Republic of the Philippines
Supreme Court
Manila

EN BANC

MARIA CAROLINA P. ARAULLO, CHAIRPERSON, BAGONG ALYANSANG MAKABAYAN; JUDY M. TAGUIWALO, PROFESSOR, UNIVERSITY OF THE PHILIPPINES DILIMAN, CO-CHAIRPERSON, PAGBABAGO; HENRI KAHN, CONCERNED CITIZENS MOVEMENT; REP. LUZ ILAGAN, GABRIELA WOMEN'S PARTY REPRESENTATIVE; REP. TERRY L. RIDON, KABATAAN PARTYLIST REPRESENTATIVE; REP. CARLOS ISAGANI ZARATE, BAYAN MUNA PARTY-LIST REPRESENTATIVE; RENATO M. REYES, JR., SECRETARY GENERAL OF BAYAN; MANUEL K. DAYRIT, CHAIRMAN, ANG KAPATIRAN PARTY; VENCER MARI E. CRISOSTOMO, CHAIRPERSON, ANAKBAYAN; VICTOR VILLANUEVA, CONVENOR, YOUTH ACT NOW,
Petitioners,

- versus -

BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY; AND FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,
Respondents.

x----------x

G.R. No. 209287

AUGUSTO L. SYJUCO JR., Ph.D., **G.R. No. 209135**
Petitioner,

- versus -

FLORENCIO B. ABAD, IN HIS CAPACITY AS THE SECRETARY OF DEPARTMENT OF BUDGET AND MANAGEMENT; AND HON. FRANKLIN MAGTUNAO DRILON, IN HIS CAPACITY AS THE SENATE PRESIDENT OF THE PHILIPPINES,
Respondents.
x----------x

MANUELITO R. LUNA, **G.R. No. 209136**
Petitioner,

- versus -

SECRETARY FLORENCIO ABAD, IN HIS OFFICIAL CAPACITY AS HEAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; AND EXECUTIVE SECRETARY PAQUITO OCHOA, IN HIS OFFICIAL CAPACITY AS ALTER EGO OF THE PRESIDENT,
Respondents**.**
x----------x

ATTY. JOSE MALVAR VILLEGAS, JR., **G.R. No. 209155**
Petitioner,

- versus -

THE HONORABLE EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; AND THE SECRETARY OF BUDGET AND MANAGEMENT FLORENCIO B. ABAD,
Respondents**.**
x----------x

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), REPRESENTED BY DEAN FROILAN M. BACUNGAN, BENJAMIN E. DIOKNO AND LEONOR M. BRIONES,
Petitioners,

G.R. No. 209164

- versus -

DEPARTMENT OF BUDGET AND MANAGEMENT AND/OR HON. FLORENCIO B. ABAD,
Respondents.

x----------x

INTEGRATED BAR OF THE PHILIPPINES (IBP),
Petitioner,

G.R. No. 209260

- versus -

SECRETARY FLORENCIO B. ABAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM),
Respondent.

x----------x

GRECO ANTONIOUS BEDA B. BELGICA; BISHOP REUBEN M. ABANTE AND REV. JOSE L. GONZALEZ,
Petitioners,

G.R. No. 209442

- versus -

PRESIDENT BENIGNO SIMEON C. AQUINO III, THE SENATE OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT FRANKLIN M. DRILON; THE HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER FELICIANO BELMONTE, JR.; THE EXECUTIVE OFFICE,

REPRESENTED BY EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; THE DEPARTMENT OF BUDGET AND MANAGEMENT, REPRESENTED BY SECRETARY FLORENCIO ABAD; THE DEPARTMENT OF FINANCE, REPRESENTED BY SECRETARY CESAR V. PURISIMA; AND THE BUREAU OF TREASURY, REPRESENTED BY ROSALIA V. DE LEON,

Respondents.

x----------x

CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), REPRESENTED BY ITS 1ST VICE PRESIDENT, SANTIAGO DASMARINAS, JR.; ROSALINDA NARTATES, FOR HERSELF AND AS NATIONAL PRESIDENT OF THE CONSOLIDATED UNION OF EMPLOYEES NATIONAL HOUSING AUTHORITY (CUE-NHA); MANUEL BACLAGON, FOR HIMSELF AND AS PRESIDENT OF THE SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES, DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT CENTRAL OFFICE (SWEAP-DSWD CO); ANTONIA PASCUAL, FOR HERSELF AND AS NATIONAL PRESIDENT OF THE DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION (DAREA); ALBERT MAGALANG, FOR HIMSELF AND AS PRESIDENT OF THE ENVIRONMENT AND MANAGEMENT BUREAU **G.R. No. 209517**

EMPLOYEES UNION (EMBEU); AND MARCIAL ARABA, FOR HIMSELF AND AS PRESIDENT OF THE KAPISANAN PARA SA KAGALINGAN NG MGA KAWANI NG MMDA (KKK-MMDA),
Petitioners,

- versus -

BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; PAQUITO OCHOA, JR., EXECUTIVE SECRETARY; AND HON. FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,
Respondents.

x----------x

VOLUNTEERS AGAINST CRIME AND CORRUPTION (VACC), REPRESENTED BY DANTE L. JIMENEZ,
Petitioner,

- versus -

PAQUITO N. OCHOA, EXECUTIVE SECRETARY, AND FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,
Respondents.

G.R. No. 209569

Present:

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

Promulgated:
February 3, 2015

x----------x

* No part.
** On leave.
*** No part.

R E S O L U T I O N

BERSAMIN, *J.*:

> The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude.[1]

Before the Court are the Motion for Reconsideration[2] filed by the respondents, and the Motion for Partial Reconsideration[3] filed by the petitioners in G.R. No. 209442.

In their Motion for Reconsideration, the respondents assail the decision[4] promulgated on July 1 2014 upon the following procedural and substantive errors, *viz*:

> PROCEDURAL
>
> I
>
> WITHOUT AN ACTUAL CASE OR CONTROVERSY, ALLEGATIONS OF GRAVE ABUSE OF DISCRETION ON THE PART OF ANY INSTRUMENTALITY OF THE GOVERNMENT CANNOT CONFER ON THIS HONORABLE COURT THE POWER TO DETERMINE THE CONSTITUTIONALITY OF THE DAP AND NBC NO. 541
>
> II
>
> PETITIONERS' ACTIONS DO NOT PRESENT AN ACTUAL CASE OR CONTROVERSY AND THEREFORE THIS HONORABLE COURT DID NOT ACQUIRE JURISDICTION
>
> III
>
> PETITIONERS HAVE NEITHER BEEN INJURED NOR THREATENED WITH INJURY AS A RESULT OF THE OPERATION OF THE DAP AND THEREFORE SHOULD HAVE BEEN HELD TO HAVE NO STANDING TO BRING THESE SUITS FOR CERTIORARI AND PROHIBITION

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1 *Biraogo v. Philippine Truth Commission of 2010,* G.R. No. 192935 and 193036, December 7, 2010, 637 SCRA 78, 177.
2 *Rollo* (G.R. No. 209287), pp. 1431-1482.
3 Id. at 1496-1520.
4 Id. at 1135-1241.

IV

NOR CAN PETITIONERS' STANDING BE SUSTAINED ON THE GROUND THAT THEY ARE BRINGING THESE SUITS AS CITIZENS AND AS TAXPAYERS

V

THE DECISION OF THIS HONORABLE COURT IS NOT BASED ON A CONSIDERATION OF THE ACTUAL APPLICATIONS OF THE DAP IN 116 CASES BUT SOLELY ON AN ABSTRACT CONSIDERATION OF NBC NO. 541[5]

SUBSTANTIVE

I

THE EXECUTIVE DEPARTMENT PROPERLY INTERPRETED "SAVINGS" UNDER THE RELEVANT PROVISIONS OF THE GAA

II

ALL DAP APPLICATIONS HAVE APPROPRIATION COVER

III

THE PRESIDENT HAS AUTHORITY TO TRANSFER SAVINGS TO OTHER DEPARTMENTS PURSUANT TO HIS CONSTITUTIONAL POWERS

IV

THE 2011, 2012 AND 2013 GAAS ONLY REQUIRE THAT REVENUE COLLECTIONS FROM EACH SOURCE OF REVENUE ENUMERATED IN THE BUDGET PROPOSAL MUST EXCEED THE CORRESPONDING REVENUE TARGET

V

THE OPERATIVE FACT DOCTRINE WAS WRONGLY APPLIED[6]

The respondents maintain that the issues in these consolidated cases were mischaracterized and unnecessarily constitutionalized; that the Court's interpretation of *savings* can be overturned by legislation considering that savings is defined in the General Appropriations Act (GAA), hence making savings a statutory issue;[7] that the withdrawn unobligated allotments and unreleased appropriations constitute savings and may be used for augmentation;[8] and that the Court should apply legally recognized norms and principles, most especially the presumption of good faith, in resolving their motion.[9]

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5 Id. at 1434-1435.
6 Id.
7 Id. at 1435-1438.
8 Id. 1444-1449.
9 Id. at 1432.

On their part, the petitioners in G.R. No. 209442 pray for the partial reconsideration of the decision on the ground that the Court thereby:

> FAILED TO DECLARE AS UNCONSTITUTIONAL AND ILLEGAL ALL MONEYS UNDER THE DISBURSEMENT ACCELERATION PROGRAM (DAP) USED FOR ALLEGED AUGMENTATION OF APPROPRIATION ITEMS THAT DID NOT HAVE ACTUAL DEFICIENCIES[10]

They submit that augmentation of items beyond the maximum amounts recommended by the President for the programs, activities and projects (PAPs) contained in the budget submitted to Congress should be declared unconstitutional.

Ruling of the Court

We deny the motion for reconsideration of the petitioners in G.R. No. 209442, and partially grant the motion for reconsideration of the respondents.

The procedural challenges raised by the respondents, being a mere rehash of their earlier arguments herein, are dismissed for being already passed upon in the assailed decision.

As to the substantive challenges, the Court discerns that the grounds are also reiterations of the arguments that were already thoroughly discussed and passed upon in the assailed decision. However, certain declarations in our July 1, 2014 Decision are modified in order to clarify certain matters and dispel further uncertainty.

1.
The Court's power of judicial review

The respondents argue that the Executive has not violated the GAA because *savings* as a concept is an ordinary species of interpretation that calls for legislative, instead of judicial, determination.[11]

This argument cannot stand.

The consolidated petitions distinctly raised the question of the

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[10] Id. at 1496.
[11] Id. at 1435.

constitutionality of the acts and practices under the DAP, particularly their non-conformity with Section 25(5), Article VI of the Constitution and the principles of separation of power and equal protection. Hence, the matter is still entirely within the Court's competence, and its determination does not pertain to Congress to the exclusion of the Court. Indeed, the interpretation of the GAA and its definition of *savings* is a foremost judicial function. This is because the power of judicial review vested in the Court is exclusive. As clarified in *Endencia and Jugo v. David*:[12]

> Under our system of constitutional government, the Legislative department is assigned the power to make and enact laws. The Executive department is charged with the execution of carrying out of the provisions of said laws. **But the interpretation and application of said laws belong exclusively to the Judicial department. And this authority to interpret and apply the laws extends to the Constitution. Before the courts can determine whether a law is constitutional or not, it will have to interpret and ascertain the meaning not only of said law, but also of the pertinent portion of the Constitution in order to decide whether there is a conflict between the two, because if there is, then the law will have to give way and has to be declared invalid and unconstitutional**.
>
> x x x x
>
> **We have already said that the Legislature under our form of government is assigned the task and the power to make and enact laws, but not to interpret them. This is more true with regard to the interpretation of the basic law, the Constitution, which is not within the sphere of the Legislative department. If the Legislature may declare what a law means, or what a specific portion of the Constitution means, especially after the courts have in actual case ascertain its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decisions. Under such a system, a final court determination of a case based on a judicial interpretation of the law of the Constitution may be undermined or even annulled by a subsequent and different interpretation of the law or of the Constitution by the Legislative department. That would be neither wise nor desirable, besides being clearly violative of the fundamental, principles of our constitutional system of government, particularly those governing the separation of powers**.[13]

The respondents cannot also ignore the glaring fact that the petitions primarily and significantly alleged grave abuse of discretion on the part of the Executive in the implementation of the DAP. The resolution of the petitions thus demanded the exercise by the Court of its aforedescribed power of judicial review as mandated by the Constitution.

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12 Nos. L-6355-56, 93 Phil. 696 (1953).

13 Id. at 700-702 (bold underscoring is supplied for emphasis).

2.

Strict construction on the accumulation and utilization of savings

The decision of the Court has underscored that the exercise of the power to augment shall be strictly construed by virtue of its being an exception to the general rule that the funding of PAPs shall be limited to the amount fixed by Congress for the purpose.[14] Necessarily, savings, their utilization and their management will also be strictly construed against expanding the scope of the power to augment.[15] Such a strict interpretation is essential in order to keep the Executive and other budget implementors within the limits of their prerogatives during budget execution, and to prevent them from unduly transgressing Congress' power of the purse.[16] Hence, regardless of the perceived beneficial purposes of the DAP, and regardless of whether the DAP is viewed as an effective tool of stimulating the national economy, the acts and practices under the DAP and the relevant provisions of NBC No. 541 cited in the Decision should remain illegal and unconstitutional as long as the funds used to finance the projects mentioned therein are sourced from savings that deviated from the relevant provisions of the GAA, as well as the limitation on the power to augment under Section 25(5), Article VI of the Constitution. In a society governed by laws, even the best intentions must come within the parameters defined and set by the Constitution and the law. Laudable purposes must be carried out through legal methods.[17]

Respondents contend, however, that withdrawn unobligated allotments and unreleased appropriations under the DAP are savings that may be used for augmentation, and that the withdrawal of unobligated allotments were made pursuant to Section 38 Chapter 5, Book VI of the Administrative Code;[18] that Section 38 and Section 39, Chapter 5, Book VI of the Administrative Code are consistent with Section 25(5), Article VI of the Constitution, which, taken together, constitute "a framework for which economic managers of the nation may pull various levers in the form of authorization from Congress to efficiently steer the economy towards the specific and general purposes of the GAA;"[19] and that the President's augmentation of deficient items is in accordance with the standing authority issued by Congress through Section 39.

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14 *Rollo* (G.R. No. 209287), pp. 1203-1204.
15 Id. at 1208.
16 Id.
17 *Brillantes, Jr. v. Commission on Elections,* G.R. No. 163193, June 15, 2004, 432 SCRA 269, 307.
18 Supra note 7, at 1448.
19 Id. at 1449.

Section 25(5), Article VI of the Constitution states:

> Section 25. x x x
>
> x x x x
>
> 5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.
>
> x x x x

Section 38 and Section 39, Chapter 5, Book VI of the Administrative Code provide:

> Section 38. *Suspension of Expenditure of Appropriations*. - Except as otherwise provided in the General Appropriations Act and whenever in his judgment the public interest so requires, the President, upon notice to the head of office concerned, is authorized to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for personal services appropriations used for permanent officials and employees.
>
> Section 39. *Authority to Use Savings in Appropriations to Cover Deficits*.—Except as otherwise provided in the General Appropriations Act, **any savings in the regular appropriations authorized in the General Appropriations Act for programs and projects of any department, office or agency, may, with the approval of the President, be used to cover a deficit in any other item of the regular appropriations**: Provided, that the creation of new positions or increase of salaries shall not be allowed to be funded from budgetary savings except when specifically authorized by law: Provided, further, that whenever authorized positions are transferred from one program or project to another within the same department, office or agency, the corresponding amounts appropriated for personal services are also deemed transferred, without, however increasing the total outlay for personal services of the department, office or agency concerned. (Bold underscoring supplied for emphasis)

In the Decision, we said that:

> Unobligated allotments, on the other hand, were encompassed by the first part of the definition of "savings" in the GAA, that is, as "portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance." But the first part of the definition was further

> qualified by the three enumerated instances of when savings would be realized. As such, unobligated allotments could not be indiscriminately declared as savings without first determining whether any of the three instances existed. This signified that the DBM's withdrawal of unobligated allotments had disregarded the definition of savings under the GAAs.
>
> x x x x
>
> The respondents rely on Section 38, Chapter 5, Book VI of the *Administrative Code of 1987* to justify the withdrawal of unobligated allotments. But the provision authorized only the suspension or stoppage of further expenditures, not the withdrawal of unobligated allotments, to wit:
>
> x x x x
>
> Moreover, the DBM did not suspend or stop further expenditures in accordance with Section 38, *supra*, but instead transferred the funds to other PAPs.[20]

We now clarify.

Section 38 refers to the authority of the President "to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act." When the President suspends or stops expenditure of funds, savings are not automatically generated until it has been established that such funds or appropriations are free from any obligation or encumbrance, and that the work, activity or purpose for which the appropriation is authorized has been completed, discontinued or abandoned.

It is necessary to reiterate that under Section 5.7 of NBC No. 541, the withdrawn unobligated allotments may be:

> 5.7.1 <u>Reissued for the original programs and projects of the agencies/OUs concerned, from which the allotments were withdrawn</u>;
>
> 5.7.2 Realigned to cover additional funding for other existing programs and projects of the agency/OU; or
>
> 5.7.3 Used to augment existing programs and projects of any agency and to fund priority programs and projects not considered in the 2012 budget but expected to be started or implemented during the current year.

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[20] Decision, pp. 60-67.

Although the withdrawal of unobligated allotments may have effectively resulted in the suspension or stoppage of expenditures through the issuance of negative Special Allotment Release Orders (SARO), the reissuance of withdrawn allotments to the original programs and projects is a clear indication that the program or project from which the allotments were withdrawn has not been discontinued or abandoned. Consequently, as we have pointed out in the Decision, "the purpose for which the withdrawn funds had been appropriated was not yet fulfilled, or did not yet cease to exist, rendering the declaration of the funds as savings impossible."[21] In this regard, the withdrawal and transfer of unobligated allotments remain unconstitutional. But then, whether the withdrawn allotments have actually been reissued to their original programs or projects is a factual matter determinable by the proper tribunal.

Also, withdrawals of unobligated allotments pursuant to NBC No. 541 which shortened the availability of appropriations for MOOE and capital outlays, and those which were transferred to PAPs that were not determined to be deficient, are still constitutionally infirm and invalid.

At this point, it is likewise important to underscore that the reversion to the General Fund of unexpended balances of appropriations – savings included – pursuant to Section 28 Chapter IV, Book VI of the *Administrative Code*[22] does not apply to the Constitutional Fiscal Autonomy Group (CFAG), which include the Judiciary, Civil Service Commission, Commission on Audit, Commission on Elections, Commission on Human Rights, and the Office of the Ombudsman. The reason for this is that the fiscal autonomy enjoyed by the CFAG –

> x x x contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.
>
> Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.
>
> The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and

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21 Id. at 62.
22 Id. at 67.

> constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. x x x[23]

On the other hand, Section 39 is evidently in conflict with the plain text of Section 25(5), Article VI of the Constitution because it allows the President to approve the use of *any* savings in the regular appropriations authorized in the GAA for programs and projects of *any* department, office or agency to cover a deficit in *any* other item of the regular appropriations. As such, Section 39 violates the mandate of Section 25(5) because the latter expressly limits the authority of the President to augment an item in the GAA to only those in his own Department out of the savings in other items of his own Department's appropriations. Accordingly, Section 39 cannot serve as a valid authority to justify cross-border transfers under the DAP. Augmentations under the DAP which are made by the Executive within its department shall, however, remain valid so long as the requisites under Section 25(5) are complied with.

In this connection, the respondents must always be reminded that the Constitution is the basic law to which all laws must conform. No act that conflicts with the Constitution can be valid.[24] In *Mutuc v. Commission on Elections*,[25] therefore, we have emphasized the importance of recognizing and bowing to the supremacy of the Constitution:

> x x x The concept of the Constitution as the fundamental law, setting forth the criterion for the validity of any public act whether proceeding from the highest official or the lowest functionary, is a postulate of our system of government. That is to manifest fealty to the rule of law, with priority accorded to that which occupies the topmost rung in the legal hierarchy. The three departments of government in the discharge of the functions with which it is [sic] entrusted have no choice but to yield obedience to its commands. Whatever limits it imposes must be observed. Congress in the enactment of statutes must ever be on guard lest the restrictions on its authority, whether substantive or formal, be transcended. The Presidency in the execution of the laws cannot ignore or disregard what it ordains. In its task of applying the law to the facts as found in deciding cases, the judiciary is called upon to maintain inviolate what is decreed by the fundamental law. Even its power of judicial review to pass upon the validity of the acts of the coordinate branches in the course of adjudication is a logical corollary of this basic principle that the Constitution is paramount. It overrides any governmental measure

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[23] *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[24] *Social Justice Society (SJS) v. Dangerous Drugs Board*, G.R. Nos. 157870, 158633 and 161658, November 3, 2008, 570 SCRA 410, 422-423.

[25] No. L-32717, November 26, 1970, 36 SCRA 228, 234-235.

> that fails to live up to its mandates. Thereby there is a recognition of its being the supreme law.

Also, in *Biraogo v. Philippine Truth Commission of 2010*,[26] we have reminded that: –

> The role of the Constitution cannot be overlooked. It is through the Constitution that the fundamental powers of government are established, limited and defined, and by which these powers are distributed among the several departments. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. Constitutional doctrines must remain steadfast no matter what may be the tides of time. It cannot be simply made to sway and accommodate the call of situations and much more tailor itself to the whims and caprices of government and the people who run it.[27]

3.
The power to augment cannot be used to fund non-existent provisions in the GAA

The respondents posit that the Court has erroneously invalidated all the DAP-funded projects by overlooking the difference between an item and an allotment class, and by concluding that they do not have appropriation cover; and that such error may induce Congress and the Executive (through the DBM) to ensure that all items should have at least ₱1 funding in order to allow augmentation by the President.[28]

At the outset, we allay the respondents' apprehension regarding the validity of the DAP funded projects. It is to be emphatically indicated that the Decision did not declare the *en masse* invalidation of the 116 DAP-funded projects. To be sure, the Court recognized the encouraging effects of the DAP on the country's economy,[29] and acknowledged its laudable purposes, most especially those directed towards infrastructure development and efficient delivery of basic social services.[30] It bears repeating that the DAP is a policy instrument that the Executive, by its own prerogative, may utilize to spur economic growth and development.

Nonetheless, the Decision did find doubtful those projects that appeared to have no appropriation cover under the relevant GAAs on the

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26 G.R. No. 192935 and 193036, December 7, 2010, 637 SCRA 78.
27 Id. at 137-138.
28 Supra note 7, at 1450-1451.
29 Decision, p. 36.
30 Id at 90.

basis that: (1) the DAP funded projects that originally did not contain any appropriation for some of the expense categories (personnel, MOOE and capital outlay); and (2) the appropriation code and the particulars appearing in the SARO did not correspond with the program specified in the GAA.

The respondents assert, however, that there is no constitutional requirement for Congress to create allotment classes within an item. What is required is for Congress to create items to comply with the line-item veto of the President.[31]

After a careful reexamination of existing laws and jurisprudence, we find merit in the respondents' argument.

Indeed, Section 25(5) of the 1987 Constitution mentions of the term *item* that may be the object of augmentation by the President, the Senate President, the Speaker of the House, the Chief Justice, and the heads of the Constitutional Commissions. In *Belgica v. Ochoa*,[32] we said that an item that is the distinct and several part of the appropriation bill, in line with the item-veto power of the President, must contain "specific appropriations of money" and not be only general provisions, thus:

> For the President to exercise his item-veto power, it necessarily follows that there exists a proper "item" which may be the object of the veto. An item, as defined in the field of appropriations, pertains to "the particulars, the details, the distinct and severable parts of the appropriation or of the bill." In the case of *Bengzon v. Secretary of Justice of the Philippine Islands*, the US Supreme Court characterized an item of appropriation as follows:
>
> > An item of an appropriation bill obviously means an item which, in itself, is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. (Emphases supplied)
>
> On this premise, it may be concluded that an appropriation bill, to ensure that the President may be able to exercise his power of item veto, must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation.
>
> Further, it is significant to point out that an item of appropriation must be an item characterized by singular correspondence – meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a "line-item." This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same. Based

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31 Respondents' Motion for Reconsideration, p. 21.

32 G.R. No. 208566, November 19, 2013, 710 SCRA 1.

> on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line-item" appropriations which are rightfully subject to item veto. Likewise, it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item. Moreover, as Justice Carpio correctly pointed out, a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, *e.g.*, MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power. Finally, special purpose funds and discretionary funds would equally square with the constitutional mechanism of item-veto for as long as they follow the rule on singular correspondence as herein discussed. x x x (Emphasis supplied)[33]

Accordingly, the *item* referred to by Section 25(5) of the Constitution is the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class. There is no specificity, indeed, either in the Constitution or in the relevant GAAs that the object of augmentation should be the expense category or allotment class. In the same vein, the President cannot exercise his veto power over an expense category; he may only veto the item to which that expense category belongs to.

Further, in *Nazareth v. Villar*,[34] we clarified that there must be an existing item, project or activity, purpose or object of expenditure with an appropriation to which savings may be transferred for the purpose of augmentation. Accordingly, so long as there is an item in the GAA for which Congress had set aside a specified amount of public fund, savings may be transferred thereto for augmentation purposes. This interpretation is consistent not only with the Constitution and the GAAs, but also with the degree of flexibility allowed to the Executive during budget execution in responding to unforeseeable contingencies.

Nonetheless, this modified interpretation does not take away the caveat that only DAP projects found in the appropriate GAAs may be the subject of augmentation by legally accumulated savings. Whether or not the 116 DAP-funded projects had appropriation cover and were validly augmented require factual determination that is not within the scope of the present consolidated petitions under Rule 65.

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33 Id. at 126-127.

34 G.R. No. 188635, January 29, 2013, 689 SCRA 385.

4.
Cross-border transfers are constitutionally impermissible

The respondents assail the pronouncement of unconstitutionality of cross-border transfers made by the President. They submit that Section 25(5), Article VI of the Constitution prohibits only the transfer of appropriation, not savings. They relate that cross-border transfers have been the practice in the past, being consistent with the President's role as the Chief Executive.[35]

In view of the clarity of the text of Section 25(5), however, the Court stands by its pronouncement, and will not brook any strained interpretations.

5.
Unprogrammed funds may only be released upon proof that the total revenues exceeded the target

Based on the 2011, 2012 and 2013 GAAs, the respondents contend that each source of revenue in the budget proposal must exceed the respective target to authorize release of unprogrammed funds. Accordingly, the Court's ruling thereon nullified the intention of the authors of the unprogrammed fund, and renders useless the special provisions in the relevant GAAs.[36]

The respondents' contentions are without merit.

To recall, the respondents justified the use of unprogrammed funds by submitting certifications from the Bureau of Treasury and the Department of Finance (DOF) regarding the dividends derived from the shares of stock held by the Government in government-owned and controlled corporations.[37] In the decision, the Court has held that the requirement under the relevant GAAs should be construed in light of the purpose for which the unprogrammed funds were denominated as "standby appropriations." Hence, revenue targets should be considered as a whole, not individually; otherwise, we would be dealing with artificial revenue surpluses. We have even cautioned that the release of unprogrammed funds based on the respondents' position could be unsound fiscal management for disregarding the budget plan and fostering budget deficits, contrary to the Government's surplus budget policy.[38]

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35 Supra note 7, at 1455-1459.
36 Id. at 1459-1465.
37 *Rollo* (G.R. No. 209155), pp. 327, 337-339.
38 Supra note 14, at 1231-1232.

While we maintain the position that aggregate revenue collection must first exceed aggregate revenue target as a pre-requisite to the use of unprogrammed funds, we clarify the respondents' notion that the release of unprogrammed funds may only occur at the end of the fiscal year.

There must be consistent monitoring as a component of the budget accountability phase of every agency's performance in terms of the agency's budget utilization as provided in Book VI, Chapter 6, Section 51 and Section 52 of the *Administrative Code of 1987*, which state:

> SECTION 51. Evaluation of Agency Performance.—The President, through the Secretary shall evaluate on a continuing basis the quantitative and qualitative measures of agency performance as reflected in the units of work measurement and other indicators of agency performance, including the standard and actual costs per unit of work.
>
> SECTION 52. Budget Monitoring and Information System.—The Secretary of Budget shall determine accounting and other items of information, financial or otherwise, needed to monitor budget performance and to assess effectiveness of agencies' operations and shall prescribe the forms, schedule of submission, and other components of reporting systems, including the maintenance of subsidiary and other records which will enable agencies to accomplish and submit said information requirements: Provided, that the Commission on Audit shall, in coordination with the Secretary of Budget, issue rules and regulations that may be applicable when the reporting requirements affect accounting functions of agencies: Provided, further, that the applicable rules and regulations shall be issued by the Commission on Audit within a period of thirty (30) days after the Department of Budget and Management prescribes the reporting requirements.

Pursuant to the foregoing, the Department of Budget and Management (DBM) and the Commission on Audit (COA) require agencies under various joint circulars to submit budget and financial accountability reports (BFAR) on a regular basis,[39] one of which is the Quarterly Report of Income or Quarterly Report of Revenue and Other Receipts.[40] On the other hand, as Justice Carpio points out in his Separate Opinion, the Development Budget Coordination Committee (DBCC) sets quarterly revenue targets for a specific fiscal year.[41] Since information on both actual revenue collections and targets are made available every quarter, or at such time as the DBM may prescribe, actual revenue surplus may be determined accordingly and

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[39] *http://budgetngbayan.com/budget-101/budget-accountability/#BAR* (Visited on January 28, 2015).

[40] See also the DBM and COA's Joint Circular No. 2013-1, March 15, 2013 and Joint Circular No. 2014-1, July 2, 2014.

[41] J. Carpio, Separate Opinion, p. 11.

releases from the unprogrammed fund may take place even prior to the end of the fiscal year.[42]

In fact, the eleventh special provision for unprogrammed funds in the 2011 GAA requires the DBM to submit quarterly reports stating the details of the use and releases from the unprogrammed funds, *viz*:

> 11. Reportorial Requirement. The DBM shall submit to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and purposes thereof, and the recipient departments, bureaus, agencies or offices, GOCCs and GFIs, including the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.

Similar provisions are contained in the 2012 and 2013 GAAs.[43]

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[42] In this regard, the ninth and tenth special provisions for unprogrammed funds in the 2011 GAA also provide the following:

> 9. Use of Income. In case of deficiency in the appropriations for the following business-type activities, departments, bureaus, offices and agencies enumerated hereunder and other agencies as may be determined by the Permanent Committee are hereby authorized to use their respective income collected during the year. Said income shall be deposited with the National Treasury, chargeable against Purpose 4 - General Fund Adjustments, to be used exclusively for the purposes indicated herein or such other purposes authorized by the Permanent Committee, as may be required until the end of the year, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E. O. No. 292, s. 1987:
>
> x x x x
>
> Implementation of this section shall be subject to guidelines to be issued by the DBM.
>
> 10. Use of Excess Income. Agencies collecting fees and charges as shown in the FY 2011 Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 4 - General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.
>
> Implementation of this section shall be subject to guidelines jointly issued by the DBM and DOF
>
> The 2012 and 2013 GAAs also contain similar provisions.

[43] 2012 GAA provides:

> 8. Reportorial Requirement. The DBM shall submit, either in printed form or by way of electronic document, to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and the purposes thereof, and the recipient departments, bureaus, agencies or offices, including GOCCs and GFIs, as well as the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.

2013 GAA reads:

> 8. Reportorial Requirement. The DBM shall submit, either in printed form or by way of electronic document, to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and the purposes thereof, and the recipient departments, bureaus, and offices, including GOCCs and GFIs, as well as the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.

However, the Court's construction of the provision on unprogrammed funds is a statutory, not a constitutional, interpretation of an ambiguous phrase. Thus, the construction should be given prospective effect.[44]

6.
The presumption of good faith stands despite the obiter pronouncement

The remaining concern involves the application of the operative fact doctrine.

The respondents decry the misapplication of the operative fact doctrine, stating:

> 110. **The doctrine of operative fact has nothing to do with the potential liability of persons who acted pursuant to a then-constitutional statute, order, or practice. They are presumed to have acted in good faith and the court cannot load the dice, so to speak, by disabling possible defenses in potential suits against so-called "authors, proponents and implementors."** The mere nullification are still deemed valid on the theory that judicial nullification is a contingent or unforeseen event.
>
> 111. The cases before us are about the statutory and constitutional interpretations of so-called acts and practices under a government program, DAP. These are not civil, administrative, or criminal actions against the public officials responsible for DAP, and any statement about bad faith may be unfairly and maliciously exploited for political ends. At the same time, **any negation of the presumption of good faith, which is the unfortunate implication of paragraphs 3 and 4 of page 90 of the Decision, violates the constitutional presumption of innocence, and is inconsistent with the Honorable Court's recognition that "the implementation of the DAP yielded undeniably positive results that enhanced the economic welfare of the country."**
>
> 112. The policy behind the operative fact doctrine is consistent with the idea that **regardless of the nullification of certain acts and practices under the DAP and/or NBC No. 541, it does not operate to impute bad faith to authors, proponents and implementors who continue to enjoy the presumption of innocence and regularity in the performance of official functions and duties. Good faith is presumed, whereas bad faith requires the existence of facts. To hold otherwise would send a chilling effect to all public officers whether of minimal or significant discretion, the result of which would be a dangerous paralysis of bureaucratic activity**.[45] (Emphasis supplied)

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[44] *Commission of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, 690 SCRA 336.

[45] Supra note 7, at 1466-1467.

In the speech he delivered on July 14, 2014, President Aquino III also expressed the view that in applying the doctrine of operative fact, the Court has already presumed the absence of good faith on the part of the authors, proponents and implementors of the DAP, so that they would have to prove good faith during trial.[46]

Hence, in their Motion for Reconsideration, the respondents now urge that the Court should extend the presumption of good faith in favor of the President and his officials who co-authored, proposed or implemented the DAP.[47]

The paragraphs 3 and 4 of page 90 of the Decision alluded to by the respondents read:

> Nonetheless, as Justice Brion has pointed out during the deliberations, the doctrine of operative fact does not always apply, and is not always the consequence of every declaration of constitutional invalidity. It can be invoked only in situations where the nullification of the effects of what used to be a valid law would result in inequity and injustice; but where no such result would ensue, the general rule that an unconstitutional law is totally ineffective should apply.
>
> In that context, as Justice Brion has clarified, **the doctrine of operative fact can apply only to the PAPs that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the DAP, but cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities**.[48] (Bold underscoring is supplied)

The quoted text of paragraphs 3 and 4 shows that the Court has neither thrown out the presumption of good faith nor imputed bad faith to the authors, proponents and implementors of the DAP. The contrary is true, because the Court has still presumed their good faith by pointing out that "the doctrine of operative fact xxx cannot apply to the authors, proponents and implementors of the DAP, *unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities*." Note that the proper tribunals can make "*concrete findings of good faith in their favor*" only after a full hearing of *all* the parties in any given case, and such a hearing can begin to proceed only after according all the presumptions, particularly that of good faith, by initially requiring the complainants, plaintiffs or accusers to

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[46] http://www.gov.ph/2014/07/14/english-national-address-of-president-aquino-on-the-supreme-courts-decision-on-dap/ Last visited on November 13, 2014.

[47] Supra note 7, at 1432.

[48] Supra note 14, at 1239.

first establish their complaints or charges before the respondent authors, proponents and implementors of the DAP.

It is equally important to stress that the ascertainment of good faith, or the lack of it, and the determination of whether or not due diligence and prudence were exercised, are questions of fact.[49] The want of good faith is thus better determined by tribunals other than this Court, which is not a trier of facts.[50]

For sure, the Court cannot jettison the presumption of good faith in this or in any other case. The presumption is a matter of law. It has had a long history. Indeed, good faith has long been established as a legal principle even in the heydays of the Roman Empire.[51] In *Soriano v. Marcelo*,[52] citing *Collantes v. Marcelo*,[53] the Court emphasizes the necessity of the presumption of good faith, thus:

> Well-settled is the rule that good faith is always presumed and the Chapter on Human Relations of the Civil Code directs every person, inter alia, to observe good faith which springs from the fountain of good conscience. Specifically, a public officer is presumed to have acted in good faith in the performance of his duties. Mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. "Bad faith" does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.
>
> The law also requires that the public officer's action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. x x x

The Court has further explained in *Philippine Agila Satellite, Inc. v. Trinidad-Lichauco*:[54]

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49 *Philippine National Bank v. Heirs of Estanislao Militar,* G.R. No. 164801 and 165165, June 30, 2006, 494 SCRA 308, 319.

50 Id.

51 See *Good Faith in European Contract Law*, R. Zimmermann, S. Whittaker, eds., Cambridge University Press, 2000, p. 16; http://catdir.loc.gov/catdir/samples/cam032/99037679.pdf (Visited on November 24, 2014).

52 G.R. No. 160772, July 13, 2009, 592 SCRA 394.

53 G.R. Nos. 167006-07, 14 August 2007, 530 SCRA 142.

54 G.R. No. 142362, May 3, 2006, 489 SCRA 22.

> We do not doubt the existence of the presumptions of "good faith" or "regular performance of official duty", yet these presumptions are disputable and may be contradicted and overcome by other evidence. Many civil actions are oriented towards overcoming any number of these presumptions, and a cause of action can certainly be geared towards such effect. The very purpose of trial is to allow a party to present evidence to overcome the disputable presumptions involved. Otherwise, if trial is deemed irrelevant or unnecessary, owing to the perceived indisputability of the presumptions, the judicial exercise would be relegated to a mere ascertainment of what presumptions apply in a given case, nothing more. Consequently, the entire Rules of Court is rendered as excess verbiage, save perhaps for the provisions laying down the legal presumptions.

Relevantly, the authors, proponents and implementors of the DAP, being public officers, further enjoy the presumption of regularity in the performance of their functions. This presumption is necessary because they are clothed with some part of the sovereignty of the State, and because they act in the interest of the public as required by law.[55] However, the presumption may be disputed.[56]

At any rate, the Court has agreed during its deliberations to extend to the proponents and implementors of the DAP the benefit of the doctrine of operative fact. This is because they had nothing to do at all with the adoption of the invalid acts and practices.

7.
The PAPs under the DAP remain effective under the operative fact doctrine

As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply.[57] In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the ₱144.378 Billions[58] worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine. For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442.

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55 Words And Phrases, Vol. 35, p. 356, citing *Bender v. Cushing*, 14 Ohio Dec. 65, 70.
56 Section 3(l), Rule 131, *Rules of Court.*
57 Id.
58 *http://www.gov.ph/2014/07/24/dap-presentation-of-secretary-abad-to-the-senate-of-the-philippines/* (November 27, 2014)

IN VIEW OF THE FOREGOING, and **SUBJECT TO THE FOREGOING CLARIFICATIONS,** the Court **PARTIALLY GRANTS** the Motion for Reconsideration filed by the respondents, and **DENIES** the Motion for Partial Reconsideration filed by the petitioners in G.R. No. 209442 for lack of merit.

ACCORDINGLY, the dispositive portion of the Decision promulgated on July 1, 2014 is hereby **MODIFIED** as follows:

> **WHEREFORE**, the Court **PARTIALLY GRANTS** the petitions for *certiorari* and prohibition; and **DECLARES** the following acts and practices under the Disbursement Acceleration Program, National Budget Circular No. 541 and related executive issuances **UNCONSTITUTIONAL** for being in violation of Section 25(5), Article VI of the 1987 Constitution and the doctrine of separation of powers, namely:
>
> (a) The withdrawal of unobligated allotments from the implementing agencies, and the declaration of the withdrawn unobligated allotments and unreleased appropriations as savings prior to the end of the fiscal year without complying with the statutory definition of savings contained in the General Appropriations Acts; and
>
> (b) The cross-border transfers of the savings of the Executive to augment the appropriations of other offices outside the Executive.
>
> The Court further **DECLARES VOID** the use of unprogrammed funds despite the absence of a certification by the National Treasurer that the revenue collections exceeded the revenue targets for non-compliance with the conditions provided in the relevant General Appropriations Acts.
>
> **SO ORDERED.**

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

See Separate Opinion
ANTONIO T. CARPIO
Associate Justice

(I join the concurring + dissenting opinion of J. Del Castillo)
PRESBITERO J. VELASCO, JR.
Associate Justice

J. Brion left his vote; see his Separate Opinion (Qualified Concurrence)

No part: (due to close relationship with one of the counsels 2nd paragraph)
Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

see concurring and dissenting opinion
MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

Se concurring opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

No part previously acted as Sol Gen

CERTIFICATION

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