



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

LEAGUE OF PROVINCES OF THE
PHILIPPINES,

Petitioner,

G.R. No. 175368

Present:

- versus -

DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES and HON.
ANGELO T. REYES, in his capacity as
Secretary of DENR,

Respondents.

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
BERNABE, and
LEONEN, JJ.

Promulgated:

APRIL 11, 2013

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DECISION

PERALTA, J.:

This is a petition for *certiorari*, prohibition and mandamus,¹ praying that this Court order the following: (1) declare as unconstitutional Section 17(b)(3)(iii) of Republic Act (R.A.) No. 7160, otherwise known as *The Local Government Code of 1991* and Section 24 of Republic Act (R.A.) No. 7076, otherwise known as the *People's Small-Scale Mining Act of 1991*; (2)

¹ Under Rule 65 of the Rules of Court.

prohibit and bar respondents from exercising control over provinces; and (3) declare as illegal the respondent Secretary of the Department of Energy and Natural Resources' (DENR) nullification, voiding and cancellation of the Small-Scale Mining permits issued by the Provincial Governor of Bulacan.

The facts are as follows:

On March 28, 1996, Golden Falcon Mineral Exploration Corporation (Golden Falcon) filed with the DENR Mines and Geosciences Bureau Regional Office No. III (MGB R-III) an Application for Financial and Technical Assistance Agreement (FTAA) covering an area of 61,136 hectares situated in the Municipalities of San Miguel, San Ildefonso, Norzagaray and San Jose del Monte, Bulacan.²

On April 29, 1998, the MGB R-III issued an Order denying Golden Falcon's Application for Financial and Technical Assistance Agreement for failure to secure area clearances from the Forest Management Sector and Lands Management Sector of the DENR Regional Office No. III.³

On November 11, 1998, Golden Falcon filed an appeal with the DENR Mines and Geosciences Bureau Central Office (MGB-Central Office), and sought reconsideration of the Order dated April 29, 1998.⁴

On February 10, 2004, while Golden Falcon's appeal was pending, Eduardo D. Mercado, Benedicto S. Cruz, Gerardo R. Cruz and Liberato Sembrano filed with the Provincial Environment and Natural Resources Office (PENRO) of Bulacan their respective Applications for Quarry Permit (AQP), which covered the same area subject of Golden Falcon's Application for Financial and Technical Assistance Agreement.⁵

On July 16, 2004, the MGB-Central Office issued an Order denying Golden Falcon's appeal and affirming the MGB R-III's Order dated April 29, 1998.

On September 13, 2004, Atlantic Mines and Trading Corporation (AMTC) filed with the PENRO of Bulacan an Application for Exploration Permit (AEP) covering 5,281 hectares of the area covered by Golden Falcon's Application for Financial and Technical Assistance Agreement.⁶

² DENR Decision, *rollo*, pp. 53,54.

³ *Rollo*, p. 54.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

On October 19, 2004, DENR-MGB Director Horacio C. Ramos, in response to MGB R-III Director Arnulfo V. Cabantog's memorandum query dated September 8, 2004, categorically stated that the MGB-Central Office's Order dated July 16, 2004 became final on August 11, 2004, fifteen (15) days after Golden Falcon received the said Order, per the Certification dated October 8, 2004 issued by the Postmaster II of the Philippine Postal Corporation of Cainta, Rizal.⁷

Through letters dated May 5 and May 10, 2005, AMTC notified the PENRO of Bulacan and the MGB R-III Director, respectively, that the subject Applications for Quarry Permit fell within its (AMTC's) existing valid and prior Application for Exploration Permit, and the the former area of Golden Falcon was open to mining location only on August 11, 2004 per the Memorandum dated October 19, 2004 of the MGB Director, Central Office.⁸

On June 24, 2005, Ricardo Medina, Jr., PENRO of Bulacan, indorsed AMTC's letter to the Provincial Legal Officer, Atty. Eugenio F. Resurreccion, for his legal opinion on which date of denial of Golden Falcon's application/appeal – April 29, 1998 or July 16, 2004 – is to be considered in the deliberation of the Provincial Mining Regulatory Board (PMRB) for the purpose of determining when the land subject of the Applications for Quarry Permit could be considered open for application.

On June 28, 2005, Provincial Legal Officer Eugenio Resurreccion issued a legal opinion stating that the Order dated July 16, 2004 of the MGB-Central Office was a mere reaffirmation of the Order dated April 29, 1998 of the MGB R-III; hence, the Order dated April 29, 1998 should be the reckoning period of the denial of the application of Golden Falcon.

On July 22, 2005, AMTC filed with the PMRB of Bulacan a formal protest against the aforesaid Applications for Quarry Permit on the ground that the subject area was already covered by its Application for Exploration Permit.⁹

On August 8, 2005, MGB R-III Director Cabantog, who was the concurrent Chairman of the PMRB, endorsed to the Provincial Governor of Bulacan, Governor Josefina M. dela Cruz, the aforesaid Applications for Quarry Permit that had apparently been converted to Applications for Small-Scale Mining Permit of Eduardo D. Mercado, Benedicto S. Cruz, Gerardo R. Cruz and Lucila S. Valdez (formerly Liberato Sembrano).¹⁰

⁷ *Id.* at 55.

⁸ *Id.*

⁹ Comment of Respondents, *id.* at 74.

¹⁰ Annex "B," *id.* at 25.

On August 9, 2005, the PENRO of Bulacan issued four memoranda recommending to Governor Dela Cruz the approval of the aforesaid Applications for Small-Scale Mining Permit.¹¹

On August 10, 2005, Governor Dela Cruz issued the corresponding Small-Scale Mining Permits in favor of Eduardo D. Mercado, Benedicto S. Cruz, Gerardo R. Cruz and Lucila S. Valdez.¹²

Subsequently, AMTC appealed to respondent DENR Secretary the grant of the aforesaid Small-Scale Mining Permits, arguing that: (1) The PMRB of Bulacan erred in giving due course to the Applications for Small-Scale Mining Permit without first resolving its formal protest; (2) The areas covered by the Small-Scale Mining Permits fall within the area covered by AMTC's valid prior Application for Exploration Permit; (3) The Applications for Quarry Permit were illegally converted to Applications for Small-Scale Mining Permit; (4) DENR-MGB Director Horacio C. Ramos' ruling that the subject areas became open for mining location only on August 11, 2004 was controlling; (5) The Small-Scale Mining Permits were null and void because they covered areas that were never declared People's Small-Scale Mining Program sites as mandated by Section 4 of the People's Small-Scale Mining Act of 1991; and (6) Iron ore is not considered as one of the quarry resources, as defined by Section 43 of the Philippine Mining Act of 1995, which could be subjects of an Application for Quarry Permit.¹³

On August 8, 2006, respondent DENR Secretary rendered a Decision¹⁴ in favor of AMTC. The DENR Secretary agreed with MGB Director Horacio C. Ramos that the area was open to mining location only on August 11, 2004, fifteen (15) days after the receipt by Golden Falcon on July 27, 2004 of a copy of the MGB-Central Office's Order dated July 16, 2004, which Order denied Golden Falcon's appeal. According to the DENR Secretary, the filing by Golden Falcon of the letter-appeal suspended the finality of the Order of denial issued on April 29, 1998 by the Regional Director until the resolution of the appeal on July 16, 2004 by the MGB-Central Office. He stated that the Applications for Quarry Permit were filed on February 10, 2004 when the area was still closed to mining location; hence, the Small-Scale Mining Permits granted by the PMRB and the Governor were null and void. On the other hand, the DENR Secretary declared that AMTC filed its Application for Exploration Permit when the area was already open to other mining applicants; thus, AMTC's Application for Exploration Permit was valid. Moreover, the DENR Secretary held that the questioned Small-Scale Mining Permits were issued in violation of

¹¹ Annexes "D" to "D-3," *id.* at 30-33.

¹² Annexes "E" to "E-3," *id.* at 34-49.

¹³ Decision of the DENR Secretary, *id.* at 56.

¹⁴ *Rollo*, p. 53.

Section 4 of R.A. No. 7076 and beyond the authority of the Provincial Governor pursuant to Section 43 of R.A. No. 7942, because the area was never proclaimed to be under the People's Small-Scale Mining Program. Further, the DENR Secretary stated that iron ore mineral is not considered among the quarry resources.

The dispositive portion of the DENR Secretary's Decision reads:

WHEREFORE, the Application for Exploration Permit, AEP-III-02-04 of Atlantic Mines and Trading Corp. is declared valid and may now be given due course. The Small-Scale Mining Permits, SSMP-B-002-05 of Gerardo Cruz, SSMP-B-003-05 of Eduardo D. Mercado, SSMP-B-004-05 of Benedicto S. Cruz and SSMP-B-005-05 of Lucila S. Valdez are declared **NULL AND VOID**. Consequently, the said permits are hereby **CANCELLED**.¹⁵

Hence, petitioner League of Provinces filed this petition.

Petitioner is a duly organized league of local governments incorporated under R.A. No. 7160. Petitioner declares that it is composed of 81 provincial governments, including the Province of Bulacan. It states that this is not an action of one province alone, but the collective action of all provinces through the League, as a favorable ruling will not only benefit one province, but all provinces and all local governments.

Petitioner raises these issues:

I

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.

II

WHETHER OR NOT THE ACT OF RESPONDENT [DENR] IN NULLIFYING, VOIDING AND CANCELLING THE SMALL-SCALE MINING PERMITS AMOUNTS TO EXECUTIVE CONTROL, NOT MERELY SUPERVISION AND USURPS THE DEVOLVED POWERS OF ALL PROVINCES.¹⁶

¹⁵ *Id.* at 58-59. (Emphasis in the original.)

¹⁶ *Id.* at 8-9.

To start, the Court finds that petitioner has legal standing to file this petition because it is tasked under Section 504 of the Local Government Code of 1991 to promote local autonomy at the provincial level;¹⁷ adopt measures for the promotion of the welfare of all provinces and its officials and employees;¹⁸ and exercise such other powers and perform such other duties and functions as the league may prescribe for the welfare of the provinces.¹⁹

Before this Court determines the validity of an act of a co-equal and coordinate branch of the Government, it bears emphasis that ingrained in our jurisprudence is the time-honored principle that a statute is presumed to be valid.²⁰ This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts.²¹ This Court, however, may declare a law, or portions thereof, unconstitutional where a petitioner has shown a clear and unequivocal breach of the Constitution,²² leaving no doubt or hesitation in the mind of the Court.²³

In this case, petitioner admits that respondent DENR Secretary had the authority to nullify the Small-Scale Mining Permits issued by the Provincial Governor of Bulacan, as the DENR Secretary has control over the PMRB, and the implementation of the Small-Scale Mining Program is subject to control by respondent DENR.

Control of the DENR/DENR Secretary over small-scale mining in the provinces is granted by three statutes: (1) R.A. No. 7061 or *The Local Government Code of 1991*; (2) 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*.²⁴ The pertinent provisions of law sought to be declared as unconstitutional by petitioner are as follows:

R.A. No. 7061 (The Local Government Code of 1991)

SEC. 17. Basic Services and Facilities. - (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. **Local government units shall likewise**

¹⁷ R.A. No. 7160, Section 504 (b).

¹⁸ R.A. No. 7160, Section 504 (c).

¹⁹ R.A. No. 7160, Section 504 (h).

²⁰ *Coconut Oil Refiners Association, Inc. v. Torres*, G.R. No. 132527, July 29, 2005, 465 SCRA 47, 62; 503 Phil. 43, 53 (2005).

²¹ *Id.* at 62-63; *id.*

²² *Id.* at 63; *id.* at 54.

²³ *Id.*; *id.*

²⁴ Sec. 42. *Small-Scale Mining*. – Small-scale mining shall continue to be governed by Republic Act No. 7076 and other pertinent laws.

exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.

(b) Such basic services and facilities include, but are not limited to, the following:

X X X X

(3) For a Province:

X X X X

(iii) Pursuant to national policies and subject to supervision, control and review of the DENR, enforcement of forestry laws limited to community-based forestry projects, pollution control law, small-scale mining law, and other laws on the protection of the environment; and mini-hydro electric projects for local purposes; x x x²⁵

R.A. No. 7076 (People's Small-Scale Mining Act of 1991)

Sec. 24. Provincial/City Mining Regulatory Board. - There is hereby created **under the direct supervision and control of the Secretary** a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, **subject to review by the Secretary**:

- (a) Declare and segregate existing gold-rush areas for small-scale mining;
- (b) Reserve future gold and other mining areas for small-scale mining;
- (c) Award contracts to small-scale miners;
- (d) Formulate and implement rules and regulations related to small-scale mining;
- (e) Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small-mining; and
- (f) Perform such other functions as may be necessary to achieve the goals and objectives of this Act.²⁶

Petitioner contends that the aforecited laws and DENR Administrative Order No. 9640 (the Implementing Rules and Regulations of the Philippine Mining Act of 1995) did not explicitly confer upon respondents DENR and the DENR Secretary the power to reverse, abrogate, nullify, void, or cancel the permits issued by the Provincial Governor or small-scale mining contracts entered into by the PMRB. The statutes are also silent as to the

²⁵ Emphasis supplied.

²⁶ Emphasis supplied.

power of respondent DENR Secretary to substitute his own judgment over that of the Provincial Governor and the PMRB.

Moreover, petitioner contends that Section 17 (b)(3)(iii) of the Local Government Code of 1991 and Section 24 of R.A. No. 7076, which confer upon respondents DENR and the DENR Secretary the power of control are unconstitutional, as the Constitution states that the President (and Executive Departments and her alter-egos) has the power of supervision only, not control, over acts of the local government units, and grants the local government units autonomy, thus:

The 1987 Constitution:

Article X, Section 4. **The President of the Philippines shall exercise general supervision over local governments.** Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.²⁷

Petitioner contends that the policy in the above-cited constitutional provision is mirrored in the Local Government Code, which states:

SEC. 25. *National Supervision over Local Government Units.* - (a) Consistent with the basic policy on local autonomy, **the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions.**

The President shall exercise supervisory authority directly over provinces, highly urbanized cities, and independent component cities; through the province with respect to component cities and municipalities; and through the city and municipality with respect to barangays.²⁸

Petitioner contends that the foregoing provisions of the Constitution and the Local Government Code of 1991 show that the relationship between the President and the Provinces or respondent DENR, as the alter ego of the President, and the Province of Bulacan is one of executive supervision, not one of executive control. The term “control” has been defined as the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his/her duties and to substitute the judgment of the former for the latter, while the term “supervision” is the power of a superior officer to see to it that lower officers perform their function in accordance with law.²⁹

²⁷ Emphasis supplied.

²⁸ Emphasis supplied.

²⁹ Citing *National Liga Ng Mga Barangay v. Paredes*, G.R. Nos. 130775 and 131939, September 27, 2004, 439 SCRA 130; 482 Phil. 331 (2004).

Petitioner argues that respondent DENR Secretary went beyond mere executive supervision and exercised control when he nullified the small-scale mining permits granted by the Provincial Governor of Bulacan, as the former substituted the judgment of the latter.

Petitioner asserts that what is involved here is a devolved power. Under the Local Government Code of 1991, the power to regulate small-scale mining has been devolved to all provinces. In the exercise of devolved powers, departmental approval is not necessary.³⁰

Petitioner contends that if the provisions in Section 24 of R.A. No. 7076 and Section 17 (b)(3)(iii) of the Local Government Code of 1991 granting the power of control to the DENR/DENR Secretary are not nullified, nothing would stop the DENR Secretary from nullifying, voiding and canceling the small-scale mining permits that have been issued by a Provincial Governor.

Petitioner submits that the statutory grant of power of control to respondents is unconstitutional, as the Constitution only allows supervision over local governments and proscribes control by the executive departments.

In its Comment, respondents, represented by the Office of the Solicitor General, stated that contrary to the assertion of petitioner, the power to implement the small-scale mining law is expressly limited in Section 17 (b)(3)(iii) of the Local Government Code, which provides that it must be carried out "pursuant to national policies and subject to supervision, control and review of the DENR." Moreover, the fact that the power to implement the small-scale mining law has not been fully devolved to provinces is further amplified by Section 4 of the People's Small-Scale Mining Act of 1991, which provides, among others, that the People's Small-Scale Mining Program shall be implemented by the DENR Secretary.

The petition lacks merit.

Paragraph 1 of Section 2, Article XII (National Economy and Patrimony) of the Constitution³¹ provides that "[t]he exploration,

³⁰ Citing *Tano v. Socrates*, G.R. No. 110249, August 21, 1997, 278 SCRA 154; 343 Phil. 670 (1997).

³¹ The Constitution, Article XII, Section 2. – All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

development and utilization of natural resources shall be under the full control and supervision of the State.”

Moreover, paragraph 3 of Section 2, Article XII of the Constitution provides that “[t]he **Congress** may, by law, allow small-scale utilization of natural resources by Filipino citizens x x x.”

Pursuant to Section 2, Article XII of the Constitution, R.A. No. 7076 or the *People's Small-Scale Mining Act of 1991*, was enacted, establishing under Section 4 thereof a People's Small-Scale Mining Program to be implemented by the DENR Secretary in coordination with other concerned government agencies.

The *People's Small-Scale Mining Act of 1991* defines “small-scale mining” as “refer[ring] to mining activities, which rely heavily on manual labor using simple implement and methods and do not use explosives or heavy mining equipment.”³²

It should be pointed out that the Administrative Code of 1987³³ provides that the DENR is, subject to law and higher authority, in charge of carrying out the State's constitutional mandate, under Section 2, Article XII of the Constitution, to control and supervise the exploration, development, utilization and conservation of the country's natural resources. Hence, the enforcement of small-scale mining law in the provinces is made subject to the supervision, control and review of the DENR under the Local Government Code 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.

x x x x

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish- workers in rivers, lakes, bays, and lagoons. (Emphases supplied.)

³² R.A. No. 7076, Sec. 2.

³³ The Administrative Code of 1987, Title XIV, Chapter 1:

SEC. 1. *Declaration of Policy.* – (1) The State shall ensure, for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources, consistent with the necessity of maintaining a sound ecological balance and protecting and enhancing the quality of the environment and the objective of making the exploration, development and utilization of such natural resources equitably accessible to the different segments of the present as well as future generations.

x x x x

SEC. 2. *Mandate.* – (1) The Department of Environment and Natural Resources shall be primarily responsible for the implementation of the foregoing policy.

(2) It shall, subject to law and higher authority, be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization and conservation of the country's natural resources. (Emphasis supplied)

Indeed, Section 4, Article X (Local Government) of the Constitution states that “[t]he President of the Philippines shall exercise general supervision over local governments,” and Section 25 of the Local Government Code reiterates the same. General supervision by the President means no more than seeing to it that laws are faithfully executed or that subordinate officers act within the law.³⁴

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.³⁵ It does not make local governments sovereign within the State.³⁶ Administrative autonomy may involve devolution of powers, but subject to limitations like following national policies or standards,³⁷ and those provided by the Local Government Code, as the structuring of local governments and the allocation of powers, responsibilities, and resources among the different local government units and local officials have been placed by the Constitution in the hands of Congress³⁸ under Section 3, Article X of the Constitution.

Section 3, Article X of the Constitution mandated Congress to “enact **a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization** with effective mechanisms of recall, initiative, and referendum, **allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.**”

In connection with the enforcement of the small-scale mining law in the province, Section 17 of the Local Government Code provides:

SEC. 17. *Basic Services and Facilities.* - (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. **Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary,**

³⁴ Fr. Joaquin G. Bernas, S.J., *The Constitution of the Philippines A Commentary*, Vol. II, © 1988, p. 379, citing III RECORD 451-452.

³⁵ *Cordillera Board Coalition v. Commission on Audit*, G.R. No. 79956, January 29, 1990, 181 SCRA 495.

³⁶ *Basco v. Philippine Amusements and Gaming Corporation*, G.R. No. 91649, May 14, 1991, 197 SCRA 52.

³⁷ Jose N. Nollado, *The Local Government Code of 1991 Annotated*, 2004 edition, p. 10.

³⁸ Fr. Joaquin G. Bernas, S.J., *The Constitution of the Philippines A Commentary*, Vol. II, © 1988, *supra* note 34, at 377.

appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.

(b) Such basic services and facilities include, but are not limited to, the following:

X X X X

(3) For a Province:

X X X X

(iii) Pursuant to national policies and subject to supervision, **control and review of the DENR, enforcement of** forestry laws limited to community-based forestry projects, pollution control law, **small-scale mining law**, and other laws on the protection of the environment; and mini-hydro electric projects for local purposes;³⁹

Clearly, the Local Government Code did not fully devolve the enforcement of the small-scale mining law to the provincial government, as its enforcement is subject to the supervision, control and review of the DENR, which is in charge, subject to law and higher authority, of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization of the country's natural resources.⁴⁰

Section 17 (b)(3)(iii) of the Local Government Code of 1991 is in harmony with R.A. No. 7076 or the *People's Small-Scale Mining Act of 1991*,⁴¹ which established a People's Small-Scale Mining Program **to be implemented by the Secretary of the DENR**, thus:

Sec. 2. Declaration of Policy. – It is hereby declared of the State to promote, develop, protect and rationalize viable small-scale mining activities in order to generate more employment opportunities and provide an equitable sharing of the nation's wealth and natural resources, giving due regard to existing rights as herein provided.

X X X X

Sec. 4. People's Small-Scale Mining Program. - For the purpose of carrying out the declared policy provided in Section 2 hereof, **there is hereby established a People's Small-Scale Mining Program to be implemented by the Secretary of the Department of Environment and Natural Resources**, hereinafter called the Department, **in coordination with other concerned government agencies**, designed to achieve an

³⁹ Emphases supplied.

⁴⁰ The Administrative Code of 1987, Title XIV (Environment and Natural Resources), Chapter 1, Section 2 (2).

⁴¹ R.A. No. 7076 was approved on June 27, 1991 and took effect on July 19, 1991.

orderly, systematic and rational scheme for the small-scale development and utilization of mineral resources in certain mineral areas in order to address the social, economic, technical, and environmental problems connected with small-scale mining activities.

X X X X

Sec. 24. Provincial/City Mining Regulatory Board. – There is hereby created **under the direct supervision and control of the Secretary** a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, **subject to review by the Secretary**:

- (a) Declare and segregate existing gold-rush areas for small-scale mining;
- (b) Reserve future gold and other mining areas for small-scale mining;
- (c) Award contracts to small-scale miners;
- (d) Formulate and implement rules and regulations related to small-scale mining;
- (e) Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small-mining; and
- (f) Perform such other functions as may be necessary to achieve the goals and objectives of this Act.⁴²

DENR Administrative Order No. 34, series of 1992, containing the Rules and Regulations to implement R.A. No. 7076, provides:

SEC. 21. *Administrative Supervision over the People's Small-Scale Mining Program.* – The following DENR officials shall exercise the following supervisory functions in the implementation of the Program:

21.1 **DENR Secretary – direct supervision and control over the program** and activities of the small-scale miners within the people's small-scale mining area;

21.2 Director – the Director shall:

- a. Recommend the depth or length of the tunnel or adit taking into account the: (1) size of membership and capitalization of the cooperative; (2) size of mineralized areas; (3) quantity of mineral deposits; (4) safety of miners; and (5) environmental impact and other considerations;

⁴²

Emphases supplied.

- b. Determine the right of small-scale miners to existing facilities in consultation with the operator, claimowner, landowner or lessor of an affected area upon declaration of a small-scale mining area;
- c. Recommend to the Secretary the withdrawal of the status of the people's small-scale mining area when it can no longer be feasibly operated on a small-scale basis; and
- d. See to it that the small-scale mining contractors abide by small-scale mines safety rules and regulations.

X X X X

SEC. 22. *Provincial/City Mining Regulatory Board.* – The Provincial/City Mining Regulatory Board created under R.A. 7076 shall exercise the following powers and functions, **subject to review by the Secretary:**

- 22.1 Declares and segregates existing gold rush area for small-scale mining;
- 22.2 Reserves for the future, mineralized areas/mineral lands for people's small-scale mining;
- 22.3 Awards contracts to small-scale miners' cooperative;
- 22.4 Formulates and implements rules and regulations related to R.A. 7076;
- 22.5 Settles disputes, conflicts or litigations over conflicting claims within ninety (90) days upon filing of protests or complaints; Provided, That any aggrieved party may appeal within five (5) days from the Board's decision to the Secretary for final resolution otherwise the same is considered final and executory; and
- 22.6 Performs such other functions as may be necessary to achieve the goals and objectives of R.A. 7076.

SEC. 6. *Declaration of People's Small-Scale Mining Areas.* – The Board created under R.A. 7076 shall have the authority to declare and set aside People's Small-Scale Mining Areas in sites onshore suitable for small-scale mining operations **subject to review by the DENR Secretary** thru the Director.⁴³

DENR Administrative Order No. 23, otherwise known as the *Implementing Rules and Regulations of R.A. No. 7942, otherwise known as the Philippine Mining Act of 1995*, adopted on August 15, 1995, provides under Section 123⁴⁴ thereof that small-scale mining applications should be

⁴³ Emphases supplied.

⁴⁴ DENR Administrative Order No. 95-936, SEC. 123. *General Provisions.* – Small-scale mining applications shall be filed with, processed and evaluated by the Provincial/City Mining Regulatory Board concerned and the corresponding permits to be issued by the Provincial/City Mayor concerned except small-scale mining applications within the mineral reservations which shall be filed, processed and evaluated by the Bureau and the corresponding permit to be issued by the Director.

filed with the PMRB⁴⁵ and the corresponding permits shall be issued by the Provincial Governor, except small-scale mining applications within the mineral reservations.

Thereafter, DENR Administrative Order No. 96-40, otherwise known as the *Revised Implementing Rules and Regulations of R.A. No. 7942, otherwise known as the Philippine Mining Act of 1995*, adopted on December 19, 1996, provides that applications for Small-Scale Mining Permits shall be filed with the Provincial Governor/City Mayor through the concerned Provincial/City Mining Regulatory Board for areas outside the Mineral Reservations and with the Director through the Bureau for areas within the Mineral Reservations.⁴⁶ Moreover, it provides that Local Government Units shall, in coordination with the Bureau/ Regional Office(s) and subject to valid and existing mining rights, “approve applications for small-scale mining, sand and gravel, quarry x x x and gravel permits not exceeding five (5) hectares.”⁴⁷

Petitioner contends that the Local Government Code of 1991, R.A. No. 7076, DENR Administrative Orders Nos. 95-23 and 96-40 granted the DENR Secretary the broad statutory power of control, but did not confer upon the respondents DENR and DENR Secretary the power to reverse, abrogate, nullify, void, cancel the permits issued by the Provincial Governor or small-scale mining contracts entered into by the Board.

The contention does not persuade.

The settlement of disputes over conflicting claims in small-scale mining is provided for in Section 24 of R.A. No. 7076, thus:

Sec. 24. Provincial/City Mining Regulatory Board. – There is hereby created under the direct supervision and control of the Secretary a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, subject to review by the Secretary:

X X X X

x x x [T]he implementing rules and regulations of R.A. No. 7076, insofar as they are not inconsistent with the provisions of these implementing rules and regulations, shall continue to govern small-scale mining operations. (Emphasis supplied.)

⁴⁵ SEC. 23. *Composition of the Provincial/City Mining Regulatory Board.* – The Board shall be composed of the following:

- 23.1 Representative from the DENR Regional Office concerned—Chairman;
- 23.2 Governor or City Mayor or their duly authorized representative—Member
- 23.3 One (1) Small-Scale mining representative—Member or as per Section 24.3 hereof;
- 23.4 One (1) Large-Scale mining representative—Member;
- 23.5 One (1) representative from a nongovernment organization—Member; and
- 23.6 Staff support to the Board to be provided by the Department.

⁴⁶ DENR Administrative Order No. 96-40, Chapter IX, Section 103.

⁴⁷ DENR Administrative Order No. 96-40, Chapter 1, Section 8.

- (e) Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small mining area; x x x

Section 24, paragraph (e) of R.A. No. 7076 cited above is reflected in Section 22, paragraph 22.5 of the Implementing Rules and Regulations of R.A. No. 7076, to wit:

SEC. 22. *Provincial/City Mining Regulatory Board.* – The Provincial/City Mining Regulatory Board created under R.A. No. 7076 shall exercise the following powers and functions, subject to review by the Secretary:

x x x x

22.5 Settles disputes, conflicts or litigations over conflicting claims within ninety (90) days upon filing of protests or complaints; Provided, That any aggrieved party may appeal within five (5) days from the Board's decision to the Secretary for final resolution otherwise the same is considered final and executory; x x x

In this case, in accordance with Section 22, paragraph 22.5 of the Implementing Rules and Regulations of R.A. No. 7076, the AMTC filed on July 22, 2005 with the PMRB of Bulacan a formal protest against the Applications for Quarry Permits of Eduardo Mercado, Benedicto Cruz, Liberato Sembrano (replaced by Lucila Valdez) and Gerardo Cruz on the ground that the subject area was already covered by its Application for Exploration Permit.⁴⁸ However, on August 8, 2005, the PMRB issued Resolution Nos. 05-8, 05-9, 05-10 and 05-11, resolving to submit to the Provincial Governor of Bulacan the Applications for Small-Scale Mining Permits of Eduardo Mercado, Benedicto Cruz, Lucila Valdez and Gerardo Cruz for the granting/issuance of the said permits.⁴⁹ On August 10, 2005, the Provincial Governor of Bulacan issued the Small-Scale Mining Permits to Eduardo Mercado, Benedicto Cruz, Lucila Valdez and Gerardo Cruz based on the legal opinion of the Provincial Legal Officer and the Resolutions of the PMRB of Bulacan.

Hence, AMTC filed an appeal with respondent DENR Secretary, appealing from Letter-Resolution No. 05-1317 and Resolution Nos. 05-08, 05-09, 05-10 and 05-11, all dated August 8, 2005, of the PMRB of Bulacan, which resolutions gave due course and granted, on August 10, 2005, Small-Scale Mining Permits to Eduardo D. Mercado, Benedicto S. Cruz, Lucila

⁴⁸ Decision of the DENR Secretary, *rollo*, pp. 2-3.

⁴⁹ Annexes "C" to "C-3," *id.* at. 26-29.

Valdez and Gerardo Cruz involving parcels of mineral land situated at Camachin, Doña Remedios Trinidad, Bulacan.

The PMRB of Bulacan filed its Answer, stating that it is an administrative body, created under R.A. No. 7076, which cannot be equated with the court wherein a full-blown hearing could be conducted, but it is enough that the parties were given the opportunity to present evidence. It asserted that the questioned resolutions it issued were in accordance with the mining laws and that the Small-Scale Mining Permits granted were registered ahead of AMTC's Application for Exploration Permit. Further, the Board stated that the Governor of Bulacan had the power to approve the Small-Scale Mining Permits under R.A. No. 7160.

The DENR Secretary found the appeal meritorious, and resolved these pivotal issues: (1) when is the subject mining area open for mining location by other applicants; and (2) who among the applicants have valid applications. The pertinent portion of the decision of the DENR Secretary reads:

We agree with the ruling of the MGB Director that the area is [open only] to mining location on August 11, 2004, fifteen (15) days after the receipt by Golden Falcon on July 27, 2004 of a copy of the subject Order of July 16, 2004. The filing by Golden Falcon of the letter-appeal suspended the finality of the Order of Denial issued on April 29, 1998 by the Regional Director until the Resolution thereof on July 16, 2004.

Although the subject AQPs/SSMPs were processed in accordance with the procedures of the PMRB, however, the AQPs were filed on February 10, 2004 when the area is still closed to mining location. Consequently, the SSMPs granted by the PMRB and the Governor are null and void making thereby AEP No. III-02-04 of the AMTC valid, it having been filed when the area is already open to other mining applicants.

Records also show that the AQPs were converted into SSMPs. These are two (2) different applications. The questioned SSMPs were issued in violation of Section 4 of RA 7076 and beyond the authority of the Provincial Governor pursuant to Section 43 of RA 7942 because the area was never proclaimed as "People's Small-Scale Mining Program." Moreover, iron ore mineral is not considered among the quarry resources.

X X X X

WHEREFORE, the Application for Exploration Permit, AEP-III-02-04 of Atlantic Mines and Trading Corp. is declared valid and may now be given due course. The Small-Scale Mining Permits, SSMP-B-002-05 of Gerardo Cruz, SSMP-B-003-05 of Eduardo D. Mercado, SSMP-B-004-05 of Benedicto S. Cruz and SSMP-B-005-05 of Lucila S. Valdez are

declared **NULL AND VOID**. Consequently, the said permits are hereby **CANCELLED**.⁵⁰

The Court finds that the decision of the DENR Secretary was rendered in accordance with the power of review granted to the DENR Secretary in the resolution of disputes, which is provided for in Section 24 of R.A. No. 7076⁵¹ and Section 22 of its Implementing Rules and Regulations.⁵² It is noted that although AMTC filed a protest with the PMRB regarding its superior and prior Application for Exploration Permit over the Applications for Quarry Permit, which were converted to Small-Scale Mining Permits, the PMRB did not resolve the same, but issued Resolution Nos. 05-08 to 05-11 on August 8, 2005, resolving to submit to the Provincial Governor of Bulacan the Applications for Small-Scale Mining Permits of Eduardo Mercado, Benedicto Cruz, Lucila Valdez and Gerardo Cruz for the granting of the said permits. After the Provincial Governor of Bulacan issued the Small-Scale Mining Permits on August 10, 2005, AMTC appealed the Resolutions of the PMRB giving due course to the granting of the Small-Scale Mining Permits by the Provincial Governor.

Hence, the decision of the DENR Secretary, declaring that the Application for Exploration Permit of AMTC was valid and may be given due course, and canceling 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 Implementing Rules and Regulations. The DENR Secretary's power to review and, therefore, decide, in this case, the issue on the validity of the issuance of the Small-Scale Mining Permits by the Provincial Governor as recommended by the PMRB, is a quasi-judicial function, which involves the determination of what the law is, and what the legal rights of the contending parties are, with respect to the matter in controversy and, on the basis thereof and the facts obtaining, the adjudication of their respective rights.⁵³ The DENR Secretary exercises quasi-judicial function under R.A. No. 7076 and its Implementing Rules and Regulations to the extent necessary in settling disputes, conflicts or

⁵⁰ *Rollo*, pp. 57-58. (Emphasis supplied)

⁵¹ **Sec. 24. Provincial/City Mining Regulatory Board.** – There is hereby created **under the direct supervision and control of the Secretary** a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, **subject to review by the Secretary**:

x x x x

(e) Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small-mining area; and x x x (Emphasis supplied.)

⁵² **SEC. 22. Provincial/City Mining Regulatory Board.** – The Provincial/City Mining Regulatory Board created under R.A. No. 7076 shall exercise the following powers and functions, subject to review by the Secretary:

x x x x

22.5 Settles disputes, conflicts or litigations over conflicting claims within ninety (90) days upon filing of protests or complaints; Provided, That any aggrieved party may appeal within five (5) days from the Board's decision to the Secretary for final resolution otherwise the same is considered final and executory; x x x

⁵³ *Doran v. Luczon, Jr.*, G.R. No. 151344, September 26, 2006, 503 SCRA 106.

litigations over conflicting claims. This quasi-judicial function of the DENR Secretary can neither be equated with “substitution of judgment” of the Provincial Governor in issuing Small-Scale Mining Permits nor “control” over the said act of the Provincial Governor as it is a determination of the rights of AMTC over conflicting claims based on the law.

In determining whether Section 17 (b)(3)(iii) of the Local Government Code of 1991 and Section 24 of R.A. No. 7076 are unconstitutional, the Court has been guided by *Beltran v. The Secretary of Health*,⁵⁴ which held:

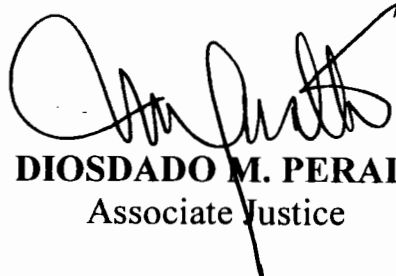
The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt. Those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis therefor. Otherwise, the petition must fail.⁵⁵

In this case, the Court finds that the grounds raised by petitioner to challenge the constitutionality of Section 17 (b)(3)(iii) of the Local Government Code of 1991 and Section 24 of R.A. No. 7076 failed to overcome the constitutionality of the said provisions of law.

WHEREFORE, the petition is **DISMISSED** for lack of merit.


No costs.

SO ORDERED.



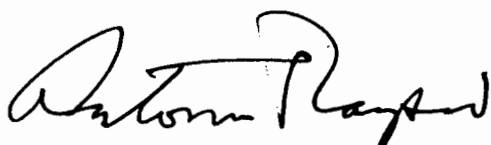
DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

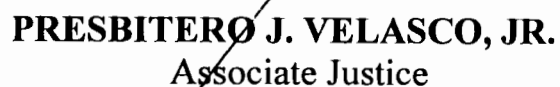


MARIA LOURDES P. A. SERENO
Chief Justice

⁵⁴ G.R. Nos. 133640, 133661, and 139147, November 25, 2005, 476 SCRA 168.
⁵⁵ *Beltran v. Secretary of Health, supra*, at 199-200.



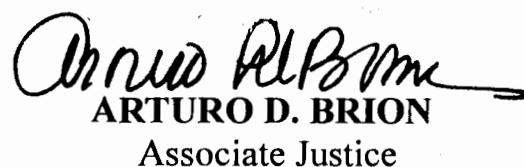
ANTONIO T. CARPIO
Associate Justice



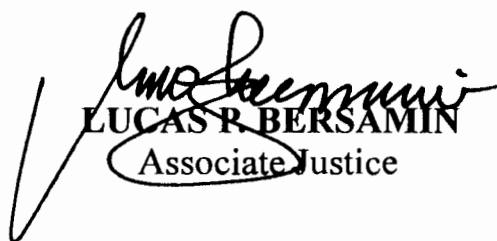
PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



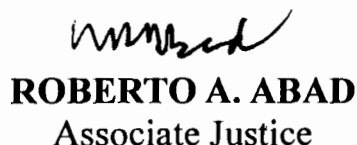
ARTURO D. BRION
Associate Justice



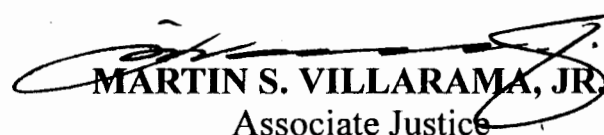
LUCAS R. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

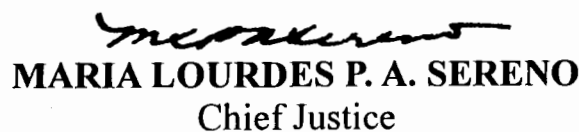
See separate concurring opinion



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice