Republic of the Philippines
Supreme Court
Manila

**EN BANC**

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| **GOV. LUIS RAYMUND F. VILLAFUERTE, JR., and the PROVINCE OF CAMARINES SUR,** | **G.R. No. 195390** |
| Petitioners, | Present: |
| | SERENO, *C.J.*, |
| | CARPIO, |
| | VELASCO, JR., |
| | LEONARDO-DE CASTRO, |
| | BRION,* |
| | PERALTA, |
| | BERSAMIN,** |
| - versus - | DEL CASTILLO, |
| | VILLARAMA, JR., |
| | PEREZ,** |
| | MENDOZA, |
| | REYES, |
| | PERLAS-BERNABE, |
| | LEONEN, and |
| | JARDELEZA,** *JJ.* |
| **HON. JESSE M. ROBREDO, in his capacity as Secretary of the Department of the Interior and Local Government,** | |
| Respondent. | Promulgated: |
| | December 10, 2014 |

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**DECISION**

**REYES, *J.*:**

This is a petition for *certiorari* and prohibition[1] under Rule 65 of the 1997 Revised Rules of Court filed by former Governor Luis Raymund F. Villafuerte, Jr. (Villafuerte) and the Province of Camarines Sur (petitioners), seeking to annul and set aside the following issuances of the late Honorable

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* On leave.
** On official leave.
1 *Rollo*, pp. 3-30.

Jesse M. Robredo (respondent), in his capacity as then Secretary of the Department of the Interior and Local Government (DILG), to wit:

(a) Memorandum Circular (MC) No. **2010-83** dated August 31, 2010, pertaining to the full disclosure of local budget and finances, and bids and public offerings;[2]

(b) MC No. **2010-138** dated December 2, 2010, pertaining to the use of the 20% component of the annual internal revenue allotment shares;[3] and

(c) MC No. **2011-08** dated January 13, 2011, pertaining to the strict adherence to Section 90 of Republic Act (R.A.) No. 10147 or the General Appropriations Act of 2011.[4]

The petitioners seek the nullification of the foregoing issuances on the ground of unconstitutionality and for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

## The Facts

In 1995, the Commission on Audit (COA) conducted an examination and audit on the manner the local government units (LGUs) 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). Thus, on December 14, 1995, the DILG issued MC No. 95-216,[5] enumerating the policies and guidelines on the utilization of the development fund component of the IRA. It likewise carried a reminder to LGUs of the strict mandate to ensure that public funds, like the 20% development fund, "shall be spent judiciously and only for the very purpose or purposes for which such funds are intended."[6]

On September 20, 2005, then DILG Secretary Angelo T. Reyes and Department of Budget and Management Secretary Romulo L. Neri issued Joint MC No. 1, series of 2005,[7] pertaining to the guidelines on the appropriation and utilization of the 20% of the IRA for development

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2 Id. at 48-51.
3 Id. at 31-32.
4 Id. at 33-47.
5 Id. at 123-127.
6 Id. at 123.
7 Id. at 128-130.

projects, which aims to enhance accountability of the LGUs in undertaking development projects. The said memorandum circular underscored that the 20% of the IRA intended for development projects should be utilized for social development, economic development and environmental management.[8]

On August 31, 2010, the respondent, in his capacity as DILG Secretary, issued the assailed MC No. 2010-83,[9] 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 pertinent portion of the issuance reads:

> **Legal and Administrative Authority**
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> Section 352 of the Local Government Code of 1991 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.
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> On the other hand, Republic Act No. 9184, known as the Government Procurement Reform Act, calls for 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, the Philippine Government Electronic Procurement System (PhilGEPS) and the website of the procuring entity.
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> The declared policy of the State to promote good local governance also calls for the posting of budgets, expenditures, contracts and loans, and procurement plans of local government units in conspicuous places within public buildings in the locality, in the web, and in print media of community or general circulation.
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> Furthermore, the President, in his first State of the Nation Address, directed all government agencies and entities to bring to an end luxurious spending and misappropriation of public funds and to expunge mendacious and erroneous projects, and adhere to the zero-based approach budgetary principle.
>
> **Responsibility of the Local Chief Executive**
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> All Provincial Governors, City Mayors and Municipal Mayors, are directed to faithfully comply with the abovecited [sic] provisions of laws, and existing national policy, by posting in conspicuous places within public buildings in the locality, or in print media of community or general circulation, and in their websites, the following:

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8 Id. at 129-130.

9 Id. at 48-51.

1. CY 2010 Annual Budget, *information detail to the level of particulars of personal services, maintenance and other operating expenses and capital outlay per individual offices (Source Document - Local Budget Preparation Form No. 3, titled, Program Appropriation and Obligation by Object of Expenditure, limited to PS, MOOE and CO. For sample form, please visit www.naga.gov.ph);*

2. Quarterly Statement of Cash Flows, *information detail to the level of particulars of cash flows from operating activities (e.g. cash inflows, total cash inflows, total cash outflows), cash flows from investing activities (e.g. cash outflows), net increase in cash and cash at the beginning of the period (Source Document - Statement of Cash Flows Form);*

3. CY 2009 Statement of Receipts and Expenditures, *information detail to the level of particulars of beginning cash balance, receipts or income on local sources (e.g., tax revenue, non-tax revenue), external sources, and receipts from loans and borrowings, surplus of prior years, expenditures on general services, economic services, social services and debt services, and total expenditures (Source Document - Local Budget Preparation Form No. 2, titled, Statement of Receipts and Expenditures);*

4. CY 2010 Trust Fund (PDAF) Utilization, *information detail to the level of particulars of object expenditures (Source Document - Local Budget Preparation Form No. 3, titled, Program Appropriation and Obligation by Object of Expenditure, limited to PDAF Utilization);*

5. CY 2010 Special Education Fund Utilization, *information detail to the level of particulars of object expenditures (Source Document - Local Budget Preparation Form No. 3, titled, Program Appropriation and Obligation by Object of Expenditure, limited to Special Education Fund);*

6. CY 2010 20% Component of the IRA Utilization, *information detail to the level of particulars of objects of expenditure on social development, economic development and environmental management (Source Document - Local Budget Preparation Form No. 3, titled, Program Appropriation and Obligation by Object of Expenditure, limited to 20% Component of the Internal Revenue Allotment);*

7. CY 2010 Gender and Development Fund Utilization, *information detail to the level of particulars of object expenditures (Source Document - Local Budget Preparation Form No. 3, titled, Program Appropriation and Obligation by Object of Expenditure, limited to Gender and Development Fund);*

8. CY 2010 Statement of Debt Service, *information detail to the level of name of creditor, purpose of loan, date contracted, term, principal amount, previous payment made on the principal and interest, amount due for the budget year and*

*balance of the principal (Source Document - Local Budget Preparation Form No. 6, titled, Statement of Debt Service);*

9. CY 2010 Annual Procurement Plan or Procurement List, *information detail to the level of name of project, individual item or article and specification or description of goods and services, procurement method, procuring office or fund source, unit price or estimated cost or approved budget for the contract and procurement schedule (Source Document - LGU Form No. 02, Makati City. For sample form, please visit www.makati.gov.ph.)[;]*

10. Items to Bid, *information detail to the level of individual Invitation to Bid, containing information as prescribed in Section 21.1 of Republic Act No. 9184, or The Government Procurement Reform Act, to be updated quarterly (Source Document - Invitation to Apply for Eligibility and to Bid, as prescribed in Section 21.1 of R.A. No. 9184. For sample form, please visit www.naga.gov.ph);*

11. Bid Results on Civil Works, and Goods and Services, *information detail to the level of project reference number, name and location of project, name (company and proprietor) and address of winning bidder, bid amount, approved budget for the contract, bidding date, and contract duration, to be updated quarterly (Source Document – Infrastructure Projects/Goods and Services Bid-Out (2010), Naga City. For sample form, please visit www.naga.gov.ph); and*

12. Abstract of Bids as Calculated, *information detail to the level of project name, location, implementing office, approved budget for the contract, quantity and items subject for bidding, and bids of competing bidders, to be updated quarterly (Source Document - Standard Form No. SF-GOOD-40, Revised May 24, 2004, Naga City. For sample form, please visit www.naga.gov.ph).*

The foregoing circular also states that non-compliance will be meted sanctions in accordance with pertinent laws, rules and regulations.[10]

On December 2, 2010, the respondent issued MC No. 2010-138,[11] 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 listed the following enumeration of expenses for which the fund must not be utilized, *viz*:

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10 Id. at 51.
11 Id. at 31-32.

1. Administrative expenses such as cash gifts, bonuses, food allowance, medical assistance, uniforms, supplies, meetings, communication, water and light, petroleum products, and the like;
2. Salaries, wages or overtime pay;
3. Travelling expenses, whether domestic or foreign;
4. Registration or participation fees in training, seminars, conferences or conventions;
5. Construction, repair or refinishing of administrative offices;
6. Purchase of administrative office furniture, fixtures, equipment or appliances; and
7. Purchase, maintenance or repair of motor vehicles or motorcycles, except ambulances.[12]

On January 13, 2011, the respondent issued MC No. 2011-08,[13] directing for the strict adherence to Section 90 of R.A. No. 10147 or the General Appropriations Act of 2011. The pertinent portion of the issuance reads as follows:

**Legal and Administrative Authority**

- **Section 90 of Republic Act No. 10147 (General Appropriations Act) FY 2011 re "Use and Disbursement of Internal Revenue Allotment of LGUs"**, [sic] stipulates: The amount appropriated for the LGU's share in the Internal Revenue Allotment shall be used in accordance with Sections 17 (g) and 287 of R.A. No 7160. The annual budgets of LGUs shall be prepared in accordance with the forms, procedures, and schedules prescribed by the Department of Budget and Management and those jointly issued with the Commission on Audit. Strict compliance with Sections 288 and 354 of R.A. No. 7160 and DILG Memorandum Circular No. 2010-83, entitled "Full Disclosure of Local Budget and Finances, and Bids and Public offering" is hereby mandated; *PROVIDED, That in addition to the publication or posting requirement under Section 352 of R.A. No. 7160 in three (3) publicly accessible and conspicuous places in the local government unit, the LGUs shall also post the detailed information on the use and disbursement, and status of programs and projects in the LGUS websites. Failure to comply with these requirements shall subject the responsible officials to disciplinary actions in accordance with existing laws.* x x x[14]

x x x x

**Sanctions**

Non-compliance with the foregoing shall be dealt with in accordance with pertinent laws, rules and regulations. In particular, attention is invited to the provision of the Local Government Code of 1991, quoted as follows:

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12 Id. at 31.
13 Id. at 33-47.
14 Id. at 33.

> Section 60. Grounds for Disciplinary Actions - An elective local official may be disciplined, suspended, or removed from office on: (c) Dishonesty, oppression, misconduct in office, ***gross negligence, or dereliction of duty***. x x x[15] (Emphasis and underscoring in the original)

On February 21, 2011, 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 and having been issued with grave abuse of discretion.

On June 2, 2011, the respondent filed his Comment on the petition.[16] Then, on June 22, 2011, the petitioners filed their Reply (With Urgent Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order).[17] In the Resolution[18] dated October 11, 2011, the Court gave due course to the petition and directed the parties to file their respective memorandum. In compliance therewith, the respondent and the petitioners filed their Memorandum on January 19, 2012[19] and on February 8, 2012[20] respectively.

The petitioners raised the following issues:

**Issues**

I

> THE HON. SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE ASSAILED MEMORANDUM CIRCULARS IN VIOLATION OF THE PRINCIPLES OF LOCAL AUTONOMY AND FISCAL AUTONOMY ENSHRINED IN THE 1987 CONSTITUTION AND THE LOCAL GOVERNMENT CODE OF 1991[.]

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15 Id. at 36.
16 Id. at 76-119.
17 Id. at 136-150.
18 Court *en banc* Resolution in G.R. No. 195390 entitled *Gov. Luis Raymund F. Villafuerte, Jr. and The Province of Camarines Sur v. Hon. Jesse M. Robredo, in his capacity as Secretary of the Department of the Interior and Local Government*; id. at 155-156.
19 Id. at 209-258.
20 Id. at 162-197.

II

THE HON. SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE INVALIDLY ASSUMED LEGISLATIVE POWERS IN PROMULGATING THE ASSAILED MEMORANDUM CIRCULARS WHICH WENT BEYOND THE CLEAR AND MANIFEST INTENT OF THE 1987 CONSTITUTION AND THE LOCAL GOVERNMENT CODE OF 1991[.][21]

**Ruling of the Court**

The present petition revolves around the main issue: Whether or not the assailed memorandum circulars violate the principles of local and fiscal autonomy enshrined in the Constitution and the LGC.

**The present petition is ripe for judicial review.**

At the outset, the respondent is questioning the propriety of the exercise of the Court's power of judicial review over the instant case. He argues that the petition is premature since there is yet any actual controversy that is ripe for judicial determination. He points out the lack of allegation in the petition that the assailed issuances had been fully implemented and that the petitioners had already exhausted administrative remedies under Section 25 of the Revised Administrative Code before filing the same in court.[22]

It is well-settled that the Court's exercise of the power of judicial review requires the concurrence of the following elements: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, 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; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[23]

The respondent claims that there is yet any actual case or controversy that calls for the exercise of judicial review. He contends that the mere expectation of an administrative sanction does not give rise to a justiciable

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21 Id. at 15.
22 Id. at 228-231.
23 *Senate of the Philippines v. Exec. Sec. Ermita*, 522 Phil. 1, 27 (2006).

controversy especially, in this case, that the petitioners have yet to exhaust administrative remedies available.[24]

The Court disagrees.

In *La Bugal-B'laan Tribal Association, Inc. v. Ramos*,[25] the Court characterized an actual case or controversy, *viz*:

> 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 power does not extend to hypothetical questions since any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.[26] (Citations omitted)

The existence of an actual controversy in the instant case cannot be overemphasized. At the time of filing of the instant petition, the respondent had already implemented the assailed memorandum circulars. In fact, on May 26, 2011, Villafuerte received Audit Observation Memorandum (AOM) No. 2011-009 dated May 10, 2011[27] from the Office of the Provincial Auditor of Camarines Sur, requiring him to comment on the observation of the audit team, which states:

> The Province failed to post the transactions and documents required under Department of Interior and Local Government (DILG) Memorandum Circular No. 2010-83, thereby violating the mandate of full disclosure of Local Budget and Finances, and Bids and Public Offering.
>
> x x x x
>
> The local officials concerned are reminded of the sanctions mentioned in the circular which is quoted hereunder, thus:
>
> "Noncompliance with the foregoing shall be dealt with in accordance with pertinent laws, rules and regulations. In particular, attention is invited to the provision of Local Government Code of 1991, quoted as follows:
>
> > Section 60. Grounds for Disciplinary Actions – An elective local official may be disciplined, suspended or removed from office on: (c) Dishonesty, oppression, misconduct in office, *gross negligence or dereliction of duty*."[28]

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24 *Rollo*, p. 231.
25 465 Phil. 860 (2004).
26 Id. at 889-890.
27 *Rollo*, pp. 151-152.
28 Id.

The issuance of AOM No. 2011-009 to Villafuerte is a clear indication that the assailed issuances of the respondent are already in the full course of implementation. The audit memorandum specifically mentioned of Villafuerte's alleged non-compliance with MC No. 2010-83 regarding the posting requirements stated in the circular and reiterated the sanctions that may be imposed for the omission. The fact that Villafuerte is being required to comment on the contents of AOM No. 2011-009 signifies that the process of investigation for his alleged violation has already begun. Ultimately, the investigation is expected to end in a resolution on whether a violation has indeed been committed, together with the appropriate sanctions that come with it. Clearly, Villafuerte's apprehension is real and well-founded as he stands to be sanctioned for non-compliance with the issuances.

There is likewise no merit in the respondent's claim that the petitioners' failure to exhaust administrative remedies warrants the dismissal of the petition. It bears emphasizing that the assailed issuances were issued pursuant to the rule-making or quasi-legislative power of the DILG. This pertains to "the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute."[29] Not to be confused with the quasi-legislative or rule-making power of an administrative agency is its quasi-judicial or administrative adjudicatory power. This is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law.[30] In challenging the validity of an administrative issuance carried out pursuant to the agency's rule-making power, the doctrine of exhaustion of administrative remedies does not stand as a bar in promptly resorting to the filing of a case in court. This was made clear by the Court in *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*,[31] where it was ruled, thus:

> In questioning the validity or constitutionality of a rule or regulation issued by an administrative agency, a party need not exhaust administrative remedies before going to court. This principle applies only where the act of the administrative agency concerned was performed pursuant to its quasi-judicial function, and not when the assailed act pertained to its rule-making or quasi-legislative power. x x x.[32]

Considering the foregoing clarification, there is thus no bar for the Court to resolve the substantive issues raised in the petition.

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29 *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 155-156 (2003).

30 Id. at 156.

31 456 Phil. 145 (2003).

32 Id. at 157.

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

The petitioners argue that the assailed issuances of the respondent interfere with the local and fiscal autonomy of LGUs embodied in the Constitution and the LGC. In particular, they claim that MC No. 2010-138 transgressed these constitutionally-protected liberties when it restricted the meaning of "development" and enumerated activities which the local government must finance from the 20% development fund component of the IRA and provided sanctions for local authorities who shall use the said component of the fund for the excluded purposes stated therein.[33] They argue that the respondent cannot substitute his own discretion with that of the local legislative council in enacting its annual budget and specifying the development projects that the 20% component of its IRA should fund.[34]

The argument fails to persuade.

The Constitution has expressly adopted the policy of ensuring the autonomy of LGUs.[35] To highlight its significance, the entire Article X of the Constitution was devoted to laying down the bedrock upon which this policy is anchored.

It is also pursuant to the mandate of the Constitution of enhancing local autonomy that the LGC was enacted. Section 2 thereof was a reiteration of the state policy. It reads, thus:

> Sec. 2. Declaration of Policy. – (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

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33 *Rollo*, pp. 175-176.
34 Id. at 178.
35 Article II, Section 25.

Verily, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization.[36] In *Limbona v. Mangelin*,[37] the Court elaborated on the concept of decentralization, thus:

> [A]utonomy 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." At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. x x x.
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> Decentralization of power, on the other hand, involves an abdication of political power in the favor of local governments [sic] 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. x x x.[38] (Citations omitted)

To safeguard the state policy on local autonomy, the Constitution confines the power of the President over LGUs to mere supervision.[39] "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."[40] Thus, Section 4, Article X of the Constitution, states:

> 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.

In *Province of Negros Occidental v. Commissioners, Commission on Audit*,[41] the Court distinguished general supervision from executive control in the following manner:

> The President's power of general supervision means the power of a superior officer to see to it that subordinates perform their functions according to law. This is distinguished from the President's power of control which is the power to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to

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36 *Ganzon v. Court of Appeals*, G.R. No. 93252, August 5, 1991, 200 SCRA 271, 286 (1991).
37 252 Phil. 813 (1989).
38 Id. at 825.
39 1987 CONSTITUTION, Article X, Section 4.
40 Supra note 37, at 825.
41 G.R. No. 182574, September 28, 2010, 631 SCRA 431.

> substitute the judgment of the President over that of the subordinate officer. The power of control gives the President the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of discretion.[42] (Citations omitted)

It is the petitioners' contention that the respondent went beyond the confines of his supervisory powers, as alter ego of the President, when he issued MC No. 2010-138. They argue that the mandatory nature of the circular, with the threat of imposition of sanctions for non-compliance, evinces a clear desire to exercise control over LGUs.[43]

The Court, however, perceives otherwise.

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. This intention was highlighted in the very first paragraph of MC No. 2010-138, which reads:

> Section 287 of the Local Government Code mandates every local government to appropriate in its annual budget no less than 20% of its annual revenue allotment for development projects. In common understanding, development means the realization of desirable social, economic and environmental outcomes essential in the attainment of the constitutional objective of a desired quality of life for all.[44] (Underscoring in the original)

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

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42 Id. at 441-442.
43 *Rollo*, p. 177.
44 Id. at 31.

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

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

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

> All local authorities are further reminded that utilizing the 20% component of the Internal Revenue Allotment, whether willfully or through negligence, for any purpose beyond those expressly prescribed by law or public policy shall be subject to the sanctions provided under the Local Government Code and under such other applicable laws.[45]

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[45] Id. at 32.

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

At any rate, LGUs must be reminded that the local autonomy granted to them does not completely severe them from the national government or turn them into impenetrable states. Autonomy does not make local governments sovereign within the state.[46] In *Ganzon v. Court of Appeals*,[47] the Court reiterated:

> Autonomy, however, is not meant to end the relation of partnership and interdependence between the central administration and local government units, or otherwise, to usher in a regime of federalism. The Charter has not taken such a radical step. Local governments, under the Constitution, are subject to regulation, however limited, and for no other purpose than precisely, albeit paradoxically, to enhance self-government.[48]

Thus, notwithstanding the local fiscal autonomy being enjoyed by LGUs, they are still under the supervision of the President and maybe held accountable for malfeasance or violations of existing laws. "Supervision is not incompatible with discipline. And the power to discipline and ensure that the laws be faithfully executed must be construed to authorize the President to order an investigation of the act or conduct of local officials when in his opinion the good of the public service so requires."[49]

Clearly then, the President's power of supervision is not antithetical to investigation and imposition of sanctions. In *Hon. Joson v. Exec. Sec. Torres*,[50] the Court pointed out, thus:

> "*Independently of any statutory provision authorizing the President to conduct an investigation of the nature involved in this proceeding, and in view of the nature and character of the executive authority with which the President of the Philippines is invested, the constitutional grant to him of power to exercise general supervision over all local governments and to take care that the laws be faithfully executed must be construed to authorize him to order an investigation of the act or conduct of the petitioner herein. Supervision is not a meaningless thing. It is an active power. It is certainly not without limitation, but it at least implies*

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46 *Basco, et al. v. Philippine Amusements and Gaming Corp.*, 274 Phil. 323, 341 (1991).
47 G.R. No. 93252, August 5, 1991, 200 SCRA 271.
48 Id. at 286.
49 *Hon. Joson v. Exec. Sec. Torres*, 352 Phil. 888, 913-914 (1998).
50 352 Phil. 888 (1998).

> *authority to inquire into facts and conditions in order to render the power real and effective*. x x x."[51] (Emphasis ours and italics in the original)

As in MC No. 2010-138, the Court finds nothing in two other questioned issuances of the respondent, *i.e.*, MC Nos. 2010-83 and 2011-08, that can be construed as infringing on the fiscal autonomy of LGUs. The petitioners claim that the requirement to post other documents in the mentioned issuances went beyond the letter and spirit of Section 352 of the LGC and R.A. No. 9184, otherwise known as the Government Procurement Reform Act, by requiring that budgets, expenditures, contracts and loans, and procurement plans of LGUs be publicly posted as well.[52]

Pertinently, Section 352 of the LGC reads:

> **Section 352.** *Posting of the Summary of Income and Expenditures.* – 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 a summary of all revenues collected and funds received including the appropriations and disbursements of such funds during the preceding fiscal year.

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.[53]

It is well to remember that fiscal autonomy does not leave LGUs with unbridled discretion in the disbursement of public funds. They remain accountable to their constituency. For, public office was created for the benefit of the people and not the person who holds office.

The Court strongly enunciated in *ABAKADA GURO Party List (formerly AASJS), et al. v. Hon. Purisima, et al.*,[54] thus:

> Public office is a public trust. It must be discharged by its holder not for his own personal gain but for the benefit of the public for whom he holds it in trust. By demanding accountability and service with responsibility, integrity, loyalty, efficiency, patriotism and justice, all government officials and employees have the duty to be responsive to the needs of the people they are called upon to serve.[55]

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51 Id. at 914, citing *Planas v. Gil*, 67 Phil. 62, 77-78 (1939).
52 *Rollo*, p. 184.
53 Id.
54 584 Phil. 246 (2008).
55 Id. at 267.

Thus, the Constitution strongly summoned the State to adopt and implement a policy of full disclosure of all transactions involving public interest and provide the people with the right to access public information.[56] Section 352 of the LGC is a response to this call for transparency. It is a mechanism of transparency and accountability of local government officials and is in fact incorporated under Chapter IV of the LGC which deals with "Expenditures, Disbursements, Accounting and Accountability."

In the same manner, R.A. No. 9184 established a system of transparency in the procurement process and in the implementation of procurement contracts in government agencies.[57] It is the public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of the law and its implementing rules and regulations, and that all these contracts are performed strictly according to specifications.[58]

The assailed issuances of the respondent, MC Nos. 2010-83 and 2011-08, are but implementation of this avowed policy of the State to make public officials accountable to the people. They are amalgamations of existing laws, rules and regulation designed to give teeth to the constitutional mandate of transparency and accountability.

A scrutiny of the contents of the mentioned issuances shows that they do not, in any manner, violate the fiscal autonomy of LGUs. To be clear, "[f]iscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof."[59]

It is inconceivable, however, how the publication of budgets, expenditures, contracts and loans and procurement plans of LGUs required in the assailed issuances could have infringed on the local fiscal autonomy of LGUs. *Firstly*, the issuances do not interfere with the discretion of the LGUs in the specification of their priority projects and the allocation of their budgets. The posting requirements are mere transparency measures which do not at all hurt the manner by which LGUs decide the utilization and allocation of their funds.

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56 Article II, Section 28, and Article III, Section 7.
57 Section 3(a).
58 Section 3(e).
59 *Pimentel, Jr. v. Hon. Aguirre*, 391 Phil. 84, 102-103 (2000).

*Secondly*, it appears that even Section 352 of the LGC that is being invoked by the petitioners does not exclude the requirement for the posting of the additional documents stated in MC Nos. 2010-83 and 2011-08. Apparently, the mentioned provision requires the publication of "a summary of revenues collected and funds received, including the appropriations and disbursements of such funds." The additional requirement for the posting of budgets, expenditures, contracts and loans, and procurement plans are well-within the contemplation of Section 352 of the LGC considering they are documents necessary for an accurate presentation of a summary of appropriations and disbursements that an LGU is required to publish.

*Finally*, the Court believes that the supervisory powers of the President are broad enough to embrace the power to require the publication of certain documents as a mechanism of transparency. In *Pimentel, Jr. v. Hon. Aguirre*,[60] the Court reminded that local fiscal autonomy does not rule out any manner of national government intervention by way of supervision, in order to ensure that local programs, fiscal and otherwise, are consistent with national goals. The President, by constitutional fiat, is the head of the economic and planning agency of the government, primarily responsible for formulating and implementing continuing, coordinated and integrated social and economic policies, plans and programs for the entire country.[61]

Moreover, the Constitution, which was drafted after long years of dictatorship and abuse of power, is now replete with numerous provisions directing the adoption of measures to uphold transparency and accountability in government, with a view of protecting the nation from repeating its atrocious past. 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, provide:

> Article II
> Declaration of Principles and State Policies Principles
>
> Section 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.
>
> Article III
> Bill of Rights
>
> Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

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60 391 Phil. 84 (2000).
61 Id. at 103.

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

It is needless to say that the power to govern is a delegated authority from the people who hailed the public official to office through the democratic process of election. His stay in office remains a privilege which may be withdrawn by the people should he betray his oath of office. Thus, he must not frown upon accountability checks which aim to show how well he is performing his delegated power. For, it is through these mechanisms of transparency and accountability that he is able to prove to his constituency that he is worthy of the continued privilege.

**WHEREFORE,** in view of the foregoing considerations, the petition is **DISMISSED** for lack of merit.

**SO ORDERED.**

**BIENVENIDO L. REYES**
Associate Justice

**WE CONCUR:**

**MARIA LOURDES P. A. SERENO**
Chief Justice

**ANTONIO T. CARPIO**
Associate Justice

**PRESBITERO J. VELASCO, JR.**
Associate Justice

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice

(On leave)
**ARTURO D. BRION**
Associate Justice

**DIOSDADO M. PERALTA**
Associate Justice

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**LUCAS P. BERSAMIN**
Associate Justice

**MARIANO C. DEL CASTILLO**
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**JOSE PORTUGAL PEREZ**
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**JOSE CATRAL MENDOZA**
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**ESTELA M. PERLAS-BERNABE**
Associate Justice

**MARVIC M.V.F. LEONEN**
Associate Justice

(On official leave)
**FRANCIS H. JARDELEZA**
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