EN BANC

G.R. No. 175368 – LEAGUE OF PROVINCES OF THE PHILIPPINES, Petitioner, v. **DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES and HON. ANGELO T. REYES, in his capacity as Secretary of DENR,** Respondent.

Promulgated:
APRIL 11, 2013

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CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

This is a case of overlapping claims, which involve the application of the Mining Act, and the Small-Scale Mining Act. It is specific to the facts of this case, which are:

The Mines and Geosciences Bureau, Regional Office No. III (MGB R-III) denied Golden Falcon Mineral Exploration Corporation's (Golden Falcon) application for Financial and Technical Assistance Agreement (FTAA) on April 29, 1998 for failure to secure the required clearances.[1]

Golden Falcon appealed the denial with the Mines and Geosciences Bureau—Central Office (Central Office).[2] The appeal was denied only on July 16, 2004 or six years after Golden Falcon appealed.[3]

On February 10, 2004, pending Golden Falcon's appeal to the Central Office, certain persons filed with the Provincial Environment and Natural Resources Office (PENRO) of Bulacan their applications for quarry permit covering the same area subject of Golden Falcon's FTAA application.[4]

On September 13, 2004, after the Central Office denied Golden

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1 *Rollo*, p. 54.
2 Id.
3 Id.
4 Id.

Falcon's appeal, Atlantic Mines and Trading Corporation (AMTC) filed an application for exploration permit covering the same subject area with the PENRO of Bulacan.[5]

Confusion of rights resulted from the overlapping applications of AMTC and the persons applying for quarry permits. The main question was when did the subject area become open for small scale mining applications. At that time, the provincial government did not question whether it had concurrent or more superior jurisdiction *vis-a-vis* the national government.

It was upon query by MGB R-III Director Arnulfo Cabantog that DENR-MGB Director Horacio Ramos stated that the denial of Golden Falcon's application became final fifteen days after the denial of its appeal to the Central Office or on August 11, 2004.[6] Hence, the area of Golden Falcon's application became open to permit applications only on that date.

After the MGB Director issued the statement, however, the Provincial Legal Officer of Bulacan, Atty. Eugenio F. Ressureccion issued a legal opinion on the issue, stating that the subject area became open for new applications on the date of the first denial on April 29, 1998.[7]

On the basis of the Provincial Legal Officer's opinion, Director Cabantog of MGB R-III endorsed the applications for quarry permit, now converted to applications for small-scale mining permit, to the Governor of Bulacan.[8] Later on, the Governor issued the small-scale mining permits.[9]

Upon appeal by the AMTC, the DENR Secretary declared as null the small-scale mining permits issued by the Governor on the ground that they have been issued in violation of Section 4 of R.A. No. 7076 and beyond the authority of the Governor.[10] According to the DENR Secretary, the area was never proclaimed to be under the small-scale mining program. [11] Iron ores also cannot be considered as a quarry resource.[12]

The question in this case is whether or not the provincial governor had the power to issue the subject permits.

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5 Id.
6 Id. at 55.
7 Id.
8 Id. at 55-56.
9 Id. at 56.
10 Id. at 58.
11 Id.
12 Id.

The fact that the application for small-scale mining permit was initially filed as applications for quarry permits is not contested.

Quarry permits, however, may only be issued "on privately-owned lands and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other similar materials..."[13] It may not be issued on "...resources that contain metals or metallic constituents and/or other valuable materials in economic quantities."[14]

Not only do iron ores fall outside the classification of any of the enumerated materials in Section 43 of the Mining Act, but iron is also a metal. It may not be classified as a quarry resource, hence, the provincial governor had no authority to issue the quarry permits in the first place. Probably realizing this error, the applications for quarry permit were converted to applications for small-scale mining permit.

Even so, the issuance of the small-scale mining permit was still beyond the authority of the provincial governor. Small-scale mining areas must first be declared and set aside as such before they can be made subject of small-scale mining rights.[15] The applications for small-scale mining permit, in this case, involved covered areas, which were never declared as people's small-scale mining areas. This is enough reason to deny an application for small-scale mining permit. Permits issued in disregard of this fact are void for having been issued beyond the authority of the issuing officer.

Therefore, there was no issue of local autonomy. The provincial governor did not have the competence to issue the questioned permits.

Neither does the League of Provinces have any standing to raise the present constitutional issue.

Locus standi is defined as "a right of appearance in a court of justice on a given question."[16] 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

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13 Republic Act. No. 7492, Sec. 43; *See also* Sec. 3(at). Mining Act.
14 Republic Act. No. 7492, Sec. 3(at).
15 Republic Act. No. 7076, Sec. 5. Small-Scale Mining Act.
16 *David v. Macapagal-Arroyo*, 489 SCRA 160, 216 (2006) *citing* Black's Law Dictionary, 6th Ed. p. 941 (1991).

the court depends for illumination of difficult constitutional questions."[17]

In case of a citizens' suit, the "interest of the person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law is invalid, but also that he has sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way."[18] In the case of *Telecommunications and Broadcast Attorneys of the Philippines, Inc. and GMA Network, Inc. v. COMELEC*, we said that a citizen who raises a constitutional question may only do so if s/he could show: (1) that s/he had personally suffered some **actual or threatened injury**; (2) that the actual or threatened injury was a result of an allegedly illegal conduct of the government; (3) that the injury is traceable to the challenged action; and (4) that the injury is likely to be redressed by a favorable action.[19]

The Petitioner League of Provinces' status as an organization of all provinces duty-bound to promote local autonomy[20] and adopt measures for the promotion of the welfare of provinces[21] does not clothe it with standing to question the constitutionality of the Section 17(b)(iii) of the Local Government Code and Section 24 of Rep. Act No. 7076 or the Small-Scale Mining Act.

As an organization that represents all provinces, it did not suffer an actual injury or an injury in fact, resulting from the implementation of the subject provisions. It cannot be said either that the provinces that Petitioner represents suffered the same injury when the Central Office nullified the permits issued by the Governor of Bulacan.

Provinces do not have a common or general interest on matters related to mining that the League of Provinces can represent. Each province has a particular interest to protect and claims to pursue that are separate and distinct from the others. Therefore, each is unique as to its reasons for raising issues to the Court. The League of Provinces cannot represent all provinces on mining-related issues. The perceived wrong suffered by the

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17 *Galicto v. Aquino III*, G..R. No. 193978, February 28, 2012, 667 SCRA 150, 170.

18 *Kilosbayan v. Morato*, G.R. No. 118910, November 16, 1995, 250 SCRA 130, 142, *citing Valmonte v. PCSO*, G.R. No. 78716, September 22, 1987.

19 G.R. No. 132922, April 21, 1998, 289 SCRA 337 (This case was cited by Justice Mendoza in his separate opinion in *Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, et al.* [G.R. No. 141284, August 15, 2000, 336 SCRA 81] wherein he referred to actual or threatened injury as "injury in fact" of an actual or imminent nature. Expounding, he said that "[t]he 'injury in fact' test requires more than injury to a cognizable interest. It requires that the party seeking review be himself among those injured.").

20 Republic Act. No. 7160, Sec. 504(b).

21 Republic Act. No. 7160, Sec. 504(c).

Province of Bulacan when the Central Office allegedly exercised control does not necessarily constitute a wrong suffered by the other provinces.

Furthermore, the Constitution provides for two types of local governance other than the national government: 1) The territorial and political subdivisions composed of provinces, cities, municipalities and barangays; and 2) autonomous regions.[22] The division of Article X of the Constitution distinguishes between their creation and relationship with the national government.

The creation of autonomous regions takes into consideration the "historical and cultural heritage, economic and social structures, and other relevant characteristics"[23] which its constituent geographical areas share in common. These factors are not considered in the creation of territorial and political subdivisions.

Autonomous regions are not only created by an act of the Congress. The Constitution also provides for a plebiscite requirement before the organic act that creates an autonomous region becomes effective.[24] This constitutes the creation of autonomous regions a direct act of the people. It means that the basic structure of an autonomous region, consisting of the executive department and legislative assembly, its special courts, and the provisions on its powers may not be easily amended or superseded by a simple act of the Congress.

Moreover, autonomous regions have powers, *e.g.* over their administrative organization, sources of revenues, ancestral domain, natural resources, personal, family and property relations, regional planning development, economic, social and tourism development, educational policies, cultural heritage and other matters.[25]

On the other hand, the creation of territorial and political subdivisions is subject to the local government code enacted by the Congress without a plebiscite requirement.[26] While this does not disallow the inclusion of provisions requiring plebiscites in the creation of provinces, cities, and municipalities, the local government code may be amended or superseded by another legislative act that removes such requirement. Their government structure, powers, and responsibilities, therefore, are always subject to

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22 CONSTITUTION, Article X, Sec. 1.
23 CONSTITUTION, Art. X, Sec. 15.
24 CONSTITUTION, Art. X, Sec. 18.
25 CONSTITUTION, Art. X, Sec. 20.
26 CONSTITUTION, Art. X, Sec. 3.

amendment by legislative acts.

The territorial and political subdivisions and autonomous regions are granted autonomy under the Constitution.[27] The constitutional distinctions between them imply a clear distinction between the kinds of autonomy that they exercise.

The oft-cited case of *Limbona v. Mangelin*[28] penned by Justice Sarmiento distinguishes between two types of autonomy:

> …autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments 'more responsive and accountable,' and 'ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress'…
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> Decentralization of power, on the other hand, involves an abdication of political power in the favor of local governments units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to "self-immolation," since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency.
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> An autonomous government that enjoys autonomy of the latter category [CONST. (1987), art. X sec. 15.] is subject alone to the decree of the organic act creating it and accepted principles on the effects and limits of "autonomy." On the other hand, an autonomous government of the former class is, as we noted, under the supervision of the national government acting through the President (and the Department of Local Government)…

I agree that autonomy, as phrased in Section 2 of Article X of the Constitution, which pertains to provinces, cities, municipalities and barangays, refers only to administrative autonomy.

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[27] CONSTITUTION, Art. X, Sec. 2 and Sec. 15.
[28] *Limbona v. Mangelin*, G.R. No. 80391, February 28, 1989, 170 SCRA 786.

In granting autonomy, the national government does not totally relinquish its powers.[29] The grant of autonomy does not make territorial and political subdivisions sovereign within the state or an "imperium in imperio".[30] The aggrupation of local government units and the creation of regional development councils in Sections 13 and 14 of Article X of the Constitution do not contemplate grant of discretion to create larger units with a recognized distinct political power that is parallel to the state. It merely facilitates coordination and exchange among them, still, for the purpose of administration.

Territorial and political subdivisions are only allowed to take care of their local affairs so that governance will be more responsive and effective to their unique needs.[31] The Congress still retains control over the extent of powers or autonomy granted to them.

Therefore, when the national government invalidates an act of a territorial or political subdivision in the exercise of a power that is constitutionally and statutorily lodged to it, the territorial or political subdivision cannot complain that its autonomy is being violated. This is especially so when the extent of its autonomy under the Constitution or law does not include power or control over the matter, to the exclusion of the national government.

However, I do not agree that *Limbona v. Mangelin* correctly categorized the kind of autonomy that autonomous regions enjoy.

In that case, the court tried to determine the extent of self-government of autonomous governments organized under Presidential Decree No. 1618 on July 25, 1979. This is prior to the autonomous regions contemplated in the 1987 Constitution.

Autonomous regions are granted more powers and less intervention from the national government than territorial and political subdivisions. They are, thus, in a more asymmetrical relationship with the national government as compared to other local governments or any regional formation.[32] The Constitution grants them legislative powers over some

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29 *See Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000, 336 SCRA 201 for discussion on the extent of local autonomy.

30 *Basco, et al., v. PAGCOR*, G.R. No. 91649, May 14, 1991, 197 SCRA 52.

31 *Supra* note 29.

32 CONSTITUTION., Art. X, Sec. 14 provides: "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

matters, *e.g.* natural resources, personal, family and property relations, economic and tourism development, educational policies, that are usually under the control of the national government. However, they are still subject to the supervision of the President. Their establishment is still subject to the framework of the Constitution, particularly, sections 15 to 21 of Article X, national sovereignty and territorial integrity of the Republic of the Philippines.

The exact contours of the relationship of the autonomous government and the national government are defined by legislation such as Republic Act No. 9054 or the Organic Act for the Autonomous Region in Muslim Mindanao. This is not at issue here and our pronouncements should not cover the provinces that may be within that autonomous region.

Considering the foregoing, I vote to **DISMISS** the petition.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

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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."