, the case was dismissed "not on the issue of jurisdiction as (the NCIP-RHO) has rightful jurisdiction over it, but on the ground of non-compliance with a condition sine qua non." However, instead of simply complying with the RHO Order, petitioner-appellant filed a forcible entry case, a complete deviation from customary practice.

Finally, the IPRA's declaration of the primacy of customary laws and practices in resolving disputes between ICCs/IPs is no less significant.

Under the foregoing discussions, We find that jurisdiction remains vested in the NCIP-RHO as the first agency to take cognizance over the case, to the exclusion of the MCTC. We likewise declare petitioner-appellant estopped from belatedly impugning the jurisdiction of the NCIP-RHO after initiating a Complaint before it and receiving an adverse ruling.

CIVIL SERVICE COMMISSION v. CAROLINA P. JUEN
G.R. No. 200577. August 17, 2016, THIRD DIVISION (Reyes, J.)

Respondent was investigated for allegedly having paid another person to take the Civil Service Professional Examination (CSPE) given on her behalf.

After preliminary investigation, it was found that there existed a *prima facie* case for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service against the respondent. It found that, after a comparison of the respondent's picture submitted in the Personal Data Sheet and with the picture of the person who took the exam as found in the Picture Seat Plan, the respondent was not the one who actually took the examination but caused somebody to take the exam on her behalf. The respondent was, thus, formally charged with dishonesty, grave misconduct and conduct prejudicial to the best interest of the service and directed to submit an answer within 72 hours from receipt of the formal charge. The respondent denied the allegation.

The CSCRO V found the respondent guilty and imposed the penalty of dismissal with all the accessory penalties attached thereto.

The respondent moved for reconsideration on the grounds that: 1) her constitutional right to due process and right to be informed of the causes against her had been denied; and 2) the CSCRO V had no jurisdiction over the case. She said she was not given sufficient notice to attend the scheduled hearings. The CSCRO V denied the motion. On appeal, the CSC affirmed the decision. The respondent then filed an appeal before the CA. Thereafter, the respondent died of ovarian cancer. The CA set aside the resolutions of CSC on the ground that CSC did not afford the respondent a hearing where she could present her case and submit evidence to support it.

ISSUES:

1. Whether the death of the respondent rendered the appeal moot and academic

2. Whether the CA erred in finding that the respondent was not afforded due process

RULING:

1. YES. The death of the respondent in an administrative case precludes the finding of administrative liability when: a) due process may be subverted; b) on equitable and humanitarian reasons; and c) the penalty imposed would render the proceedings useless. The Court finds that the first exception applies.

Here, the case was pending appeal with the CA when the respondent passed away. The CA was duty bound to render a ruling on the issue of whether or not the respondent was indeed administratively liable of the alleged infraction. However, in its decision, the CA found that the respondent was deprived of her right to due process.

The Court has, in a long line of cases, stated that due process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the

tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) in arriving at a decision, the tribunal must have acted on its own consideration *of the law and the facts of the controversy and must not have simply accepted the views of a subordinate*; and (7) the decision must be rendered in such manner that the respondents would know the reasons for it and the various issues involved.

2. NO. The Court agrees with the conclusion of the CA especially when it stated that the filing of a motion for reconsideration and appeal is not a substitute to deprive the [respondent] of her right to due process. The opportunity to adduce evidence is essential in the administrative process, as decisions must be rendered on the evidence presented, either in the hearing, or at least contained in the record and disclosed to the parties affected.

Since the case against the respondent was dismissed by the CA on the lack of due process, the Court finds it proper to dismiss the present administrative case against the deceased under the circumstances since she can no longer defend herself.

NATIONAL POWER CORPORATION v. HEIRS OF ANTONINA RABIE
G.R. No. 210218. August 17, 2016, SECOND DIVISION (Carpio, J.)

NAPOCOR filed a complaint for expropriation against the respondents for the acquisition of a residential lot to be used as access road for the Caliraya Hydro Electric Power Plant of the Caliraya-Botocan-Kalayaan Build Rehabilitate and Operate Transfer Project of the NAPOCOR. Respondents prayed for a just compensation in the amount of P1,250,700, representing the Bureau of Internal Revenue (BIR) zonal valuation for the "actual area to be occupied" by NAPOCOR. NAPOCOR deposited with the Land Bank of the Philippines (Land Bank) the amount of P411,000.

Respondents filed a Motion to Withdraw Deposit which the trial court granted. NAPOCOR filed a Motion to Issue Order of Expropriation and a Motion for Annotation/Registration of Partial Payment. Both were granted by the RTC. Thereafter, the RTC issued an order directing NAPOCOR to pay the fair market value of the property P11,000.00 per square meter or a total of P9,042,000.00. Respondents filed a Motion for Execution Pending Appeal which the RTC subsequently granted. NAPOCOR filed with the Court of Appeals a petition for certiorari under Rule 65, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. The petition was dismissed.

ISSUE:

Whether discretionary execution applies to eminent domain proceedings

RULING:

NO. While the trial court still had jurisdiction when it issued the order granting execution pending appeal, the Court holds that discretionary execution does not apply to eminent domain proceedings. In *Spouses Curata v. Philippine Ports Authority* where movants alleged advanced age as ground for their motion for discretionary execution, the Court found the trial court to have committed grave abuse of discretion in issuing the order granting execution pending appeal. The Court held that discretionary execution is not applicable to expropriation proceedings, thus:

> As early as 1919 in *Visayan Refining Co. v. Camus* and Paredes, the Court held that when the Government is plaintiff the judgment will naturally take the form of an order merely requiring the payment of the award as a condition precedent to the transfer of the title, as a personal judgment against the Government could not be realized upon execution.
>
> In *Commissioner of Public Highways v. San Diego,* no less than the eminent Chief Justice Claudio Teehankee explained the rationale behind the doctrine that government funds and properties cannot be seized under a writ of execution, thus:
>
> > The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimants action only up to the completion of proceedings anterior to the stage of execution and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the

diversion of public funds from their legitimate and specific objects, as appropriated by law.

PPA's monies, facilities and assets are government properties. Ergo, they are exempt from execution whether by virtue of a final judgment or pending appeal.

PPA is a government instrumentality charged with carrying out governmental functions through the management, supervision, control and regulation of major ports of the country. It is an attached agency of the Department of Transportation and Communication pursuant to PD 505.

Therefore, an undeniable conclusion is that the funds of PPA partake of government funds, and such may not be garnished absent an allocation by its Board or by statutory grant. **If the PPA funds cannot be garnished and its properties, being government properties, cannot be levied via a writ of execution pursuant to a final judgment, then the trial court likewise cannot grant discretionary execution pending appeal, as it would run afoul of the established jurisprudence that government properties are exempt from execution. What cannot be done directly cannot be done indirectly.**

ALLIANCE FOR THE FAMILY FOUNDATION, et al. v. HON. JANETTE L. GARIN, et al.
G.R. No. 217872/G.R. No. 221866. August 24, 2016, SECOND DIVISION (Mendoza, C.J.)

The subject petitions sprouted from *Imbong v. Ochoa* and other cases (Imbong) where the Court declared the RH Law and its IRR as not unconstitutional.

In the first petition, petitioners wrote to the Food and Drug Administration (*FDA*), inquiring about the steps that the agency might have taken to carry out the decision of the Court. The Office of the Solicitor General (*OSG*) assured the petitioners that both the Department of Health (*DOH*) and the FDA were taking steps to comply with the decision of the Court and that it would inform them of any developments. The petitioners claimed that, as of the date of filing, they had not heard anything anymore from the OSG.

Petitioner Rosie B. Luistro chanced upon the FDA's Notice inviting Marketing Authorization Holders (*MAH*) of fifty (50) contraceptive drugs to apply for re-evaluation/re-certification of their contraceptive products and directed "all concerned to give their written comments to said applications on or before October 8, 2014. Petitioner Alliance for the Family Foundation, Inc. (*ALFI*) believed that the contraceptives enumerated in the Notice fell within the definition of "abortifacient" under Section 4(a) of the RH Law because of their "secondary mechanism of action which induces abortion or destruction of the fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb." For said reason, ALFI filed its opposition to all applications with the FDA.

Notwithstanding the pending opposition of the petitioners to the re-evaluation/re-certification of these contraceptive products, the FDA issued two (2) certificates of product registration for the hormonal contraceptives, "Implanon" and "Implanon NXT."

Petitioners instituted the petition for certiorari, contending that the FDA committed grave abuse of discretion for violating the Court's pronouncements in Imbong and for failing to act on their opposition. The petitioners also contend that due to lack of any procedure, rules and regulations and consultations for re-evaluation/re-certification of contraceptive drugs and devices, the FDA had also violated the rudimentary requirements of due process. Invoking the Court's power under Section 5(5), Article VIII of the Constitution, they seek that the Court "promulgate rules and/or disapprove (or approve) rules of procedure in order to adequately protect and enforce the constitutional right to life of the unborn."

In the second petition, petitioners averred that notwithstanding the receipt of the TRO, respondent FDA continued to grant applications for registration and re-certification of reproductive products and supplies.

ISSUES:

1. Whether the petitioners have the *locus standi* to file the subject petitions?

2. Whether the certifications/re-certifications and the distribution of the contraceptive drugs by the respondents should be struck down as violative of the constitutional right to due process?

RULING:

1. YES. In Imbong, it was already stated that "(from) the declared policy of the RH Law, it is clear that Congress intended that the public be given only those medicines that are proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards." Thus, the public, including the petitioners in these cases, have the right to question any approval or disapproval by the FDA of any drugs or devices which they suspect to be abortifacient on the ground that they were not properly tested or were done in haste or secrecy.

Since the Court in Imbong already declared that the issues of contraception and reproductive health in relation to the right to life of the unborn child were indeed of transcendental importance, and considering also that the petitioners averred that the respondents unjustly caused the allocation of public funds for the purchase of alleged abortifacients which would deprive the unborn of its the right to life, the Court finds that the petitioners have locus standi to file these petitions.

2. YES. The Court finds that the FDA certified, procured and administered such contraceptive drugs and devices, without the observance of the basic tenets of due process, without notice and without public hearing, despite the constant opposition from the petitioners. From the records, it appears that other than the notice inviting stakeholders to apply for certification/re-certification of their reproductive health products, there was no showing that the respondents notified the oppositors and conducted a hearing on the applications and oppositions submitted.

Rather than provide concrete evidence to meet the petitioners' opposition, the respondents simply relied on their challenge questioning the propriety of the subject petition on technical and procedural grounds. The Court notes that even the letters submitted by the petitioners to the FDA and the DOH seeking information on the actions taken by the agencies regarding their opposition were left unanswered as if they did not exist at all. The mere fact that the RH Law was declared as not unconstitutional does not permit the respondents to run roughshod over the constitutional rights, substantive and procedural, of the petitioners.

Indeed, although the law tasks the FDA as the primary agency to determine whether a contraceptive drug or certain device has no abortifacient effects, its findings and conclusion should be allowed to be questioned and those who oppose the same must be given a genuine opportunity to be heard in their stance. After all, under Section 4(k) of R.A. No. 3720, as amended by R.A. No. 9711, the FDA is mandated to order the ban, recall and/or withdrawal of any health product found to have caused death, serious illness or serious injury to a consumer or patient, or found to be imminently injurious, unsafe, dangerous, or grossly deceptive, after due process.

Due to the failure of the respondents to observe and comply with the basic requirements of due process, the Court is of the view that the certifications/re-certifications and the distribution of the questioned contraceptive drugs by the respondents should be struck down as violative of the constitutional right to due process.

Verily, it is a cardinal precept that where there is a violation of basic constitutional rights, the courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. This rule is equally true in quasi-judicial and administrative proceedings, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same.

LEANDRO B. VERCELES, JR. v. COMMISSION ON AUDIT
G.R. No. 211553. September 13, 2016, EN BANC (Brion, J.)

Then Governor of Catanduanes Leandro B. Verceles, Jr. engaged the Provincial Environment and Natural Resources Office (*PENRO*) to carry out the province's tree seedlings production project. The province and PENRO entered into several Memoranda of Agreement (*MOA*).

On June 11, 2001, the Sangguniang Panlalawigan, through Resolution No. 067-2001, gave blanket authority to the governor to enter into contracts on behalf of the province. The SP reaffirmed the authority given to the governor through Resolution Nos. 068-2001 and 069-2001. On the same date, the SP also resolved to give the governor the power to realign, revise, or modify items in the provincial budget.

The cost of the project was allegedly paid out of the Economic Development Fund (*EDF*) allocation in the provincial budget for calendar years (CY) 2001 and 2002. The EDF is the 20% portion of the province's internal revenue allotment (IRA) required by law to be spent on development projects.

The SP issued Resolution No. 104-A-2001, which effectively revoked the blanket authority given to the governor to enter into contracts on behalf of the Province.

On February 4, 2003, the COA found that Verceles should have sought prior authority from the SP pursuant to the Local Government Code (*LGC*) before executing any MOA after the issuance of Resolution No. 104-A-2001.The Regional Office issued Notices of Disallowance in the total amount of P7,528,175.46.

Verceles moved but failed to obtain reconsideration of the *Notices of Disallowance*. The Legal and Adjudication Office also denied his appeal and motion for reconsideration. Verceles elevated the case to the COA proper (national office) to challenge the disallowed payments. Verceles argued that the payments for the project were covered by appropriations under the EDF allocation of the provincial budget for CYs 2001 and 2002 and that the local chief executive need not secure express or specific authorization from the SP as long as a budget for a contract is already appropriated. The COA denied Verceles' petition for lack of merit.

ISSUE:

1. Whether the subject MOAs were duly authorized since they were covered by the provincial annual budget for CYs 2001 and 2002
2. Whether a blanket authority is a sufficient authority for the governor to implement projects that have no definite appropriations
3. Whether COA is correct is disallowing the *fourth* and *fifth* MOAs
4. Whether the grant of authority to the local chief executive to augment items in the annual budget can be belatedly granted

RULING:

1. YES but only with respect to the third MOA. Section 22 (c) of the LGC requires the local chief executive to obtain prior authorization from the sanggunian before he can enter into contracts in behalf of the LGU. Section 465 (b) (1) (vi), on the other hand, allows the local chief executive to

implement specific or specified projects with corresponding appropriations without securing a separate authority from the sanggunian. In the latter provision, the appropriation ordinance is the authority from the sanggunian required in the former provision.

Verceles claims that the first and third MOAs were funded by the EDF allocation of the province in CYs 2001 and 2002. We agree but only with respect to the third MOA.

In the first MOA, the appropriation ordinance of the province for CY 2001 indeed contained a provision on the EDF. Section 6 of Appropriations Ordinance No. 1-2001 provides "that appropriations under the 20% EDF shall be approved by the Sanggunian Panlalawigan."

While there was an available fund for the economic development projects of the province, the specific projects had not yet been identified. The corresponding costs for the projects had also not been set aside. Contrary to Verceles' assertion, the CY 2001 appropriation ordinance did not specifically authorize him to enter into the first MOA to implement the tree seedlings production project.

Thus as held in Quisumbing, we need to determine whether there was a specific prior approval from the SP before Verceles could enter into the first MOA. There was none.

2. NO. While a blanket authority is not per se ineffective, it does not suffice for purposes of implementing projects funded by lump-sum appropriations. The nature of lump-sum appropriations vis-a-vis the power of the purse of the SP (as the legislative organ of the LGU) requires the local chief executive to obtain definite and specific authorizations before he can enter into contracts funded by lump-sum appropriations. The exception is when the appropriation ordinance already identifies the specific projects and the costs of the projects to be funded by lump-sum appropriations.

First, the nature of a lump-sum appropriation requires specific authorization from the SP before projects funded by it can be implemented.

Second, the power of the purse of the SP requires the governor to obtain prior authority before he can implement projects funded by lump-sum appropriations.

Using this as parameter, we note that the CY 2001 EDF is akin to the PDAF as they are both singular lump-sum amounts to be tapped as a funding source for multiple purposes. They are both described in generic terms ("economic development fund" and "priority development assistance fund"), which requires the further determination of the actual amount to be spent and the actual purpose of the appropriation.

We employ the above analogy to emphasize that the 2001 EDF was not a specific appropriation of money as Verceles would want the Court to believe in his attempt to justify the first MOA. At the time the SP enacted the 2001 appropriation ordinance, it had not yet set apart certain sums of money from the EDF for specified purposes. In other words, the SP had not yet completely exercised its power of the purse such that all the governor had to do was to implement the projects identified in the appropriation ordinance. On the contrary, the 2001 EDF did not specify the projects to be funded.

Further, Section 6 of the 2001 appropriation ordinance stated that "appropriations under the 20% EDF shall be approved by the Sanggunian Panlalawigan." Obviously, the SP wanted to ensure that the projects to be funded by the EDF still go through the deliberations of the SP members precisely because these projects had not been previously identified and approved by the SP.

Since the 2001 EDF was a lump-sum amount not yet apportioned to specified development projects, Verceles needed to secure prior authority from the SP. Having failed to secure prior authority, the first MOA was unauthorized and properly disallowed.

3. YES. First, the power of the local chief executive to augment items under Section 336 of the LGC is a mere exception to the general rale that funds shall be available exclusively for the specific purpose for which they have been appropriated. Exceptions are strictly construed and apply only so far as their language fairly warrants, with all doubts being resolved in favor of the general proviso rather than the exception. As an exception to the general rule, all the requirements for a valid augmentation must be strictly complied with. One such requirement is that the local chief executive must be authorized by an ordinance.

Second, the all-encompassing nature of the blanket ratification by the SP of all the augmentations made in the past budgets rendered such ratification ineffective.

Third, Section 26 of the CY 2002 appropriation ordinance of the province provides that "[a]ll realignments of fund shall be approved by the Sangguniang Panlalawigan." In contrast to the CYs 2001 and 2003 appropriation ordinances, which expressly authorized the governor to realign, revise, modify, or change items in the annual budget, Section 26 of the CY 2002 appropriation ordinance is couched in a markedly different language. The SP effectively withheld from Verceles the authority to make augmentations by requiring its approval for all realignments of funds.

Finally, the Ocampo case does not squarely apply here. What was impliedly ratified in Ocampo was the MOA entered into by the governor without prior authority. The issue here is more nuanced. The present case involves unauthorized augmentations, which became the bases for unauthorized MOAs. Verceles not only entered into unauthorized MOAs, he was able to enter into these MOAs because he made augmentations that had no prior authorizations.

4. NO. To "authorize" means "to empower; to give a right or authority to act." It means "to endow with authority or effective legal power, warrant or right; to permit a thing to be done in the future." Thus, strictly speaking, the governor must be duly authorized before he can make augmentations. We highlight the words "to augment" suggesting that what is being authorized is an act that has yet to happen.

Nevertheless, our ruling in the present case should not be taken to mean that the LGC prohibits the ratification of previously unauthorized augmentations. We only want to underscore the necessity of an existing authority before the local chief executive can make augmentations. The Court recognizes that there may be narrow instances where past augmentations can be shown to have fully complied with all the requisites (except for the authority by ordinance requisite) for a valid augmentation, in which cases, ratification is allowed.

JULIET B. DANO v. COMMISSION ON ELECTIONS
G.R. No. 210200. September 13, 2016, EN BANC (Sereno, C.J.)

Petitioner was a natural-born Filipino from the Municipality of Sevilla, Province of Bohol. She worked as a nurse in the US and thereafter acquired American citizenship.

On 2 May 2012, petitioner went to Sevilla to apply for voter's registration. She then went back to the US and stayed there until 28 September 2012. Upon returning to the Philippines, petitioner executed a Sworn Renunciation of Any and All Foreign Citizenship on 30 September 2012.

On 4 October 2012, she filed her COC for mayor of Sevilla. She represented herself therein as one who had been a resident of Sevilla for 1 year and 11 days prior to the elections of 13 May 2013, or from 2 May 2012.

On 10 October 2012, private respondent Marie Karen Joy Digal filed a petition with the COMELEC for the cancellation of petitioner's COC. Private respondent was the daughter of Ernesita Digal, whom petitioner would later best for the mayoralty position in the 2013 elections by a margin of 668 votes. Private respondent alleged that petitioner had made material misrepresentations of fact in the latter's COC and likewise failed to comply with the one-year residency requirement under Section 39 of the LGC.

COMELEC First Division cancelled the COC of petitioner. It highlighted that even if she had reacquired her Filipino citizenship, registered as a voter in Sevilla, and executed her sworn renunciation, her prolonged absence resulted in her failure to reestablish her domicile in her hometown for the purpose of abiding by the one-year residence requirement

Petitioner argued that the following acts showed that she had reestablished her domicile in Sevilla: a) she purchased parcels of land and a residential house on 18 May 2013; b) she made public her intention to run for mayor of Sevilla as early as January 2012; and c) she started to settle permanently in her ancestral home in Barangay Poblacion, Sevilla, starting January 2012.

ISSUES:

Whether petitioner proved compliance with the one-year residency requirement for local elective officials

RULING:

YES. Physical presence, along with *animus manendi et revertendi*, is an essential requirement for the acquisition of a domicile of choice. However, the law does not require that physical presence be unbroken. In *Japzon v. Comelec*, this Court ruled that to be considered a resident of a municipality, the candidate is not required to stay and never leave the place for a full one-year period prior to the date of

the election. In *Sabili v. Comelec*, this Court reiterated that the law does not require a candidate to be at home 24 hours a day 7 days a week to fulfill the residency requirement.

COMELEC relied heavily on the affidavits executed by Ceferino and Marie Karen Joy Digal containing bare allegations that petitioner had never been a resident of Sevilla since she became an American citizen. However, petitioner sufficiently established that she had already reacquired her Philippine citizenship when she started residing in Sevilla on 2 May 2012. It must be noted that the starting point from which her residence should be counted was not material to the deliberations before COMELEC or in any of the pleadings submitted before this Court. The only controverted issue was whether her absence from the locality for four months out of the 1 year and 11 days she had stated in her COC rendered her unable to fulfill the residence requirement.

Considering that the only material issue before COMELEC was the completeness of the period of residence, it should not have disregarded the following evidence showing specific acts performed by petitioner one year before the elections, or by 13 May 2012, which clearly demonstrated her *animus manendi et revertendi:*

1. She made public her intention to run for the mayoralty position. In preparation for this aspiration, and in order to qualify for the position, she went through the reacquisition process under Republic Act No. 9225.
2. She started to reside in her ancestral home, and even obtained a CTC, during the first quarter of 2012.
3. She applied for voter's registration in Sevilla.
4. She went back to the US to dispose of her properties located there.

COMELEC was also wrong in dismissively disregarding the affidavits of the *punong barangay* and a long-time resident of Sevilla for not being "substantiated by proof."

COMELEC's grave abuse of discretion lay in its failure to fully appreciate petitioner's evidence and fully explained absence from Sevilla. Instead, it made a legal conclusion that a candidate who has been physically absent from a locality for four out of the twelve months preceding the elections can never fulfil the residence requirement under Section 39 of the LGC. In addition, COMELEC cancelled petitioner's COC without any prior determination of whether or not she had intended to deceive or mislead the electorate. This omission also constitutes grave abuse of discretion.

DRUGSTORES ASSOCIATION OF THE PHILIPPINES, INC. AND NOTHERN LUZON DRUG CORPORATION VS. NATIONAL COUNCIL ON DISABILITY AFFAIRS, et al.
G.R. No. 194561. September 14, 2016, THIRD DIVISION (Peralta, J.)

On March 24, 1992, Republic Act (R.A.) No. 7277 was passed into law. It was amended on April 30, 2007 by R.A. No. 9442. Specifically, R.A. No. 9442 granting incentives and benefits including a twenty percent (20%) discount to PWDs in the purchase of medicines; fares for domestic air, sea and land travels including public railways and skyways; recreation and amusement centers including theaters, food chains and restaurants. RA 9442 also includes a tax deduction scheme, wherein covered establishments may deduct the discounts they granted from their gross income based on the net cost of goods sold or services rendered.

A series of Orders and Guidelines were thereafter issued namely, A.O. No. 1 Series of 2008 by the National Council on Disability Affairs (NCDA) prescribing guidelines which should serve as a mechanism for the issuance of a PWD Identification Card, and Revenue Regulations No. 1-2009, issued by the Department Of Finance, prescribing rules and regulations relative to the tax privileges of PWDs and tax incentives for establishments granting the discount. The Department of Health (DOH) also issued A.O. No. 2009-0011 specifically stating that the grant of 20% discount shall be provided in the purchase of branded medicines and unbranded generic medicines from all establishments dispensing medicines for the exclusive use of the PWDs

On July 28, 2009, the Drugstores Association of the Philippines (DAP) and the Northern Luzon Drug Corporation (NLDC) filed a Petition for Prohibition with application for a Temporary Restraining Order and/or a Writ of Preliminary Injunction before the Court of Appeals (CA) to annul and enjoin the implementation of the said laws. The CA upheld the constitutionality of R.A. 7277, as amended, as well as the assailed administrative issuances.

ISSUES:

1. IS R.A. 7277'S MANDATORY 20% DISCOUNT ON THE PURCHASE OF MEDICINE BY PWDS A VALID EXERCISE OF POLICE POWER?

2. ARE THE DEFINITIONS OF DISABILITIES OF R.A. 7277 VAGUE, AND, THUS, UNCONSTITUTIONAL?

3. DOES THE MANDATORY DISCOUNT VIOLATE THE EQUAL PROTECTION CLAUSE WHEN IT OVERBURDENS DRUGSTORES TO ACHIEVE A SPECIFIC LEGITIMATE GOVERNMENT GOAL?

RULING:

1. YES. When the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare. Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated.

A legislative act based on the police power requires the concurrence of a lawful subject which includes the interests of the public generally, as distinguished from those of a particular class and a lawful method which are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

In the case at hand, the PWD mandatory discount has a valid subject considering that the concept of public use is no longer confined to the traditional notion of use by the public, but held synonymous with public interest and welfare. As in the case of senior citizens, the discount privilege to which the PWDs are entitled is actually a benefit enjoyed by the general public to which these citizens belong.

In addition, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. The means employed to provide a fair, just and quality health care to PWDs are also reasonably related to its accomplishment, and are not oppressive, considering that as a form of reimbursement, the discount extended to PWDs in the purchase of medicine can be claimed by the establishments as allowable tax deductions pursuant to Section 32 of R.A. No. 9442 as implemented in Section 4 of DOF Revenue Regulations No. 1-2009.

2. NO. Aside from the definitions of a "person with disability" or "disabled persons" under Section 4 of R.A. No. 7277 as amended and in the Implementing Rules and Regulations of RA 9442, NCDA A.O. No. 1 also provides specific illustrations of conditions that constitute a disability, including psychosocial, chronic illness, learning, mental, visual, orthopedic, speech and hearing conditions. Similarly, DOH A.O. No. 2009-0011 defines the different categories of disability. Hence, the definition of terms is not vague and ambiguous.

Settled is the rule that courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency.

As a matter of policy, the Court accord great respect to the decisions and/or actions of administrative authorities not only because of the doctrine of separation of powers but also for their presumed knowledge, ability, and expertise in the enforcement of laws and regulations entrusted to their jurisdiction.

3. NO. The law allegedly targets only retailers such as DAP and NLDC, and that the other enterprises in the drug industry are not imposed with similar burden. While the Constitution protects property rights, DAP and NLDC must accept the realities of business and the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process. The equal protection clause recognizes a valid classification, that is, a classification that has a reasonable foundation or rational basis and not arbitrary. With respect to R.A. No. 9442, its expressed public policy is the rehabilitation, self-development and self-reliance of PWDs. PWD's form a class separate and distinct from the other citizens of the country. Indubitably, such

substantial distinction is germane and intimately related to the purpose of the law. Hence, the classification and treatment accorded to the PWDs fully satisfy the demands of equal protection.

RIZALITO Y. DAVID v. SENATE ELECTORAL TRIBUNAL AND MARY GRACE POE-LLMANZARES
G.R. No. 221538. September 20, 2016, EN BANC (Leonen, J.)

Senator Mary Grace Poe-Llamanzares (Senator Poe) is a foundling whose biological parents are unknown. She was abandoned at the Parish Church of Jaro, Iloilo while still an infant. It was a certain Edgardo Militar who found her outside the church who later turned her over to Mr. and Mrs. Emiliano Militar. Emiliano Militar reported to the Office of the Local Civil Registrar that the infant was found on September 6, 1968. She was given the name Mary Grace Natividad Contreras Militar.

Spouses Ronald Allan Poe (more popularly known as Fernando Poe, Jr.) and Jesusa Sonora Poe (more popularly known as Susan Roces) filed a Petition for Adoption of Senator Poe. On May 13, 1974, the Municipal Court of San Juan, Rizal promulgated the Decision granting the adoption. Senator Poe decided to run as Senator in the 2013 Elections.

Rizalito David, a losing candidate in the 2013 Senatorial Elections, filed a Petition for *Quo Warranto* before the Senate Electoral Tribunal (SET) assailing the election of Senator Poe for failing to "comply with the citizenship and residency requirements mandated by the 1987 Constitution." The SET ruled that Senator Poe is a natural-born citizen and, therefore, qualified to hold office as Senator.

ISSUES:

1. Does the 1987 Constitution exclude foundlings from entering public service?

2. Was the SET correct in dismissing the petition for *Quo Warranto*, finding that Grace Poe is a natural-born Filipino citizen, thus, qualified to hold a seat as Senator?

RULING:

1. NO. Article IV, Section 2 and Article IV, Section 1(2), constitutional provisions on citizenship must not be taken in isolation. They must be read in light of the constitutional mandate to defend the well-being of children, to guarantee equal protection of the law and equal access to opportunities for public service, and to respect human rights. They must also be read in conjunction with the Constitution's reasons for requiring natural-born status for select public offices. Further, this presumption is validated by contemporaneous construction that considers related legislative enactments, executive and administrative actions, and international instruments.

Article IV, Section 1 of the 1987 Constitution merely gives an enumeration. Section 2 categorically defines "natural-born citizens." This constitutional definition is further clarified in jurisprudence, which delineates natural-born citizenship from naturalized citizenship. Consistent with Article 8 of the Civil Code, this jurisprudential clarification is deemed written into the interpreted text, thus establishing its contemporaneous intent.

Natural-born citizenship is not concerned with being a human thoroughbred.

Section 2 defines "natural-born citizens." Section 1(2) stipulates that to be a citizen, either one's father or one's mother must be a Filipino citizen.

That is all there is to Section 1(2). Physical features, genetics, pedigree, and ethnicity are not determinative of citizenship.

Section 1(2) does not require one's parents to be natural-born Filipino citizens. It does not even require them to conform to traditional conceptions of what is indigenously or ethnically Filipino. One or both parents can, therefore, be ethnically foreign.

Section 1(2) requires nothing more than one ascendant degree: parentage. The citizenship of everyone else in one's ancestry is irrelevant. There is no need, as David insists, for a pure Filipino bloodline.

Section 1(2) requires citizenship, not identity. A conclusion of Filipino citizenship may be sustained by evidence adduced in a proper proceeding, which substantially proves that either or both of one's parents is a Filipino citizen.

Consistent with a reading that harmonizes Article IV, Section 2's definition of natural-born citizens and Section 1(2)'s reference to parentage, the Constitution sustains a presumption that all foundlings found in the Philippines are born to at least either a Filipino father or a Filipino mother and are thus natural-born, unless there is substantial proof otherwise. Consistent with Article IV, Section 1(2), any such countervailing proof must show that both—not just one—of a foundling's biological parents are not Filipino citizens.

Senator Poe was found as a newborn infant outside the Parish Church of Jaro, Iloilo on September 3, 1968. In 1968, Iloilo, as did most—if not all—Philippine provinces, had a predominantly Filipino population. Senator Poe is described as having "brown almond-shaped eyes, a low nasal bridge, straight black hair and an oval-shaped face." She stands at 5 feet and 2 inches tall. Further, in 1968, there was no international airport in Jaro, Iloilo.

These circumstances are substantial evidence justifying an inference that her biological parents were Filipino. Her abandonment at a Catholic Church is more or less consistent with how a Filipino who, in 1968, lived in a predominantly religious and Catholic environment, would have behaved. The absence of an international airport in Jaro, Iloilo precludes the possibility of a foreigner mother, along with a foreigner father, swiftly and surreptitiously coming in and out of Jaro, Iloilo just to give birth and leave her offspring there. Though proof of ethnicity is unnecessary, her physical features nonetheless attest to it.

Out of the 900,165 recorded births in the Philippines in 1968, only 1,595 or 0.18% newborns were foreigners. This translates to roughly 99.8% probability that Senator Poe was born a Filipino citizen.nGiven the sheer difficulty, if not outright impossibility, of identifying her parents after half a century, a range of substantive proof is available to sustain a reasonable conclusion as to Senator Poe's parentage.

In the other related case of *Poe-Llamanzares v. Commission on Elections*, the Solicitor General underscored how it is statistically more probable that Senator Poe was born a Filipino citizen rather than as a foreigner.

2. NO. The Senate Electoral Tribunal acted well within the bounds of its constitutional competence when it ruled that Senator Poe is a natural-born citizen qualified to sit as Senator of the Republic. There is basis for concluding that the Senate Electoral Tribunal acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Ruling on the Petition for *Quo Warranto* initiated by David, the Senate Electoral Tribunal was confronted with a novel legal question: the citizenship status of children whose biological parents are unknown, considering that the Constitution, in Article IV, Section 1(2) explicitly makes reference to one's father or mother. It was compelled to exercise its original jurisdiction in the face of a constitutional ambiguity that, at that point, was without judicial precedent.

Acting within this void, the Senate Electoral Tribunal was only asked to make a reasonable interpretation of the law while needfully considering the established personal circumstances of Senator Poe. It could not have asked the impossible of Senator Poe, sending her on a proverbial fool's errand to establish her parentage, when the controversy before it arose because Senator Poe's parentage was unknown and has remained so throughout her life.

The Senate Electoral Tribunal knew the limits of human capacity. It did not insist on burdening Senator Poe's with conclusively proving, within the course of the few short months, the one thing that she has never been in a position to know throughout her lifetime. Instead, it conscientiously appreciated the implications of all other facts known about her finding. Therefore, it arrived at conclusions in a manner in keeping with the degree of proof required in proceedings before a quasi-judicial body: not absolute certainty, not proof beyond reasonable doubt or preponderance of evidence, but "substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

In the process, it avoided setting a damning precedent for all children with the misfortune of having been abandoned by their biological parents. Far from reducing them to inferior, second-class citizens, the Senate Electoral Tribunal did justice to the Constitution's aims of promoting and defending the well-being of children, advancing human rights, and guaranteeing equal protection of the laws and equal access to opportunities for public service

DR. ROLANDO B. MANGUNE, et al. v. HON. SECRETARY EDUARDO ERMITA, et al.
G.R. No. 182604. September 27, 2016, EN BANC (Jardeleza, J.)

Republic Act No. 78425 (R.A. No. 7842) was enacted establishing, under the administration and supervision of the Department of Health (DOH), the Taguig-Pateros District Hospital (TPDH). During her term, President Arroyo issued E.O. No. 567 devolving the administration and supervision of TPDH from the DOH to the City of Taguig.

The City of Taguig and the DOH subsequently entered into a Memorandum of Agreement providing the details of the transition and turn-over of the hospital's operations from the DOH to the City of Taguig.

In the meantime, petitioners, who were employees of the DOH assigned to the TPDH, submitted expressed their objections to E.O. No. 567 to the then Secretary of Health, respondent Duque. However, the DOH did not act on it. Petitioners also wrote a letter to the Office of the President requesting the deferment of the implementation of E.O. No. 567, which also took no action.

Thereafter, Mayor Tinga issued Executive Order No. 001 creating the TPDH Management Team which will implement the MOA.

Petitioners filed a Petition for Declaratory Relief against respondents before the RTC. Petitioners then filed an amended Petition for Prohibition and *Certiorari* praying that E.O. No. 567 be declared unconstitutional, illegal and null and void for having been issued in violation of the constitutional principle of separation of powers and with grave abuse of discretion amounting to lack or excess of jurisdiction.

ISSUES:

1. Whether the doctrine of exhaustion of administrative remedies applies

2. Whether E.O. No. 567 is constitutional

RULING:

1. NO. The doctrine of exhaustion of administrative remedies provides that a party must first avail himself or herself of all the means of administrative processes afforded him or her before he or she is allowed to seek the intervention of the court. If resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. However, the doctrine admits of exceptions, one of which is when the issue involved is purely a legal question. As the issue in this case involves the legality of E.O. No. 567, a purely legal question, the filing of the petition without exhausting administrative remedies is justified.

2. YES. E.O. No. 567 satisfies all of the below requisites for an administrative issuance, such as an executive order to be valid:

1. Its promulgation must be authorized by the legislature;
2. It must be promulgated in accordance with the prescribed procedure;

3. It must be within the scope of the authority given by the legislature; and
4. It must be reasonable.

First, E.O. No. 567 itself identifies its statutory and constitutional basis.

E.O. No. 567 was issued pursuant to Section 17 of the Local Government Code expressly devolving to the local government units the delivery of basic services and facilities. It is the policy of the LGC to provide for a more responsive and accountable local government structure through a system of decentralization. Thus, E.O. No. 567 merely implements and puts into operation the policy and directive set forth in the Local Government Code.

Similarly, E.O. No. 567 is within the constitutional power of the President to issue. The President may, by executive or administrative order, direct the reorganization of government entities under the executive department. This is sanctioned under the Constitution, as well as other statutes.

As regards the second requisite, that the order must be issued or promulgated in accordance with the prescribed procedure, petitioners do not question the procedure by which E.O. No. 567 was issued. In the absence of strong evidence to the contrary, acts of the other branches of the government are presumed to be valid, and there being no objection from the respondents as to the procedure in the promulgation of E.O. No. 567, the presumption is that the executive issuance duly complied with the procedures and limitations imposed by law.

The third requisite provides that an administrative issuance must not be ultra vires or beyond the limits of the authority conferred. It must not supplant or modify the Constitution, its enabling statute and other existing laws, for such is the sole function of the legislature which the other branches of the government cannot usurp.

Decentralization is the devolution of national administration, not power, to local governments. One form of decentralization is devolution, which involves the transfer of powers, responsibilities, and resources for the performance of certain functions from the central government to the LGUs. It has been said that devolution is indispensable to decentralization.

Based on the foregoing, there is no question that the law favors devolution. In fact, as mentioned earlier, Section 5(a) of the Local Government Code explicitly states that in case of doubt, any question on any provision on a power of a local government shall be resolved in favor of devolution of powers and of the LGU.

Considering the same, petitioners' restrictive interpretation of Section 17(e) is inconsistent with the Constitution and the Local Government Code. It limits the devolution intended by both the Constitution and the Local Government Code to an unduly short period of time.

E.O. No. 567 meets the test of reasonableness. The transfer of the administration and supervision of TPDH from the DOH to the City of Taguig aims to provide the City of Taguig the genuine and meaningful autonomy which would make it an effective and efficient partner in the attainment of national goals and providing basic health services and facilities to the community. It implements and breathes life to the provisions of the Constitution and the Local Government Code on creating a more responsive and accountable local government structure instituted through a system of decentralization.

PHILIPPINE ECONOMIC ZONE AUTHORITY v. COMMISSION ON AUDIT
G.R. No. 210903, 11 October 2016, EN BANC, (Peralta, J.)

The Philippine Economic Zone Authority (PEZA) Charter, Republic Act R.A. No. 7916, was amended by R.A. No. 8748 in 1999 exempting PEZA from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its systems conform as closely as possible to the principles under Republic Act No. 6758. The PEZA Board in Resolution No. M-99-266 dated October 29, 1999, adjusted PEZA's compensation plan and included in the said compensation plan is the grant of Christmas bonus in such amount as may be fixed by the Board and such other emoluments. PEZA had been granting Christmas bonus to each of its officers and employees for CY 2000 to 2004, however, for the years 2005 to 2008, the Christmas bonus was gradually increased per PEZA Board Resolution Nos. 05-450 and 06-462 dated November 28, 2005 and September 26, 2006, respectively. State Auditor V Aurora Liveta-Funa issued Notice of Disallowance (ND) stating that the payment of additional Christmas bonus to PEZA officers and employees for calendar years 2005-2008 violated Section 3 of Memorandum Order (M.O.) No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of government-owned and controlled corporations (GOCCs) and government financial institutions (GFIs) that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President.

ISSUE:

Does the grant of additional Christmas Bonus to PEZA Officers and employees needs the approval of the Office of the President?

RULING:

YES, it is not disputed that after the enactment of the Salary Standardization Law (Republic Act No. 6758 became effective on July 1, 1989), laws have been passed exempting some government entities from its coverage. The said government entities were allowed to create their own compensation and position classification systems that apply to their respective offices, usually through their Board of Directors. From 1995 to 2004, laws were passed exempting several government financial institutions from the Salary Standardization Law. Among these financial institutions are the Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.

A close reading of the charters of those other government entities exempted from the Salary Standardization Law shows a common provision stating that although the board of directors of the said entities has the power to set a compensation, position classification system and qualification standards, the same entities shall also endeavor to make the system to conform as closely as possible to the principles and modes provided in R.A. No. 6758.Thus, the charters of those government entities exempt from the Salary Standardization Law is not without any form of restriction. They are still required to

report to the Office of the President, through the DBM the details of their salary and compensation system and to endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758. Such restriction is the most apparent indication that the legislature did not divest the President, as Chief Executive of his power of control over the said government entities. In National Electrification Administration v. COA, this Court explained the nature of presidential power of control, and held that the constitutional vesture of this power in the President is self-executing and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature.

It must always be remembered that under our system of government all executive departments, bureaus and offices are under the control of the President of the Philippines. This precept is embodied in Section 17, Article VII of the Constitution.

Thus, COA was correct in claiming that PEZA has to comply with Section 325 of M.O. No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of GOCCs/GFIs that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President. The said M.O. No. 20 is merely a reiteration of the President's power of control over the GOCCs/CFIs notwithstanding the power granted to the Board of Directors of the latter to establish and fix a compensation and benefits scheme for its employees

H. SOHRIA PASAGI DIAMBRANG v. COMMISSION ON ELECTIONS AHD H. HAMIM SARIP PATAD
G.R. No. 201809, 11 October 2016, EN BANC, (Peralta, J.)

H. Sohria Pasagi Diambrang (Diambrang) and H. Hamim Sarip Patad (Patad) were opponents in the 2010 Barangay Elections for Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte. While Patad obtained 183 votes to Diambrang's 78 votes, the Barangay Board of Canvassers (BBOC) proclaimed Diambrang the winner, based on the recommendation of the Provincial Election Suprevisor that Patad was disqualified for being a fugitive from justice. This recommendation, however, is not yet final and executory. Patag filed a petition to annul Diambrang's proclamation.

The COMELEC Second Division ruled that BBOC committed grave abuse of discretion in proclaiming Diambrang based on the recommendation of the Provincial Election Supervisor who conducted the preliminary investigation on Patad's case, and whose decision the COMELEC had not yet affirmed. Even if Patad was disqualified, Diambrang, who obtained only the second highest number of votes, could not be declared as the winning candidate

Diambrang filed a motion for reconsideration. The COMELEC En Banc, however, denied his MR. It annulled his proclamation, and declared the first ranked Barangay Kagawad to succeed as the new Punong Barangay. It also ruled that Patad was disqualified.

ISSUE:

Whether Diambrang, the losing candidate is entitled to proclamation in the face of disqualification of the winning candidate?

RULING:

NO, this case has been rendered moot by the election of a new Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte during the 28 October 2013 Barangay Elections. The case had been overtaken by events due to Patad's failure to file his comment on the petition as well as the repeated failure of the Postmaster of Lanao del Norte to respond to the Court's query whether Patad received the Resolution requiring him to file his comment

The Court promulgated its ruling in *Jalosjos, Jr. v. Commission on Elections* where it held that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible, it should however be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took effect, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position.

Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.

There is no need to apply the rule cited in *Labo v. COMELEC* that when the voters are well aware within the realm of notoriety of a candidate's disqualification and still cast their votes in favor said candidate, then the eligible candidate obtaining the next higher number of votes may be deemed elected. That rule is also a mere obiter that further complicated the rules affecting qualified candidates who placed second to ineligible ones. The electorate's awareness of the candidate's disqualification is not a prerequisite for the disqualification to attach to the candidate. The very existence of a disqualifying circumstance makes the candidate ineligible. Knowledge by the electorate of a candidate's disqualification is not necessary before a qualified candidate who placed second to a disqualified one can be proclaimed as the winner. The second-placer in the vote count is actually the first-placer among the qualified candidates.

Clearly, the prevailing ruling is that if the certificate of candidacy is void *ab initio*, the candidate is not considered a candidate from the very beginning even if his certificate of candidacy was cancelled after the elections.

Patad's disqualification arose from his being a fugitive from justice. It does not matter that the disqualification case against him was finally decided by the COMELEC *En Banc* only on 14 November 2011. Patad's certificate of candidacy was void *ab initio*. As such, Diambrang, being the first-placer among the qualified candidates, should have been proclaimed as the duly elected Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte. However, due to supervening events as we previously discussed, Diambrang can no longer hold office.

SATURNINO C. OCAMPO, ET AL. v. REAR ADMIRAL ERNESTO C. ENRIQUEZ, ET AL.
G.R. No. 225973, 8 November 2016, EN BANC (Peralta, J.)

August 7, 2016, Secretary of National Defense Delfin N. Lorenzana issued a memorandum to the Chief of Staff of the Armed Forces of the Philippines (AFP), General Ricardo R. Visaya, regarding the interment of former President Ferdinand E. Marcos at the Libingan ng Mga Bayani (LNMB), in compliance with the verbal order of President Duterte to fulfill his election campaign promise to that effect. On August 9, 2016, AFP Rear Admiral Ernesto C. Enriquez issued the corresponding directives to the Philippine Army Commanding General. Dissatisfied with the foregoing issuance, various parties filed several petitions for certiorari, prohibition and mandamus, essentially arguing that the decision to have the remains of former President Marcos interred at the LNMB violated various laws; that Marcos is not entitled to be interred at the LNMB; and that the Marcos family has already waived such burial.

ISSUES:

1. Did the issuance of the assailed memorandum and directive violate the Constitution, domestic and international laws?

2. Have historical facts, laws enacted to recover ill-gotten wealth from the Marcoses and their cronies, and the decisions of the Court on the Marcos regime nullified his entitlement as a soldier and former President to internment at the LNMB?

3. Has the Marcos family waived the burial of former President Marcos at the LNMB by virtue of their agreement with the Government of the Republic of the Philippines as regards the return and internment of his remains in the Philippines?

RULINGS:

1. NO, the assailed memorandum and directive, being the President's decision, to bury Marcos at the LNMB is in accordance with the Constitution, domestic and international laws. Ocampo, et al. invoked Sections 2, 11, 13, 23, 26, 27 and 28 of Article II; Sec. 17 of Art. VII, Sec. 3(2) of Art. XIV; Sec. 1 of Art. XI; and Sec. 26 of Art. XVIII of the Constitution.

While the Constitution is a product of our collective history as a people, its entirety should not be interpreted as providing guiding principles to just about anything remotely related to the Martial Law period such as the proposed Marcos burial at the LNMB. Tañada v. Angara already ruled that the provisions in Article II of the Constitution are not self executing. The reasons for denying a cause of

action to an alleged infringement of broad constitutional principles are sourced from basic considerations of due process and the lack of judicial authority to wade "into the uncharted ocean of social and economic policy making."

In the same vein, Sec. 1 of Art. XI of the Constitution is not a self-executing provision. The Court also found the reliance on Sec. 3(2) of Art. XIV and Sec. 26 of Art. XVIII of the Constitution to be misplaced, with such provisions bearing no direct or indirect prohibition to Marcos' interment at the LNMB. The Court also found no violation of President Duterte's mandate under Sec. 17, Art. VII of the Constitution to take necessary and proper steps to carry into execution the law. RA No. 289 (An Act Providing For the Construction of A National Pantheon for Presidents of the Philippines, National Heroes and Patriots of the Country) Ocampo, et al. also invoked RA 289, which authorized the construction of a National Pantheon as the burial place of the mortal remains of all the Presidents of the Philippines, national heroes and patriots, as well as a Board on National Pantheon to implement the said law. Ocampo, et al. are mistaken. Both in their pleadings and during the oral arguments, they miserably failed to provide legal and historical bases as to their supposition that the LNMB and the National Pantheon are one and the same. To date, the Congress has deemed it wise not to appropriate any funds for its construction or the creation of the Board on National Pantheon. This is indicative of the legislative will not to pursue, at the moment, the establishment of a singular interment place for the mortal remains of all Presidents of the Philippines, national heroes, and patriots. Even if the Court treats R.A. No. 289 as relevant to the issue, still, Ocampo, et al.'s allegations must fail. To apply the standard that the LNMB is reserved only for the "decent and the brave" or "hero" would be violative of public policy as it will put into question the validity of the burial of each and every mortal remains resting therein, and infringe upon the principle of separation of powers since the allocation of plots at the LNMB is based on the grant of authority to the President under existing laws and regulations. RA No. 10368 (Human Rights Victims Reparation and Recognition Act of 2013)

Ocampo, et al. also invoked RA 10368, modifiying AFP Regulations G-161-375, which they interpreted as implicitly disqualifying Marcos' burial at the LNMB because the legislature, a co-equal branch of the government, has statutorily declared his tyranny as a deposed dictator and has recognized the heroism and sacrifices of the Human Rights Violations Victims (HRVVs). International Human Rights Laws Ocampo, et al. argued that the burial of Marcos at the LNMB will violate the rights of the HRVVs to "full" and "effective" reparation, provided under the International Covenant on Civil and Political Rights (ICCPR), the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity. When the Filipinos regained their democratic institutions after the successful People Power Revolution that culminated on February 25, 1986, the three branches of the government have done their fair share to respect, protect and fulfill the country's human rights obligations. The 1987 Constitution contains provisions that promote and protect human rights and social justice. As to judicial remedies, aside from the writs of habeas corpus, amparo, and habeas data, the Supreme Court promulgated AO No. 25-2007, which provides rules on cases involving extra-judicial killings of political ideologists and members of the media. On the part of the Executive Branch, it issued a number of administrative and executive orders. Congress has passed several laws affecting human rights. Contrary to Ocampo, et al.'s postulation, our nation's history will not be instantly revised by a single resolve of President Duterte, acting through the Enriquez, et al., to bury Marcos at the LNMB. Whether Ocampo, et al. admit it or not, the lessons of Martial Law are already engraved, albeit in varying degrees, in the hearts and minds of the present generation of Filipinos. As to the unborn, it must be said that the preservation and popularization of our history is not the sole responsibility of the Chief Executive; it is a joint and collective endeavor of every freedom-loving citizen of this country.

2. NO, Marcos remains to be qualified to be interred at the LNMB. Under AFP Regulations G-161-375, the following are eligible for interment at the LNMB: (a) Medal of Valor Awardees; (b) Presidents or Commanders-in-Chief, AFP; (c) Secretaries of National Defense; (d) Chiefs of Staff, AFP; (e) General/Flag Officers of the AFP; (f) Active and retired military personnel of the AFP to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary (CAA) who died in combat operations or combat related activities; (g) Former members of the AFP who laterally entered or joined the PCG and the PNP; (h) Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerillas; (i) Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinternment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense; and g) Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National Defense and Chief of Staff. Similar to AFP Regulations G-161-374, the following are not qualified to be interred in the LNMB: (a) Personnel who were dishonorably separated/reverted/discharged from the service; and (b) Authorized personnel who were convicted by final judgment of an offense involving moral turpitude. In the absence of any executive issuance or law to the contrary, the AFP Regulations G-161-375 remains to be the sole authority in determining who are entitled and disqualified to be interred at the LNMB. Interestingly, even if they were empowered to do so, former Presidents Corazon C. Aquino and Benigno Simeon C. Aquino III, who were themselves aggrieved at the Martial Law, did not revise the rules by expressly prohibiting the burial of Marcos at the LNMB. It is not contrary to the "well-established custom," as the dissent described it, to argue that the word "bayani" in the LNMB has become a misnomer since while a symbolism of heroism may attach to the LNMB as a national shrine for military memorial, the same does not automatically attach to its feature as a military cemetery and to those who were already laid or will be laid therein. Whether or not the extension of burial privilege to civilians is unwarranted and should be restricted in order to be consistent with the original purpose of the LNMB is immaterial and irrelevant to the issue at bar since it is indubitable that Marcos had rendered significant active military service and military-related activities. Ocampo, et al. did not dispute that Marcos was a former President and Commander-in-Chief, a legislator, a Secretary of National Defense, a military personnel, a veteran, and a Medal of Valor awardee. For his alleged human rights abuses and corrupt practices, the Court may disregard Marcos as a President and Commander-in-Chief, but the Court cannot deny him the right to be acknowledged based on the other positions he held or the awards he received. In this sense, the Court agreed with the proposition that Marcos should be viewed and judged in his totality as a person. While he was not all good, he was not pure evil either. Certainly, just a human who erred like us. Aside from being eligible for burial at the LNMB, Marcos possessed none of the disqualifications stated in AFP Regulations G-161-375. He was neither convicted by final judgment of the offense involving moral turpitude nor dishonorably separated/reverted/discharged from active military service. Despite ostensibly persuasive arguments as to gross human rights violations, massive graft and corruption, and dubious military records, the 1986 popular uprising as a clear sign of Marcos' discharge from the AFP, the fact remains that Marcos was not convicted by final judgment of any offense involving moral turpitude. The various cases cited by Ocampo, et al., which were decided with finality by courts here and abroad, have no bearing in this case since they are merely civil in nature; hence, cannot and do not establish moral turpitude. To the Court's mind, the word "service" should be construed as that rendered by a military person in the AFP, including civil service, from the time of his/her commission, enlistment, probation, training or drafting, up to the date of his/her separation or retirement from the AFP. Civil service after honorable separation and retirement from the AFP is outside the context of "service" under AFP Regulations G-161-375. Hence, it cannot be conveniently claimed that Marcos' ouster from the presidency during the EDSA Revolution is tantamount to his dishonorable separation, reversion or discharge from the military service. Not being a military person who may be prosecuted before the court martial, the President can hardly be deemed "dishonorably separated/reverted/discharged from the service" as contemplated by AFP Regulations G-161-375. Dishonorable discharge through a successful revolution is an extraconstitutional and direct sovereign act

of the people which is beyond the ambit of judicial review, let alone a mere administrative regulation. It is undeniable that former President Marcos was forced out of office by the people through the so-called EDSA Revolution. Said political act of the people should not be automatically given a particular legal meaning other than its obvious consequence - that of ousting him as president. To do otherwise would lead the Court to the treacherous and perilous path of having to make choices from multifarious inferences or theories arising from the various acts of the people.

3. NO, the Marcoses are not deemed to have waived the former President's burial at the LNMB. The presidential power of control over the Executive Branch of Government is a self-executing provision of the Constitution and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature. This is why President Duterte is not bound by the alleged 1992 Agreement between former President Ramos and the Marcos family to have the remains of Marcos interred in Batac, Ilocos Norte. As the incumbent President, he is free to amend, revoke or rescind political agreements entered into by his predecessors, and to determine policies which he considers, based on informed judgment and presumed wisdom, will be most effective in carrying out his mandate. Moreover, under the Administrative Code, the President has the power to reserve for public use and for specific public purposes any of the lands of the public domain and that the reserved land shall remain subject to the specific public purpose indicated until otherwise provided by law or proclamation. At present, there is no law or executive issuance specifically excluding the land in which the LNMB is located from the use it was originally intended by the past Presidents. The allotment of a cemetery plot at the LNMB for Marcos as a former President and Commander-in-Chief, a legislator, a Secretary of National Defense, military personnel, a veteran, and a Medal of Valor awardee, whether recognizing his contributions or simply his status as such, satisfies the public use requirement. Presumption of regularity in the performance of official duty prevails over Ocampo, et al.'s highly disputed factual allegation that, in the guise of exercising a presidential prerogative, the Chief Executive is actually motivated by utang na loob (debt of gratitude) and bayad utang (payback) to the Marcoses.

JOSE M. ROY III, v. THE SECURITIES AND EXCHANGE COMMISSION, AND PHILILIPPINE LONG DISTANCE TELEPHONE COMPANY et al.
G.R. No. 207246, November 22, 2016, (Caguioa, ***J.)***

The Securities and Exchange Commission (SEC) posted a Notice in its website inviting the public to attend a public dialogue and to submit comments on the draft memorandum circular on the guidelines to be followed in determining compliance with the Filipino ownership requirement in public utilities under Section 11, Article XII of the Constitution. Atty. Jose M. Roy III ("Roy") submitted his written comments on the draft guidelines. Roy, as a lawyer and taxpayer, filed the Petition, assailing the validity of SEC-MC No. 8 for not conforming to the letter and spirit of the *Gamboa Decision* and Resolution and for having been issued by the SEC with grave abuse of discretion. Petitioner Roy seeks to apply the 60-40 Filipino ownership requirement separately to each class of shares of a public utility corporation, whether common, preferred nonvoting, preferred voting or any other class of shares. Roy also questions the ruling of the SEC that respondent Philippine Long Distance Telephone Company (PLDT) is compliant with the constitutional rule on foreign ownership. He prays that the Court declare SEC-MC No. 8 unconstitutional and direct the SEC to issue new guidelines regarding the determination of compliance with Section 11, Article XII of the Constitution in accordance with *Gamboa* Decision.

ISSUES:

1. Is PLDT is compliant with the constitutional limitation on foreign ownership?
2. Whether the SEC's issuance of SEC-MC No. 8 is tainted with grave abuse of discretion.

Ruling:

1. NO, in the Gamboa Decision, the Court directly answered the Issue and consistently defined the term "capital" " in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock comprising both common and non voting preferred shares. Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.

2. NO, Section 2 of SEC-MC No. 8 clearly incorporates the Voting Control Test or the controlling interest requirement. In fact, Section 2 goes beyond requiring a 60-40 ratio in favor of Filipino nationals in the voting stocks; it moreover requires the 60-40 percentage ownership in the total number of outstanding shares of stock, whether voting or not. The SEC formulated SEC-MC No. 8 to adhere to the Court's unambiguous pronouncement that "full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights is required." Clearly, SEC-MC No. 8 cannot be said to have been issued with grave abuse of discretion.

HON. PHILIP A. AGUINALDO v. HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III et al.
G.R. No. 224302, 29 November 2016, (Leonardo-De Castro, J.)

On June 11, 1978, then President Ferdinand E. Marcos (Marcos) issued Presidential Decree No. 1486, creating a special court called the Sandiganbayan, composed of a Presiding Judge and eight Associate Judges to be appointed by the President, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in governmentowned or controlled corporations. A few months later, President Marcos also issued Presidential Decree No. 1606, which elevated the rank of the members of the Sandiganbayan from Judges to Justices, co-equal in rank with the Justices of the Court of Appeals; and provided that the Sandiganbayan shall sit in three divisions of three Justices each. Republic Act No. 79756 was approved into law on March 30, 1995 and it increased the composition of the Sandiganbayan from nine to fifteen Justices who would sit in five divisions of three members each. Republic Act No. 10660, recently enacted on April 16, 2015, created two more divisions of the Sandiganbayan with three Justices each, thereby resulting in six vacant positions.

On July 20, 2015, the Judicial and Bar Council (JBC) published in the Philippine Star and Philippine Daily Inquirer and posted on the JBC website an announcement calling for applications or recommendations for the six newly created positions of Associate Justice of the Sandiganbayan. After screening and selection of applicants, the JBC submitted to President Aquino six shortlists contained in six separate letters

President Aquino issued on January 20, 2015 the appointment papers for the six new Sandiganbayan Associate Justices, namely: (1) respondent Musngi; (2) Justice Reynaldo P. Cruz (R. Cruz); (3) respondent Econg; (4) Justice Maria Theresa V. Mendoza-Arcega (Mendoza-Arcega); (5) Justice Karl B. Miranda (Miranda); and (6) Justice Zaldy V. Trespeses (Trespeses). The appointment papers were transmitted on January 25, 2016 to the six new Sandiganbayan Associate Justices, who took their oaths of office on the same day all at the Supreme Court Dignitaries Lounge. Respondent Econg, with Justices Mendoza-Arcega and Trespeses, took their oaths of office before Supreme Court Chief Justice Maria Lourdes P. A. Sereno (Sereno); while respondent Musngi, with Justices R. Cruz and Miranda, took their oaths of office before Supreme Court Associate Justice Francis H. Jardeleza (Jardeleza).

Petitioners Aguinaldo, Alhambra, D. Cruz, Pozon, And Timbang (Aguinaldo, Et Al.), were all nominees in the shortlist for the 16th Sandiganbayan Associate Justice. They assert that President Aquino violated Section 9, Article VIII Of The 1987 constitution in that he did not appoint anyone from the shortlist submitted by the JBC for the vacancy for position of the 16th Associate Justice of the Sandiganbayan and that he appointed Undersecretary Musngi and Judge Econg as associate justices of The Sandiganbayan to the vacancy for the position of 21st Associate Justice of the Sandiganbayan.

According to Aguinaldo, Et Al., the JBC was created under the 1987 Constitution to reduce the politicization of the appointments to the Judiciary, i.e., "to rid the process of appointments to the Judiciary from the political pressure and partisan activities."

The Office of the Solicitor General (OSG), on behalf of the Office of the President (OP), filed a Comment, seeking the dismissal of the Petition on procedural and substantive grounds.

ISSUES:

1. Whether president aquino enjoyed immunity from suit in this instant case

2. Whether president aquino, under the circumstances, was limited to appoint only from the nominees in the shortlist submitted by the jbc for each specific vacancy.

RULING

1. YES, the Court finds it proper to drop President Aquino as respondent taking into account that when this Petition was filed on May 17, 2016, he was still then the incumbent President who enjoyed immunity from suit. The presidential immunity from suit remains preserved in the system of government of this country, even though not expressly reserved in the 1987 Constitution. The President is granted the privilege of immunity from suit "to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention."

2. NO, the JBC was created under the 1987 Constitution with the principal function of recommending appointees to the Judiciary. It is a body, representative of all the stakeholders in the judicial appointment process, intended to rid the process of appointments to the Judiciary of the evils of political pressure and partisan activities.

It should be stressed that the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid. On this score, the Court finds herein that President Aquino was not obliged to appoint one new Sandiganbayan Associate Justice from each of the six shortlists submitted by the JBC, especially when the clustering of nominees into the six shortlists encroached on President Aquino's power to appoint members of the Judiciary from all those whom the JBC had considered to be qualified for the same positions of Sandiganbayan Associate Justice.

Moreover, in the case at bar, there were six simultaneous vacancies for the position of Sandiganbayan Associate Justice, and the JBC cannot, by clustering of the nominees, designate a numerical order of seniority of the prospective appointees. The Sandiganbayan, a collegiate court, is composed of a Presiding Justice and 20 Associate Justices divided into seven divisions, with three members each. The numerical order of the seniority or order of preference of the 20 Associate Justices is determined pursuant to law by the date and order of their commission or appointment by the President.

It bears to point out that part of the President's power to appoint members of a collegiate court, such as the Sandiganbayan, is the power to determine the seniority or order of preference of such newly appointed members by controlling the date and order of issuance of said members' appointment or commission papers. By already designating the numerical order of the vacancies, the JBC would be establishing the seniority or order of preference of the new Sandiganbayan Associate Justices even before their appointment by the President and, thus, unduly arrogating unto itself a vital part of the President's power of appointment.

There is also a legal ground why the simultaneous vacant positions of Sandiganbayan Associate Justice should not each be assigned a specific number by the JBC. The Sandiganbayan Associate Justice positions were created without any distinction as to rank in seniority or order of preference in the collegiate court. The President appoints his choice nominee to the post of Sandiganbayan Associate Justice, but not to a Sandiganbayan Associate Justice position with an identified rank, which is automatically determined by the order of issuance of appointment by the President. The appointment does not specifically pertain to the 16th, 17th, 18th, 19th, 20th, or 21st Sandiganbayan Associate Justice, because the Sandiganbayan Associate Justice's ranking is temporary and changes every time a vacancy occurs in said collegiate court. In fact, by the end of 2016, there will be two more vacancies for Sandiganbayan Associate Justice.51 These vacancies will surely cause movement in the ranking within the Sandiganbayan. At the time of his/her appointment, a Sandiganbayan Associate Justice might be ranked 16th, but because of the two vacancies occurring in the court, the same Sandiganbayan Associate Justice may eventually be higher ranked.

Furthermore, the JBC, in sorting the qualified nominees into six clusters, one for every vacancy, could influence the appointment process beyond its constitutional mandate of recommending qualified nominees to the President. Clustering impinges upon the President's power of appointment, as well as restricts the chances for appointment of the qualified nominees, because (1) the President's option for every vacancy is limited to the five to seven nominees in the cluster; and (2) once the President has appointed from one cluster, then he is proscribed from considering the other nominees in the same cluster for the other vacancies. The said limitations are utterly without legal basis and in contravention of the President's appointing power.

To recall, the JBC invited applications and recommendations and conducted interviews for the "six newly created positions of Associate Justice of the Sandiganbayan." Applicants, including respondents Musngi and Econg, applied for the vacancy for "Associate Justice of the Sandiganbayan." Throughout the application process before the JBC, the six newly-created positions of Sandiganbayan Associate Justice were not specifically identified and differentiated from one another for the simple reason that there was really no legal justification to do so. The requirements and qualifications, as well as the power, duties, and responsibilities are the same for all the Sandiganbayan Associate Justices. If an individual is found to be qualified for one vacancy, then he/she is also qualified for all the other vacancies. It was only at the end of the process that the JBC precipitously clustered the 37 qualified nominees into six separate shortlists for each of the six vacant positions.

MARIA VICTORIA G. BELO-HENARES v. ATTY. ROBERTO "ARGEE" C. GUEVARRA
A.C. No. 11394, 1 December 2016, (Perlas-Bernabe, J)

This instant administative case arose from a verified complaint for disbarment filed by complainant complainant Maria Victoria G. Belo-Henares (complainant) against respondent Atty. Roberto "Argee" C. Guevarra (respondent) for alleged violations of the Code of Professional Responsibility.

Complainant is the Medical Director and principal stockholder of the Belo Medical Group, Inc. (BMGI), a corporation duly organized and existing under Philippine laws 2 and engaged in the specialized field of cosmetic surgery.3 On the other hand, respondent is the lawyer of a certain Ms. Josefina "Josie" Norcio (Norcio), who filed criminal cases against complainant for an allegedly botched surgical procedure on her buttocks in 2002 and 2005, purportedly causing infection and making her ill in 2009.

In 2009, respondent wrote a series of posts on his Facebook account insulting and verbally abusing complainant. The complaint further alleged that respondent posted remarks on his Facebook account that were intended to destroy and ruin BMGI's medical personnel, as well as the entire medical practice of around 300 employees for no fair or justifiable cause. His posts include the following excerpts:

Argee Guevarra Quack Doctor Becky Belo: I am out to get Puwitic Justice here! Kiss My Client's Ass, Belo. Senator Adel Tamano, don't kiss Belo's ass. Guys and girls, nagiisip na akong tumakbo sa Hanghalan 2010 to Kick some ass!!! I will launch a national campaign against Plastic Politicians -No guns, No goons, No gold -IN GUTS I TRUST!

Argee Guevarra Dr. Vicki Belo, watch out for Josefina Norcio's Big Bang on Friday -You will go down in Medical History as a QUACK DOCTOR!!!! QUACK QUACK QUACK QUACK. CNN, FOX NEWS, BLOOMBERG, CHICAGO TRIBUNE, L.A. TIMES c/o my partner in the U.S., Atty. Trixie Cruz-Angeles ﷺ (September 22 at 11:18pm)

Argee Guevarra is amused by a libel case filed by Vicki Belo against me through her office receptionist in Taytay Rizal. Haaaaay, style-bulok at style-duwag talaga. Lalakarin ng Reyna ng Kaplastikan at Reyna ng Payola ang kaso … si Imelda Marcos nga sued me for P300 million pesos and ended up apologizing to me, si Belo pa kaya? (September 15 at 12:08pm

Argee Guevarra get vicki belo as your client!!! may 'extra-legal' budget yon. Kaya Lang, bistado ko na kung sino-sino ang tumatanggap eh, pag nalaman mo, baka bumagsak pa isang ahensya ng gobyerno dito, hahaha (August 9 at 10:31pm)

Argee Guevarra ATTENTION MGA BA TCHMATES SA DOJ: TIMBREHAN NJYO AKO KUNG MAGKANONG PANGSUHOL NJ BELO PARA MADIIN AKO HA???? I just [want] to know how much she hates me, ok? Ang payola budget daw niya runs into tens of millions …. (September 15 at 3:57pm) xxx xxx xxx

Asserting that the said posts, written in vulgar and obscene language, were designed to inspire public hatred, destroy her reputation, and to close BMGI and all its clinics, as well as to extort the amount of P200 Million from her as evident from his demand letter dated August 26, 2009, complainant

lodged the instant complaint for disbarment against respondent before the Integrated Bar of the Philippines (IBP), docketed as CBD Case No. 09-2551.

In defense, respondent claimed that the complaint was filed in violation of his constitutionally-guaranteed right to privacy, asserting that the posts quoted by complainant were private remarks on his private account on Facebook, meant to be shared only with his circle of friends of which complainant was not a part. He also averred that he wrote the posts in the exercise of his freedom of speech, and contended that the complaint was filed to derail the criminal cases that his client, Norcio, had filed against complainant. He denied that the remarks were vulgar and obscene, and that he made them in order to inspire public hatred against complainant. He likewise denied that he attempted to extort money from her, explaining that he sent the demand letter as a requirement prior to the filing of the criminal case for estafa, as well as the civil case for damages against her. Finally, respondent pointed out that complainant was a public figure who is, therefore, the subject of fair comment.

ISSUES:

1. Whether respondent can validly invoke his right to privacy?

2. Whether respondent can validly invoke freedom of speech?

RULING:

1. NO, Respondent never denied that he posted the purportedly vulgar and obscene remarks about complainant and BMGI on his Facebook account. In defense, however, he invokes his right to privacy, claiming that they were "private remarks" on his "private account" that can only be viewed by his circle of friends. Thus, when complainant accessed the same, she violated his constitutionally guaranteed right to privacy.

The defense is untenable. Before, can have an expectation of privacy in his or her online social networking activity -in this case, Facebook -it is first necessary that said user manifests the intention to keep certain posts private, through the employment of measures to prevent access thereto or to limit its visibility. This intention can materialize in cyberspace through the utilization of Facebook's privacy tools. In other words, utilization of these privacy tools is the manifestation, in the cyber world, of the user's invocation of his or her right to informational privacy.

The bases of the instant complaint are the Facebook posts maligning and insulting complainant, which posts respondent insists were set to private view. However, the latter has failed to offer evidence that he utilized any of the privacy tools or features of Facebook available to him to protect his posts, or that he restricted its privacy to a select few. Therefore, without any positive evidence to corroborate his statement that the subject posts, as well as the comments thereto, were visible only to him and his circle of friends, respondent's statement is, at best, self-serving, thus deserving scant consideration.

Moreover, even if the Court were to accept respondent's allegation that his posts were limited to or viewable by his "Friends" only, there is no assurance that the same -or other digital content that he uploads or publishes on his Facebook profile -will be safeguarded as within the confines of privacy, in light of the following:

Facebook "allows the world to be more open and connected by giving its users the tools to interact and share in any conceivable way";

A good number of Facebook users "befriend" other users who are total strangers;

The sheer number of "Friends" one user has, usually by the hundreds; and

A user's Facebook friend can "share" the former's post, or "tag" others who are not Facebook friends with the former, despite its being visible only to his or her own Facebook friends.

Thus, restricting the privacy of one's Facebook posts to "Friends" does not guarantee absolute protection from the prying eyes of another user who does not belong to one's circle of friends. The user's own Facebook friend can share said content or tag his or her own Facebook friend thereto, regardless of whether the user tagged by the latter is Face book friends or not with the former. Also, when the post is shared or when a person is tagged, the respective Facebook friends of the person who shared the post or who was tagged can view the post, the privacy setting of which was set at "Friends." Under the circumstances, therefore, respondent's claim of violation of right to privacy is negated.

2. NO, it has been held that the freedom of speech and of expression, like all constitutional freedoms, is not absolute. As such, the constitutional right of freedom of expression may not be availed of to broadcast lies or half-truths, insult others, destroy their name or reputation or bring them into disrepute.

A punctilious scrutiny of the Facebook remarks complained of disclosed that they were ostensibly made with malice tending to insult and tarnish the reputation of complainant and BMGI. Calling complainant a "quack doctor," "Reyna ng Kaplastikan," "Reyna ng Payola," and "Reyna ng Kapalpakan," and insinuating that she has been bribing people to destroy respondent smacks of bad faith and reveals an intention to besmirch the name and reputation of complainant, as well as BMGI. Respondent also ascribed criminal negligence upon complainant and BMGI by posting that complainant disfigured ("binaboy ") his client Norcio, labeling BMGI a "Frankenstein Factory," and calling out a boycott of BMGI's services -all these despite the pendency of the criminal cases that Norcio had already filed against complainant. He even threatened complainant with conviction for criminal negligence and estafa -which is contrary to one's obligation "to act with justice."

In view of the foregoing, respondent's inappropriate and obscene language, and his act of publicly insulting and undermining the reputation of complainant through the subject Facebook posts are, therefore, in complete and utter violation of the following provisions in the Code of Professional Responsibility:

Rule 7.03 -A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Rule 8.01 -A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

Rule 19.01 -A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

By posting the subject remarks on Facebook directed at complainant and BMGI, respondent disregarded the fact that, as a lawyer, he is bound to observe proper decorum at all times, be it in his public or private life. He overlooked the fact that he must behave in a manner befitting of an officer of the court, that is, respectful, firm, and decent. Instead, he acted inappropriately and rudely; he used words unbecoming of an officer of the law, and conducted himself in an aggressive way by hurling insults and maligning complainant's and BMGI' s reputation.

That complainant is a public figure and/or a celebrity and therefore, a public personage who is exposed to criticism does not justify respondent's disrespectful language. It is the cardinal condition of all criticism that it shall be bona fide, and shall not spill over the walls of decency and propriety. In this case, respondent's remarks against complainant breached the said walls, for which reason the former must be administratively sanctioned.

HON. MICHAEL L. RAMA, ET AL. v. HON. GILBERT P. MOISES, ET AL.
G.R. No. 197146, 6 December 2016, EN BANC, (Bersamin, J)

On May 25, 1973, President Ferdinand E. Marcos issued Presidential Decree No. 198 (Provincial Water Utilities Act of 1973). By virtue of P. D. No. 198, Cebu City formed the Metro Cebu Water District (MCWD) in 1974. Thereafter, the Cities of Mandaue, Lapu-Lapu and Talisay, and the Municipalities of Liloan, Compostela, Consolacion, and Cordova turned over their waterworks systems and services to the MCWD. From 1974 to 2002, the Cebu City Mayor appointed all the members of the MCWD Board of Directors in accordance with Section 3 (b) of P. D. No. 198, to wit: (b) Appointing authority. The person empowered to appoint the members of the board of Directors of a local water district, depending upon the geographic coverage and population make-up of the particular district. In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located. If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governors then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists.

In July 2002, Cebu Provincial Governor Pablo L. Garcia wrote to the MCWD to assert his authority and intention to appoint the members of the MCWD Board of Directors.' He stated in his letter that since 1996, the active water service connections in Cebu City had been below 75% of the total active water service connection of the MCWD; that no other city or municipality under the MCWD had reached the required percentage of 75%; and that, accordingly, he, as the Provincial Governor of Cebu, was the appointing authority for the members of the MCWD Board of Directors pursuant to Section 3 (b) of P. D. No. 198. Later on, the MCWD commenced in the Regional Trial Court in Cebu City (RTC) its action for declaratory relief seeking to declare Section 3(b) of P.D. No. 198 unconstitutional; or, should the provision be declared valid, it should be interpreted to mean that the authority to appoint the members of the MCWD Board of Directors belonged solely to the Cebu City Mayor. The RTC (Branch 7) dismissed the action for declaratory relief. To avoid a vacuum and in the exigency of the service, Provincial Governor Gwendolyn F. Garcia and Cebu City Mayor Tomas R. Osmeña jointly appointed Atty. Adelino Sitoy and Leo Pacana to fill the vacancies. However, the position of Atty. Sitoy was deemed vacated upon his election as the Municipal Mayor of Cordova, Cebu in the 2007 elections. Governor Garcia commenced an action for declaratory relief to seek the interpretation of Section 3 (b) of P.D. No. 198 on the proper appointing authority for the members of the MCWD Board of Directors. On February 22, 2008, however, Mayor Osmeña appointed Yu as a member of the MCWD Board of Directors.7 Accordingly, on May 20, 2008, the RTC dismissed the action for declaratory relief on the ground that declaratory relief became improper once there was a breach or violation of the provision. On June 13, 2008, Governor Garcia filed a complaint to declare the nullity of the appointment of Yu as a member of the MCWD Board of Directors (docketed as Civil Case No. CEB-34459), alleging that the appointment by Mayor Osmefia was illegal; that under Section 3(b) of P.D. No. 198, it was she as the Provincial Governor of Cebu who was vested with the authority to appoint members of the MCWD Board of Directors because the total active water service connections of Cebu City and of the other cities and municipalities were below 75% of the total water service connections in the area of the MCWD.

On November 16, 2010, the RTC rendered the assailed judgment declaring the appointment of Yu as illegal and void and ruled that the court has not been able to find any constitutional infirmity in the questioned provision (Sec. 3) of Presidential Decree No. 198. The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its

favor the presumption of constitutionality. For a law to be nullified, there must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt.

Mayor Osmeña and Yu jointly moved for reconsideration, but the RTC denied their motion. Hence, the petitioners have instituted this special civil action for certiorari.

ISSUES:

1. Whether Yu's expiration of term renders case moot and academic.

2. Whether Section 3(b) of P.D. No. 198 was void on its face for violating the constitutional provision on local autonomy and independence of HUCs under Article X of the 1987 Constitution.

3. Whether Section 3(b) of P.D. 198 is unconstitutional for violating the Due Process Clause and the Equal Protection Clause.

RULING:

1. Yu's expiration of term did not render case moot and academic. We note that respondent Yu's term as a member of the MCWD Board of Directors expired on December 31, 2012. However, this fact does not justify the dismissal of the petition on the ground of its being rendered moot and academic. The case should still be decided, despite the intervening developments that could have rendered the case moot and academic, because public interest is involved, and because the issue is capable of repetition yet evading review. For sure, the appointment by the proper official of the individuals to manage the system of water distribution and service for the consumers residing in the concerned cities and municipalities involves the interest of their populations and the general public affected by the services of the MCWD as a public utility. Moreover, the question on the proper appointing authority for the members of the MCWD Board of Directors should none of the cities and municipalities have at least 75% of the water consumers will not be definitively resolved with finality if we dismiss the petition on the ground of mootness.

2. Section 3(b) of P.D. 198 is already superseded. The Court opines that Section 3(b) of P.D. No. 198 should be partially struck down for being repugnant to the local autonomy granted by the 1987 Constitution to LGUs, and for being inconsistent with R.A. No. 7160 (1991 Local Government Code) and related laws on local governments. The enactment of P.D. No. 198 on May 25, 1973 was prior to the enactment on December 22, 1979 of Batas Pambansa Blg. 51 (An Act Providing for the Elective or Appointive Positions in Various Local Governments and for Other Purposes) and antedated as well the effectivity of the 1991 Local Government Code on January 1, 1992. At the time of the enactment of P.D. No. 198, Cebu City was still a component city of Cebu Province. Section 328 of B.P. Blg. 51 reclassified the cities of the Philippines based on well-defined criteria. Cebu City thus became an HUC, which immediately meant that its inhabitants were ineligible to vote for the officials of Cebu Province. In accordance with Section 12 of Article X of the 1987 Constitution, cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be independent of the province, but the voters of component cities within a province, whose charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials. Later on, Cebu City, already an HUC, was further effectively rendered

independent from Cebu Province pursuant to Section 29 of the 1991 Local Government Code. Hence, all matters relating to its administration, powers and functions were exercised through its local executives led by the City Mayor, subject to the President's retained power of general supervision over provinces, HUCs, and independent component cities pursuant to and in accordance with Section 252 of the 1991 Local Government Code, a law enacted for the purpose of strengthening the autonomy of the LGUs in accordance with the 1987 Constitution. Article X of the 1987 Constitution guarantees and promotes the administrative and fiscal autonomy of the LGUs. The foregoing statutory enactments enunciate and implement the local autonomy provisions explicitly recognized under the 1987 Constitution. To conform with the guarantees of the Constitution in favor of the autonomy of the LGUs, therefore, it becomes the duty of the Court to declare and pronounce Section 3(b) of P.D. No. 198 as already partially unconstitutional.

3. Section 3(b) of P.D. 198 is unconstitutional for violating the Due Process Clause and the Equal Protection Clause. The Court opine that although Section 3(b) of P.D. No. 198 provided for substantial distinction and was germane to the purpose of P.D. No. 198 when it was enacted in 1973, the intervening reclassification of the City of Cebu into an HUC and the subsequent enactment of the 1991 Local Government Code rendered the continued application of Section 3(b) in disregard of the reclassification unreasonable and unfair. Clearly, the assailed provision no longer provided for substantial distinction because, firstly, it ignored that the MCWD was built without the participation of the provincial government; secondly, it failed to consider that the MCWD existed to serve the community that represents the needs of the majority of the active water service connections; and, thirdly, the main objective of the decree was to improve the water service while keeping up with the needs of the growing population. Hence, the Court deem it to be inconsistent with the true objectives of the decree to still leave to the provincial governor the appointing authority if the provincial governor had administrative supervision only over municipalities and component cities accounting for 16.92% of the active water service connection in the MCWD. In comparison, the City of Cebu had 61.28% of the active service water connections; Mandaue, another HUC, 16%; and Lapu Lapu City, another HUC, 6.8%. There is no denying that the MCWD has been primarily serving the needs of Cebu City. Although it is impermissible to inquire into why the decree set 75% as the marker for determining the proper appointing authority, the provision has meanwhile become unfair for ignoring the needs and circumstances of Cebu City as the LGU accounting for the majority of the active water service connections, and whose constituency stood to be the most affected by the decisions made by the MCWD's Board of Directors. Indeed, the classification has truly ceased to be germane or related to the main objective for the enactment of P.D. No. 198 in 1973

SUBIDO PAGENTE CERTEZA MENDOZA AND BINAY LAW OFFICES v. THE COURT OF APPEALS, ET AL.
G.R. No. 216914, 6 December, 2016, EN BANC, (Perez, J)

Challenged in this petition for certiorari and prohibition under Rule 65 of the Rules of Court is the constitutionality of Section 11 of R.A No. 9160, the Anti-Money Laundering Act, as amended, specifically the Anti-Money Laundering Council's authority to file with the Court of Appeals (CA) in this case, an ex-parte application for inquiry into certain bank deposits and investments, including related accounts based on probable cause.

In 2015, a year before the 2016 presidential elections, reports abounded on the supposed disproportionate wealth of then Vice President Jejomar Binay and the rest of his family, some of whom were likewise elected public officers. The Office of the Ombudsman and the Senate conducted investigations and inquiries thereon.

From various news reports announcing the inquiry into then Vice President Binay's bank accounts, including accounts of members of his family, petitioner Subido Pagente Certeza Mendoza & Binay Law Firm (SPCMB) was most concerned with the article published in the Manila Times on 25 February 2015 entitled "Inspect Binay Bank Accounts" which read, in pertinent part:

xxx The Anti-Money Laundering Council (AMLC) asked the Court of Appeals (CA) to allow the [C]ouncil to peek into the bank accounts of the Binays, their corporations, and a law office where a family member was once a partner.

Also the bank accounts of the law office linked to the family, the Subido Pagente Certeza Mendoza & Binay Law Firm, where the Vice President's daughter Abigail was a former partner. By 8 March 2015, the Manila Times published another article entitled, "CA orders probe of Binay 's assets" reporting that the appellate court had issued a Resolution granting the ex-parte application of the AMLC to examine the bank accounts of SPCMB. Forestalled in the CA thus alleging that it had no ordinary, plain, speedy, and adequate remedy to protect its rights and interests in the purported ongoing unconstitutional examination of its bank accounts by public respondent Anti-Money Laundering Council (AMLC), SPCMB undertook direct resort to this Court via this petition for certiorari and prohibition on the following grounds that the he Anti-Money Laundering Act is unconstitutional insofar as it allows the examination of a bank account without any notice to the affected party: (1) It violates the person's right to due process; and (2) It violates the person's right to privacy.

ISSUES:

1. Whether Section 11 of R.A No. 9160 violates substantial due process.

2. Whether Section 11 of R.A No. 9160 violates procedural due process.

3. Whether Section 11 of R.A No. 9160 is violative of the constitutional right to privacy enshrined in Section 2, Article III of the Constitution.

RULING:

1. NO, we do not subscribe to SPCMB' s position. Succinctly, Section 11 of the AMLA providing for ex-parte application and inquiry by the AMLC into certain bank deposits and investments does not violate substantive due process, there being no physical seizure of property involved at that stage. In fact, .Eugenio delineates a bank inquiry order under Section 11 from a freeze order under Section 10 on both remedies' effect on the direct objects, i.e. the bank deposits and investments:

On the other hand, a bank inquiry order under Section 11 does not necessitate any form of physical seizure of property of the account holder. What the bank inquiry order authorizes is the examination of the particular deposits or investments in banking institutions or non-bank financial institutions. The monetary instruments or property deposited with such banks or financial institutions are not seized in a physical sense, but are examined on particular details such as the account holder's record of deposits and transactions. Unlike the assets subject of the freeze order, the records to be inspected under a bank inquiry order cannot be physically seized or hidden by the account holder. Said records are in the possession of the bank and therefore cannot be destroyed at the instance of the account holder alone as that would require the extraordinary cooperation and devotion of the bank. At the stage in which the petition was filed before us, the inquiry into certain bank deposits and investments by the AMLC still does not contemplate any form of physical seizure of the targeted corporeal property.

2. NO, the AMLC functions solely as an investigative body in the instances mentioned in Rule 5.b.26 Thereafter, the next step is for the AMLC to file a Complaint with either the DOJ or the Ombudsman pursuant to Rule 6b. Even in the case of Estrada v. Office of the Ombudsman, where the conflict arose at the preliminary investigation stage by the Ombudsman, we ruled that the Ombudsman's denial of Senator Estrada's Request to be furnished copies of the counter-affidavits of his co-respondents did not violate Estrada's constitutional right to due process where the sole issue is the existence of probable cause for the purpose of determining whether an information should be filed and does not prevent Estrada from requesting a copy of the counter-affidavits of his co-respondents during the pre-trial or even during trial. Plainly, the AMLC's investigation of money laundering offenses and its determination of possible money laundering offenses, specifically its inquiry into certain bank accounts allowed by court order, does not transform it into an investigative body exercising quasi-judicial powers. Hence, Section 11 of the AMLA, authorizing a bank inquiry court order, cannot be said to violate SPCMB's constitutional right to due process.

3. NO, SPCMB is adamant that the CA's denial of its request to be furnished copies of AMLC's ex-parte application for a bank inquiry order and all subsequent pleadings, documents and orders filed and issued in relation thereto, constitutes grave abuse of discretion where the purported blanket authority under Section 11: (1) partakes of a general warrant intended to aid a mere fishing expedition; (2) violates the attorney-client privilege; (3) is not preceded by predicate crime charging SPCMB of a money laundering offense; and (4) is a form of political harassment [of SPCMB' s] clientele.

We thus subjected Section 11 of the AMLA to heightened scrutiny and found nothing arbitrary in the allowance and authorization to AMLC to undertake an inquiry into certain bank accounts or deposits. Instead, we found that it provides safeguards before a bank inquiry order is issued, ensuring adherence to the general state policy of preserving the absolutely confidential nature of Philippine bank accounts: The AMLC is required to establish probable cause as basis for its ex-parte application for bank inquiry order. The CA, independent of the AMLC's demonstration of probable cause, itself makes a finding of probable cause that the deposits or investments are related to an unlawful activity under Section 3(i) or a money laundering offense under Section 4 of the AMLA.

A bank inquiry court order ex-parte for related accounts is preceded by a bank inquiry court order ex-parte for the principal account which court order ex-parte for related accounts is separately based on probable cause that such related account is materially linked to the principal account inquired into; and the authority to inquire into or examine the main or principal account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the Constitution. The foregoing demonstrates that the inquiry and examination into the bank account are not undertaken whimsically and solely based on the investigative discretion of the AMLC. In particular, the requirement of demonstration by the AMLC, and determination by the CA, of probable cause emphasizes the limits of such governmental action. We will revert to these safeguards under Section 11 as we specifically discuss the CA' s denial of SPCMB' s letter request for information concerning the purported issuance of a bank inquiry order involving its accounts. All told, we affirm the constitutionality of Section 11 of the AMLA allowing the ex-parte application by the AMLC for authority to inquire into, and examine, certain bank deposits and investments.