Republic of the Philippines
SUPREME COURT
Manila

SPECIAL THIRD DIVISION

NARRA NICKEL MINING AND DEVELOPMENT CORP., TESORO MINING AND DEVELOPMENT, INC., and McARTHUR MINING, INC., Petitioners,	**G.R. No. 195580**
	Present:
- versus -	VELASCO, JR., *J.*, Chairperson, PERALTA, MENDOZA, LEONEN, and JARDELEZA, *JJ.*
REDMONT CONSOLIDATED MINES CORP., Respondent.	Promulgated: **January 28, 2015**

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RESOLUTION

VELASCO, JR., *J.*:

Before the Court is the Motion for Reconsideration of its April 21, 2014 Decision, which denied the Petition for Review on Certiorari under Rule 45 jointly interposed by petitioners Narra Nickel and Mining Development Corp. (Narra), Tesoro Mining and Development, Inc. (Tesoro), and McArthur Mining Inc. (McArthur), and affirmed the October 1, 2010 Decision and February 15, 2011 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 109703.

Very simply, the challenged Decision sustained the appellate court's ruling that petitioners, being foreign corporations, are not entitled to Mineral Production Sharing Agreements (MPSAs). In reaching its conclusion, this Court upheld with approval the appellate court's finding that there was doubt as to petitioners' nationality since a 100% Canadian-owned firm, MBMI Resources, Inc. (MBMI), effectively owns 60% of the common stocks of the petitioners by owning equity interest of petitioners' other majority corporate shareholders.

In a strongly worded Motion for Reconsideration dated June 5, 2014, petitioners-movants argued, in the main, that the Court's Decision was not in accord with law and logic. In its September 2, 2014 Comment, on the other hand, respondent Redmont Consolidated Mines Corp. (Redmont) countered

that petitioners' motion for reconsideration is nothing but a rehash of their arguments and should, thus, be denied outright for being pro-forma. Petitioners have interposed on September 30, 2014 their Reply to the respondent's Comment.

After considering the parties' positions, as articulated in their respective submissions, We resolve to deny the motion for reconsideration.

I.
The case has not been rendered moot and academic

Petitioners have first off criticized the Court for resolving in its Decision a substantive issue, which, as argued, has supposedly been rendered moot by the fact that petitioners' applications for MPSAs had already been converted to an application for a Financial Technical Assistance Agreement (FTAA), as petitioners have in fact been granted an FTAA. Further, the nationality issue, so petitioners presently claim, had been rendered moribund by the fact that MBMI had already divested itself and sold all its shareholdings in the petitioners, as well as in their corporate stockholders, to a Filipino corporation—DMCI Mining Corporation (DMCI).

As a counterpoint, respondent Redmont avers that the present case has not been rendered moot by the supposed issuance of an FTAA in petitioners' favor as this FTAA was subsequently revoked by the Office of the President (OP) and is currently a subject of a petition pending in the Court's First Division. Redmont likewise contends that the supposed sale of MBMI's interest in the petitioners and in their "holding companies" is a question of fact that is outside the Court's province to verify in a Rule 45 certiorari proceedings. In any case, assuming that the controversy has been rendered moot, Redmont claims that its resolution on the merits is still justified by the fact that petitioners have violated a constitutional provision, the violation is capable of repetition yet evading review, and the present case involves a matter of public concern.

Indeed, as the Court clarified in its Decision, the conversion of the MPSA application to one for FTAAs and the issuance by the OP of an FTAA in petitioners' favor are irrelevant. The OP itself has already cancelled and revoked the FTAA thus issued to petitioners. Petitioners curiously have omitted this critical fact in their motion for reconsideration. Furthermore, the supposed sale by MBMI of its shares in the petitioner-corporations and in their holding companies is not only a question of fact that this Court is without authority to verify, it also does not negate any violation of the Constitutional provisions previously committed before any such sale.

We can assume for the nonce that the controversy had indeed been rendered moot by these two events. As this Court has time and again declared, the "moot and academic" principle is not a magical formula that automatically dissuades courts in resolving a case.[1] The Court may still take cognizance of an otherwise moot and academic case, if it finds that (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review.[2] The Court's April 21, 2014 Decision explained in some detail that all four (4) of the foregoing circumstances are present in the case. If only to stress a point, we will do so again.

First, allowing the issuance of MPSAs to applicants that are owned and controlled by a 100% foreign-owned corporation, albeit through an intricate web of corporate layering involving alleged Filipino corporations, is tantamount to permitting a blatant violation of Section 2, Article XII of the Constitution. The Court simply cannot allow this breach and inhibit itself from resolving the controversy on the facile pretext that the case had already been rendered academic.

Second, the elaborate corporate layering resorted to by petitioners so as to make it appear that there is compliance with the minimum Filipino ownership in the Constitution is deftly exceptional in character. More importantly, the case is of paramount public interest, as the corporate layering employed by petitioners was evidently designed to circumvent the constitutional caveat allowing only Filipino citizens and corporations 60%-owned by Filipino citizens to explore, develop, and use the country's natural resources.

Third, the facts of the case, involving as they do a web of corporate layering intended to go around the Filipino ownership requirement in the Constitution and pertinent laws, require the establishment of a definite principle that will ensure that the Constitutional provision reserving to Filipino citizens or "corporations at least sixty *per centum* of whose capital is owned by such citizens" be effectively enforced and complied with. The case, therefore, is an opportunity to establish a controlling principle that will "guide the bench, the bar, and the public."

Lastly, the petitioners' actions during the lifetime and existence of the instant case that gave rise to the present controversy are capable of repetition yet evading review because, as shown by petitioners' actions, foreign

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[1] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, October 14, 2008, 568 SCRA 402, 460.

[2] *David v. Macapagal-Arroyo*, G.R. No. 171396, etc., May 3, 2006, 489 SCRA 160; citing *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736; *Lacson v. Perez*, 410 Phil. 78 (2001); *Albaña v. Comelec*, 478 Phil. 941 (2004); *Chief Supt. Acop v. Guingona Jr.*, 433 Phil. 62 (2002); *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482 (2004).

corporations can easily utilize dummy Filipino corporations through various schemes and stratagems to skirt the constitutional prohibition against foreign mining in Philippine soil.

II.
The application of the Grandfather Rule is justified by the circumstances of the case to determine the nationality of petitioners.

To petitioners, the Court's application of the Grandfather Rule to determine their nationality is erroneous and allegedly without basis in the Constitution, the Foreign Investments Act of 1991 (FIA), the Philippine Mining Act of 1995,[3] and the Rules issued by the Securities and Exchange Commission (SEC). These laws and rules supposedly espouse the application of the Control Test in verifying the Philippine nationality of corporate entities for purposes of determining compliance with Sec. 2, Art. XII of the Constitution that only "corporations or associations at least sixty *per centum* of whose capital is owned by such [Filipino] citizens" may enjoy certain rights and privileges, like the exploration and development of natural resources.

The application of the Grandfather Rule in the present case does not eschew the Control Test.

Clearly, petitioners have misread, and failed to appreciate the clear import of, the Court's April 21, 2014 Decision. Nowhere in that disposition did the Court foreclose the application of the Control Test in determining which corporations may be considered as Philippine nationals. Instead, to borrow Justice Leonen's term, the Court used the Grandfather Rule as a "supplement" to the Control Test so that the intent underlying the averted Sec. 2, Art. XII of the Constitution be given effect. The following excerpts of the April 21, 2014 Decision cannot be clearer:

> In ending, **the "control test" is still the prevailing mode of determining whether or not a corporation is a Filipino corporation**, within the ambit of Sec. 2, Art. XII of the 1987 Constitution, entitled to undertake the exploration, development and utilization of the natural resources of the Philippines. **When in the mind of the Court, there is doubt, based on the attendant facts and circumstances of the case**, in the 60-40 Filipino equity ownership in the corporation, **then it may apply the "grandfather rule."** (emphasis supplied)

With that, the use of the Grandfather Rule as a "supplement" to the Control Test is not proscribed by the Constitution or the Philippine Mining Act of 1995.

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[3] Republic Act No. (RA) 7942, effective April 14, 1995.

The Grandfather Rule implements the intent of the Filipinization provisions of the Constitution.

To reiterate, Sec. 2, Art. XII of the Constitution reserves the exploration, development, and utilization of natural resources to Filipino citizens and "corporations or associations at least sixty *per centum* of whose capital is owned by such citizens." Similarly, Section 3(aq) of the Philippine Mining Act of 1995 considers a "corporation x x x registered in accordance with law at least sixty per cent of the capital of which is owned by citizens of the Philippines" as a person qualified to undertake a mining operation. Consistent with this objective, the Grandfather Rule was originally conceived to look into the *citizenship* of the individuals who ultimately own and control the shares of stock of a corporation for purposes of determining compliance with the constitutional requirement of Filipino ownership. It cannot, therefore, be denied that the framers of the Constitution have not foreclosed the Grandfather Rule as a tool in verifying the nationality of corporations for purposes of ascertaining their right to participate in nationalized or partly nationalized activities. The following excerpts from the Record of the 1986 Constitutional Commission suggest as much:

> MR. NOLLEDO: In Sections 3, 9 and 15, the Committee stated local or Filipino equity and foreign equity; namely, 60-40 in Section 3, 60-40 in Section 9, and 2/3-1/3 in Section 15.
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> MR. VILLEGAS: That is right.
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> x x x x
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> MR. NOLLEDO: Thank you.
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> With respect to an investment by one corporation in another corporation, say, a corporation with 60-40 percent equity invests in another corporation which is permitted by the Corporation Code, **does the Committee adopt the grandfather rule**?
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> MR. VILLEGAS: **Yes, that is the understanding of the Committee**.

As further defined by Dean Cesar Villanueva, the Grandfather Rule is "**the method by which the percentage of Filipino equity in a corporation** engaged in nationalized and/or partly nationalized areas of activities, provided for under the Constitution and other nationalization laws, **is computed, in cases where corporate shareholders are present, by *attributing* the nationality of the second or even subsequent tier of ownership to determine the nationality of the corporate shareholder**."[4] Thus, to arrive at the actual Filipino ownership and control in a corporation, both the direct and indirect shareholdings in the corporation are determined.

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[4] Villanueva, Cesar Lapuz, *Philippine Corporate Law* (2001), p. 54. Emphasis and italicization supplied.

This concept of stock attribution inherent in the Grandfather Rule to determine the ultimate ownership in a corporation is observed by the Bureau of Internal Revenue (BIR) in applying Section 127 (B)[5] of the National Internal Revenue Code on taxes imposed on closely held corporations, in relation to Section 96 of the Corporation Code[6] on close corporations. Thus, in BIR Ruling No. 148-10, Commissioner Kim Henares held:

> **In the case of a multi-tiered corporation, the stock attribution rule must be allowed to run continuously along the chain of ownership until it finally reaches the individual stockholders. This is in consonance with the "grandfather rule" adopted in the Philippines under Section 96 of the Corporation Code** (Batas Pambansa Blg. 68) which provides that notwithstanding the fact that all the issued stock of a corporation are held by not more than twenty persons, among others, a corporation is nonetheless not to be deemed a close corporation when at least two thirds of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation.[7]

In SEC-OGC Opinion No. 10-31 dated December 9, 2010 (SEC Opinion 10-31), the SEC applied the Grandfather Rule even if the corporation engaged in mining operation *passes the 60-40 requirement of the Control Test*, viz:

> You allege that the structure of MML's ownership in PHILSAGA is as follows: (1) MML owns 40% equity in MEDC, while the 60% is ostensibly owned by Philippine individual citizens who are actually

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[5] SEC. 127. **Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering**. —

(B) Tax on Shares of Stock Sold or Exchanged Through Initial Public Offering. — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:

x x x x

For purposes of this Section, the term 'closely held corporation' means any corporation at least fifty percent (50%) in value of the outstanding capital stock of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals.

For purposes of determining whether the corporation is a closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:

(1) Stock not Owned by Individuals. — **Stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries**. x x x

[6] Sec. 96. Definition and applicability of Title. –

A close corporation, within the meaning of this Code, is one whose articles of incorporation provide that: (1) All the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) all the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. **Notwithstanding the foregoing, a corporation shall not be deemed a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code.**

Any corporation may be incorporated as a close corporation, except mining or oil companies, stock exchanges, banks, insurance companies, public utilities, educational institutions and corporations declared to be vested with public interest in accordance with the provisions of this Code.

[7] Dated December 17, 2010; emphasis supplied. See also BIR Ruling Nos. 072-97, July 2, 1997 and 055-81, March 23, 1981.

> MML's controlled nominees; (2) MEDC, in turn, owns 60% equity in MOHC, while MML owns the remaining 40%; (3) Lastly, MOHC owns 60% of PHILSAGA, while MML owns the remaining 40%. You provide the following figure to illustrate this structure:
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> x x x x
>
> We note that the Constitution and the statute use the concept "Philippine citizens." Article III, Section 1 of the Constitution provides who are Philippine citizens: x x x This enumeration is exhaustive. In other words, there can be no other Philippine citizens other than those falling within the enumeration provided by the Constitution. Obviously, only natural persons are susceptible of citizenship. Thus, for purposes of the Constitutional and statutory restrictions on foreign participation in the exploitation of mineral resources, a corporation investing in a mining joint venture can never be considered as a Philippine citizen.
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> The Supreme Court En Banc confirms this [in]… Pedro R. Palting, vs. San Jose Petroleum [Inc.]. The Court held that a corporation investing in another corporation engaged in a nationalized activity cannot be considered as a citizen for purposes of the Constitutional provision restricting foreign exploitation of natural resources:
>
> x x x x
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> Accordingly, we opine that we must look into the citizenship of the individual stockholders, i.e. natural persons, of that investor-corporation in order to determine if the Constitutional and statutory restrictions are complied with. If the shares of stock of the immediate investor corporation is in turn held and controlled by another corporation, then we must look into the citizenship of the individual stockholders of the latter corporation. **In other words, if there are layers of intervening corporations investing in a mining joint venture, we must delve into the citizenship of the individual stockholders of each corporation.** This is the strict application of the grandfather rule, which the Commission has been consistently applying prior to the 1990s.
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> **Indeed, the framers of the Constitution intended for the "grandfather rule" to apply in case a 60%-40% Filipino-Foreign equity corporation invests in another corporation engaging in an activity where the Constitution restricts foreign participation**.
>
> **x x x x**
>
> Accordingly, under the structure you represented, the joint mining venture is 87.04 % foreign owned, while it is only 12.96% owned by Philippine citizens. Thus, the constitutional requirement of 60% ownership by Philippine citizens is violated. (emphasis supplied)

Similarly, in the eponymous *Redmont Consolidated Mines Corporation v. McArthur Mining Inc., et al.*,[8] the SEC *en banc* applied the Grandfather Rule despite the fact that the subject corporations ostensibly have satisfied the 60-40 Filipino equity requirement. The SEC *en banc* held that **to attain the Constitutional objective of reserving to Filipinos the**

[8] SEC En Banc Case No. 09-09-177, March 25, 2010.

utilization of natural resources, ***one should not stop where the percentage of the capital stock is 60%.*** Thus:

> **[D]oubt, we believe, exists in the instant case because the foreign investor, MBMI, provided practically all the funds of the remaining appellee-corporations**. The records disclose that: (1) Olympic Mines and Development Corporation ("OMDC"), a domestic corporation, and MBMI subscribed to 6,663 and 3,331 shares, respectively, out of the authorized capital stock of Madridejos; however, OMDC paid nothing for this subscription while MBMI paid P2,803,900.00 out of its total subscription cost of P3,331,000.00; (2) Palawan Alpha South Resource Development Corp. ("Palawan Alpha"), also a domestic corporation, and MBMI subscribed to 6,596 and 3,996 shares, respectively, out of the authorized capital stock of Patricia Louise; however, Palawan Alpha paid nothing for this subscription while MBMI paid P2,796,000.00 out of its total subscription cost of P3,996,000.00; (3) OMDC and MBMI subscribed to 6,663 and 3,331 shares, respectively, out of the authorized capital stock of Sara Marie; however, OMDC paid nothing for this subscription while MBMI paid P2,794,000.00 out of its total subscription cost of P3,331,000.00; and (4) Falcon Ridge Resources Management Corp. ("Falcon Ridge"), another domestic corporation, and MBMI subscribed to 5,997 and 3,998 shares, respectively, out of the authorized capital stock of San Juanico; however, Falcon Ridge paid nothing for this subscription while MBMI paid P2,500,000.00 out of its total subscription cost of P3,998,000.00. Thus, pursuant to the afore-quoted DOJ Opinion, the Grandfather Rule must be used.
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> x x x x
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> **The avowed purpose of the Constitution is to place in the hands of Filipinos the exploitation of our natural resources. Necessarily, therefore, the Rule interpreting the constitutional provision should not diminish that right through the legal fiction of corporate ownership and control**. But the constitutional provision, as interpreted and practiced via the 1967 SEC Rules, has favored foreigners contrary to the command of the Constitution. Hence, **the Grandfather Rule must be applied to accurately determine the actual participation, both direct and indirect, of foreigners in a corporation engaged in a nationalized activity or business.**

The method employed in the Grandfather Rule of attributing the shareholdings of a given corporate shareholder to the second or even the subsequent tier of ownership hews with the rule that the "***beneficial ownership***" of corporations engaged in nationalized activities must reside in the hands of Filipino citizens. Thus, *even if the 60-40 Filipino equity requirement appears to have been satisfied*, the Department of Justice (DOJ), in its Opinion No. 144, S. of 1977, stated that **an agreement that may distort the actual economic or beneficial ownership of a mining corporation may be struck down as violative of the constitutional requirement**, viz:

> In this connection, you raise the following specific questions:
>
> 1. Can a Philippine corporation with 30% equity owned by foreigners enter into a mining service contract with a foreign company granting the latter a share of not more than 40% from the proceeds of the operations?
>
> x x x x
>
> By law, **a mining lease may be granted only to a Filipino citizen, or to a corporation or partnership registered with the [SEC] at least 60% of the capital of which is owned by Filipino citizens** and possessing x x x. **The sixty percent Philippine equity requirement in mineral resource exploitation** x x x **is intended to insure, among other purposes, the conservation of indigenous natural resources, for Filipino posterity** x x x. I think it is implicit in this provision, even if it refers merely to ownership of stock in the corporation holding the mining concession, that **beneficial ownership of the right to dispose, exploit, utilize, and develop natural resources shall pertain to Filipino citizens, and that the nationality requirement is not satisfied unless Filipinos are the principal beneficiaries in the exploitation of the country's natural resources**. This criterion of beneficial ownership is tacitly adopted in Section 44 of P.D. No. 463, above-quoted, which limits the service fee in service contracts to 40% of the proceeds of the operation, thereby implying that the 60-40 benefit-sharing ration is derived from the 60-40 equity requirement in the Constitution.
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> x x x x
>
> It is obvious that while payments to a service contractor may be justified as a service fee, and therefore, properly deductible from gross proceeds, **the service contract could be employed as a means of going about or circumventing the constitutional limit on foreign equity participation and the obvious constitutional policy to insure that Filipinos retain beneficial ownership of our mineral resources**. Thus, every service contract scheme has to be evaluated in its entirety, on a case to case basis, to determine reasonableness of the total "service fee" x x x like the options available to the contractor to become equity participant in the Philippine entity holding the concession, or to acquire rights in the processing and marketing stages. x x x (emphasis supplied)

The "beneficial ownership" requirement was subsequently used *in tandem* with the "situs of control" to determine the nationality of a corporation in DOJ Opinion No. 84, S. of 1988, through the Grandfather Rule, *despite the fact that both the investee and investor corporations purportedly satisfy the 60-40 Filipino equity requirement*:[9]

> This refers to your request for opinion on whether or not there may be an investment in real estate by a domestic corporation (the investing corporation) seventy percent (70%) of the capital stock of which is owned by another domestic corporation with at least 60%-40% Filipino-Foreign Equity, while the remaining thirty percent (30%) of the capital stock is owned by a foreign corporation.

[9] Dated April 26, 1988.

x x x x

> This Department has had the occasion to rule in several opinions that it is implicit in the constitutional provisions, even if it refers merely to ownership of stock in the corporation holding the land or natural resource concession, **that the nationality requirement is not satisfied unless it meets the criterion of beneficial ownership, i.e. Filipinos are the principal beneficiaries in the exploration of natural resources** (Op. No. 144, s. 1977; Op. No. 130, s. 1985)**, and that in applying the same "the primordial consideration is situs of control, whether in a stock or non-stock corporation"** (Op. No. 178, s. 1974). As stated in the Register of Deeds vs. Ung Sui Si Temple (97 Phil. 58), obviously to insure that corporations and associations allowed to acquire agricultural land or to exploit natural resources "shall be controlled by Filipinos." Accordingly, **any arrangement which attempts to defeat the constitutional purpose should be eschewed** (Op. No 130, s. 1985).
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> We are informed that in the registration of corporations with the [SEC], compliance with the sixty per centum requirement is being monitored by SEC under the "Grandfather Rule" a method by which the percentage of Filipino equity in corporations engaged in nationalized and/or partly nationalized areas of activities provided for under the Constitution and other national laws is accurately computed, and the diminution if said equity prevented (SEC Memo, S. 1976). **The "Grandfather Rule" is applied specifically in cases where the corporation has corporate stockholders with alien stockholdings, otherwise, if the rule is not applied, the presence of such corporate stockholders could diminish the effective control of Filipinos**.
>
> Applying the "Grandfather Rule" in the instant case, the result is as follows: x x x the total foreign equity in the investing corporation is 58% while the Filipino equity is only 42%, in the investing corporation, subject of your query, is disqualified from investing in real estate, which is a nationalized activity, as it does not meet the 60%-40% Filipino-Foreign equity requirement under the Constitution.

This pairing of the concepts "beneficial ownership" and the "situs of control" in determining what constitutes "capital" has been adopted by this Court in *Heirs of Gamboa v. Teves.*[10] In its October 9, 2012 Resolution, the Court clarified, thus:

> This is consistent with Section 3 of the FIA which provides that where 100% of the capital stock is held by "a trustee of funds for pension or other employee retirement or separation benefits," the trustee is a Philippine national if "at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals." Likewise, Section 1(b) of the Implementing Rules of the FIA provides that "for stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights, is essential**." (emphasis supplied)

[10] G.R. No. 176579, October 9, 2012.

In emphasizing the twin requirements of "beneficial ownership" and "control" in determining compliance with the required Filipino equity in *Gamboa*, the *en banc* Court explicitly cited with approval the SEC e*n banc*'s application in *Redmont Consolidated Mines, Corp. v. McArthur Mining, Inc., et al.* of the Grandfather Rule, to wit:

> Significantly, **the SEC en banc**, which is the collegial body statutorily empowered to issue rules and opinions on behalf of SEC, **has adopted the Grandfather Rule** in determining compliance with the 60-40 ownership requirement in favor of Filipino citizens mandated by the Constitution for certain economic activities. **This prevailing SEC ruling, which the SEC correctly adopted to thwart any circumvention of the required Filipino "ownership and control," is** laid down in the 25 March 2010 SEC en banc ruling in Redmont Consolidated Mines, Corp. v. McArthur Mining, Inc., et al. x x x (emphasis supplied)

Applying *Gamboa*, the Court, in *Express Investments III Private Ltd. v. Bayantel Communications, Inc.*,[11] denied the foreign creditors' proposal to convert part of Bayantel's debts to common shares of the company at a rate of 77.7%. **Supposedly, *the conversion of the debts to common shares by the foreign creditors would be done, both directly and indirectly, in order to meet the control test principle under the FIA*.** Under the proposed structure, the foreign creditors would own 40% of the outstanding capital stock of the telecommunications company on a direct basis, while the remaining 40% of shares would be registered to a holding company that shall retain, on a direct basis, the other 60% equity reserved for Filipino citizens. **Nonetheless, the Court found the proposal non-compliant with the Constitutional requirement of Filipino ownership** as the proposed structure would give more than 60% of the ownership of the common shares of Bayantel to the foreign corporations, viz:

> In its Rehabilitation Plan, among the material financial commitments made by respondent Bayantel is that its shareholders shall relinquish the agreed-upon amount of common stock[s] as payment to Unsecured Creditors as per the Term Sheet. **Evidently, the parties intend to convert the unsustainable portion of respondent's debt into common stocks, which have voting rights. If we indulge petitioners on their proposal, the Omnibus Creditors which are foreign corporations, shall have control over 77.7% of Bayantel, a public utility company. This is precisely the scenario proscribed by the Filipinization provision of the Constitution.** Therefore, the Court of Appeals acted correctly in sustaining the 40% debt-to-equity ceiling on conversion. (emphasis supplied)

As shown by the quoted legislative enactments, administrative rulings, opinions, and this Court's decisions, the Grandfather Rule not only finds basis, but more importantly, it implements the Filipino equity requirement, in the Constitution.

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[11] G.R. Nos. 175418-20, December 5, 2012.

Application of the Grandfather Rule with the Control Test.

Admittedly, an ongoing quandary obtains as to the role of the Grandfather Rule in determining compliance with the minimum Filipino equity requirement vis-à-vis the Control Test. This confusion springs from the erroneous assumption that the use of one method forecloses the use of the other.

As exemplified by the above rulings, opinions, decisions and this Court's April 21, 2014 Decision, the Control Test can be, as it has been, applied *jointly with* the Grandfather Rule to determine the observance of foreign ownership restriction in nationalized economic activities. **The Control Test and the Grandfather Rule** are not, as it were, incompatible ownership-determinant methods that can only be applied alternative to each other. Rather, these methods **can, if appropriate, be used cumulatively in the determination of the ownership and control of corporations engaged in fully or partly nationalized activities**, as the mining operation involved in this case or the operation of public utilities as in *Gamboa* or *Bayantel*.

The Grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result in an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, **it is only when the Control Test is first complied with that the Grandfather Rule may be applied.** Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears.

On the other hand, **a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation *if there is no doubt* as to who has the "beneficial ownership" and "control" of the corporation. In that instance, there is no need for** a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation **or the application of the Grandfather Rule.**[12] As a corollary rule, even if the 60-40 Filipino to foreign equity ratio is apparently met by the subject or investee corporation, **a resort to the Grandfather Rule is necessary *if doubt exists* as to the *locus* of the "beneficial ownership" and "control."** In this case, a further investigation as to the nationality of the personalities with the beneficial ownership and control of the corporate shareholders in both the investing and investee corporations is necessary.

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[12] *See* SEC-OGC Opinion No. 03-08 dated 15 January 2008.

As explained in the April 21, 2012 Decision, the "doubt" that demands the application of the Grandfather Rule in addition to or in tandem with the Control Test is not confined to, or more bluntly, does not refer to the fact that the apparent Filipino ownership of the corporation's equity falls below the 60% threshold. Rather, **"doubt" refers to various indicia that the "beneficial ownership" and "control" of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders**. As provided in DOJ Opinion No. 165, Series of 1984, which applied the pertinent provisions of the Anti-Dummy Law in relation to the minimum Filipino equity requirement in the Constitution, "significant indicators of the dummy status" have been recognized in view of reports "that some Filipino investors or businessmen are being utilized or [are] allowing themselves to be used as dummies by foreign investors" specifically in joint ventures for national resource exploitation. These indicators are:

> 1. That the foreign investors provide practically all the funds for the joint investment undertaken by these Filipino businessmen and their foreign partner;
>
> 2. That the foreign investors undertake to provide practically all the technological support for the joint venture;
>
> 3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.

Thus, *In the Matter of the Petition for Revocation of the Certificate of Registration of Linear Works Realty Development Corporation*,[13] the SEC held that **when foreigners contribute more capital to an enterprise, doubt exists as to the actual control and ownership of the subject corporation even if the 60% Filipino equity threshold is met**. Hence, the SEC in that one ordered a further investigation, viz:

> x x x The [SEC Enforcement and Prosecution Department (EPD)] maintained that the basis for determining the level of foreign participation is the number of shares subscribed, regardless of the par value. Applying such an interpretation, the EPD rules that the foreign equity participation in Linearworks Realty Development Corporation amounts to 26.41% of the corporation's capital stock since the amount of shares subscribed by foreign nationals is 1,795 only out of the 6,795 shares. Thus, **the subject corporation is compliant with the 40% limit on foreign equity participation**. Accordingly, the EPD dismissed the complaint, and did not pursue any investigation against the subject corporation.
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> x x x x
>
> x x x [I]n this respect we find no error in the assailed order made by the EPD. The EPD did not err when it did not take into account the par value of shares in determining compliance with the constitutional and statutory restrictions on foreign equity.

[13] SEC En Banc Case No. 07-10-205, November 25, 2010.

> However, **we are aware that some unscrupulous individuals employ schemes to circumvent the constitutional and statutory restrictions on foreign equity**. **In the present case, the fact that the shares of the Japanese nationals have a greater par value but only have similar rights to those held by Philippine citizens having much lower par value, is highly suspicious.** This is because **a reasonable investor would expect to have greater control and economic rights than other investors who invested less capital than him.** Thus**, it is reasonable to suspect** that there may be secret arrangements between the corporation and the stockholders wherein **the Japanese nationals who subscribed to the shares with greater par value actually have greater control and economic rights** contrary to the equality of shares based on the articles of incorporation.
>
> With this in mind, we find it proper for the EPD to investigate the subject corporation. The EPD is advised to avail of the Commission's subpoena powers in order to gather sufficient evidence, and file the necessary complaint.

As will be discussed, even if at first glance the petitioners comply with the 60-40 Filipino to foreign equity ratio, **doubt exists in the present case** that gives rise to a reasonable suspicion that the Filipino shareholders do not actually have the requisite number of control and beneficial ownership in petitioners Narra, Tesoro, and McArthur. Hence, a further investigation and dissection of the extent of the ownership of the corporate shareholders through the Grandfather Rule is justified.

Parenthetically, it is advanced that the application of the Grandfather Rule is impractical as tracing the shareholdings to the point when natural persons hold rights to the stocks may very well lead to an investigation *ad infinitum*. Suffice it to say in this regard that, while the Grandfather Rule was originally intended to trace the shareholdings to the point where natural persons hold the shares, the SEC had already set up a limit as to the number of corporate layers the attribution of the nationality of the corporate shareholders may be applied.

In a 1977 internal memorandum, the SEC suggested applying the Grandfather Rule on two (2) levels of corporate relations for publicly-held corporations or where the shares are traded in the stock exchanges, and to three (3) levels for closely held corporations or the shares of which are not traded in the stock exchanges.[14] These limits comply with the requirement in *Palting v. San Jose Petroleum , Inc.*[15] that the application of the Grandfather Rule cannot go beyond the level of what is reasonable.

A doubt exists as to the extent of control and beneficial ownership of MBMI over the petitioners and their investing corporate stockholders.

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[14] Villanueva, Cesar Lapuz. *Philippine Corporate Law* (2001), p. 54.
[15] No. L-14441, December 17, 1966, 18 SCRA 924.

In the Decision subject of this recourse, the Court applied the Grandfather Rule to determine the matter of true ownership and control over the petitioners as doubt exists as to the actual extent of the participation of MBMI in the equity of the petitioners and their investing corporations.

We considered the following membership and control structures and like nuances:

Tesoro

Supposedly Filipino corporation Sara Marie Mining, Inc. (Sara Marie) holds 59.97% of the 10,000 *common* shares of petitioner Tesoro while the Canadian-owned company, MBMI, holds 39.98% of its shares.

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Sara Marie Mining, Inc.	Filipino	5,997	□5,997,000.00	□825,000.00
MBMI Resources, Inc.[16]	Canadian	3,998	□3,998,000.00	□1,878,174.60
Lauro L. Salazar	Filipino	1	□1,000.00	□1,000.00
Fernando B. Esguerra	Filipino	1	□1,000.00	□1,000.00
Manuel A. Agcaoili	Filipino	1	□1,000.00	□1,000.00
Michael T. Mason	American	1	□1,000.00	□1,000.00
Kenneth Cawkel	Canadian	1	□1,000.00	□1,000.00
	Total	10,000	□10,000,000.00	□2,708,174.6

In turn, the Filipino corporation Olympic Mines & Development Corp. (Olympic) holds 66.63% of Sara Marie's shares while the same Canadian company MBMI holds 33.31% of Sara Marie's shares. Nonetheless, it is admitted that Olympic did not pay a single peso for its shares. On the contrary, MBMI paid for 99% of the paid-up capital of Sara Marie.

Name	Nationality	Number of	Amount	Amount Paid
Olympic Mines & Development Corp. [17]	Filipino	6,663	□6,663,000.00	**□0.00**
MBMI Resources, Inc.	Canadian	3,331	□3,331,000.00	□2,794,000.00
Amanti Limson	Filipino	1	□1,000.00	□1,000.00
Fernando B. Esguerra	Filipino	1	□1,000.00	□1,000.00
Lauro Salazar	Filipino	1	□1,000.00	□1,000.00
Emmanuel G. Hernando	Filipino	1	□1,000.00	□1,000.00
Michael T. Mason	American	1	□1,000.00	□1,000.00
Kenneth Cawkel	Canadian	1	□1,000.00	□1,000.00
	Total	10,000	□10,000,000.00	□2,800,000.00

[16] Emphasis supplied.
[17] Emphasis supplied.

The fact that MBMI had practically provided all the funds in Sara Marie and Tesoro creates serious doubt as to the true extent of its (MBMI) control and ownership over both Sara Marie and Tesoro since, as observed by the SEC, "a reasonable investor would expect to have greater control and economic rights than other investors who invested less capital than him." The application of the Grandfather Rule is clearly called for, and as shown below, the Filipinos' control and economic benefits in petitioner Tesoro (through Sara Marie) fall below the threshold 60%, viz:

Filipino participation in petitioner Tesoro: 40.01%

66.67/100 (Filipino equity in Sara Marie) x 59.97 (Sara Marie's share in Tesoro) = **39.98%**

39.98% + .03% (shares of individual Filipino shareholders [SHs] in Tesoro)
= **40.01%**

Foreign participation in petitioner Tesoro: 59.99%

33.33/100 (Foreign equity in Sara Marie) x 59.97 (Sara Marie's share in Tesoro) = **19.99%**

19.99% + 39.98% (MBMI's direct participation in Tesoro) + .02% (shares of foreign individual SHs in Tesoro)
= **59.99%**

With only 40.01% Filipino ownership in petitioner Tesoro, as compared to 59.99% foreign ownership of its shares, it is clear that petitioner Tesoro does not comply with the minimum Filipino equity requirement imposed in Sec. 2, Art. XII of the Constitution. Hence, the appellate court's observation that Tesoro is a foreign corporation not entitled to an MPSA is apt.

McArthur

Petitioner McArthur follows the corporate layering structure of Tesoro, as 59.97% of its 10, 000 common shares is owned by supposedly Filipino Madridejos Mining Corporation (Madridejos), while 39.98% belonged to the Canadian MBMI.

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Madridejos Mining Corporation	Filipino	5,997	□5,997,000.00	□825,000.00
MBMI Resources, Inc.[18]	Canadian	3,998	□3,998,000.00	□1,878,174.60
Lauro L. Salazar	Filipino	1	□1,000.00	□1,000.00
Fernando B.	Filipino	1	□1,000.00	□1,000.00
Manuel A. Agcaoili	Filipino	1	□1,000.00	□1,000.00

[18] Emphasis supplied.

Michael T. Mason	American	1	□1,000.00	□1,000.00
Kenneth Cawkell	Canadian	1	□1,000.00	□1,000.00
	Total	10,000	□10,000,000.00	□2,708,174.60

In turn, 66.63% of Madridejos' shares were held by Olympic while 33.31% of its shares belonged to MBMI. Yet again, Olympic did not contribute to the paid-up capital of Madridejos and it was MBMI that provided 99.79% of the paid-up capital of Madridejos.

Name	Nationality	Number of	Amount	Amount Paid
Olympic Mines & Development Corp.[19]	Filipino	6,663	□6,663,000.00	**□0.00**
MBMI Resources, Inc.	Canadian	3,331	□3,331,000.00	□2,803,900.00
Amanti Limson	Filipino	1	□1,000.00	□1,000.00
Fernando B. Esguerra	Filipino	1	□1,000.00	□1,000.00
Lauro Salazar	Filipino	1	□1,000.00	□1,000.00
Emmanuel G. Hernando	Filipino	1	□1,000.00	□1,000.00
Michael T. Mason	American	1	□1,000.00	□1,000.00
Kenneth Cawkel	Canadian	1	□1,000.00	□1,000.00
	Total	10,000	□10,000,000.00	□2,809,900.00

Again, the fact that MBMI had practically provided all the funds in Madridejos and McArthur creates serious doubt as to the true extent of its control and ownership of MBMI over both Madridejos and McArthur. The application of the Grandfather Rule is clearly called for, and as will be shown below, MBMI, along with the other foreign shareholders, breached the maximum limit of 40% ownership in petitioner McArthur, rendering the petitioner disqualified to an MPSA:

Filipino participation in petitioner McArthur: 40.01%

66.67/100 (Filipino equity in Madridejos) x 59.97 (Madridejos' share in McArthur) = **39.98%**

39.98% + .03% (shares of individual Filipino SHs in McArthur)
= **40.01%**

Foreign participation in petitioner McArthur: 59.99%

33.33/100 (Foreign equity in Madridejos) x 59.97 (Madridejos' share in McArthur) = **19.99%**

19.99% + 39.98% (MBMI's direct participation in McArthur) + .02% (shares of foreign individual SHs in McArthur)
= **59.99%**

[19] Emphasis supplied.

As with petitioner Tesoro, with only 40.01% Filipino ownership in petitioner McArthur, as compared to 59.99% foreign ownership of its shares, it is clear that petitioner McArthur does not comply with the minimum Filipino equity requirement imposed in Sec. 2, Art. XII of the Constitution. Thus, the appellate court did not err in holding that petitioner McArthur is a foreign corporation not entitled to an MPSA.

Narra

As for petitioner Narra, 59.97% of its shares belonged to Patricia Louise Mining & Development Corporation (PLMDC), while Canadian MBMI held 39.98% of its shares.

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Patricia Lousie Mining and Development Corp.	Filipino	5,997	□5,997,000.00	□1,677,000.00
MBMI Resources, Inc.[20]	Canadian	3,996	□3,996,000.00	□1,116,000.00
Higinio C. Mendoza,	Filipino	1	□1,000.00	□1,000.00
Henry E. Fernandez	Filipino	1	□1,000.00	□1,000.00
Ma. Elena A. Bocalan	Filipino	1	□1,000.00	□1,000.00
Michael T. Mason	American	1	□1,000.00	□1,000.00
Robert L. McCurdy	Canadian	1	□1,000.00	□1,000.00
Manuel A. Agcaoili	Filipino	1	□1,000.00	□1,000.00
Bayani H. Agabin	Filipino	1	□1,000.00	□1,000.00
	Total	10,000	□10,000,000.00	□2,800,000.00

PLMDC's shares, in turn, were held by Palawan Alpha South Resources Development Corporation (PASRDC), which subscribed to 65.96% of PLMDC's shares, and the Canadian MBMI, which subscribed to 33.96% of PLMDC's shares.

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Palawan Alpha South Resource Development Corp.	Filipino	6,596	□6,596,000.00	**□0**
MBMI Resources, Inc.[21]	Canadian	3,396	□3,396,000.00	□2,796,000.00
Higinio C. Mendoza, Jr.	Filipino	1	□1,000.00	□1,000.00
Fernando B. Esguerra	Filipino	1	□1,000.00	□1,000.00
Henry E. Fernandez	Filipino	1	□1,000.00	□1,000.00
Ma. Elena A. Bocalan	Filipino	1	□1,000.00	□1,000.00
Michael T. Mason	American	1	□1,000.00	□1,000.00
Robert L. McCurdy	Canadian	1	□1,000.00	□1,000.00
Manuel A. Agcaoili	Filipino	1	□1,000.00	□1,000.00
Bayani H, Agabin	Filipino	1	□1,000.00	□1,000.00
	Total	10,000	□10,000,000.0	□2,804,000.0

[20] Emphasis supplied.
[21] Emphasis supplied.

Yet again, PASRDC did not pay for any of its subscribed shares, while MBMI contributed 99.75% of PLMDC's paid-up capital. This fact **creates serious doubt as to the true extent of MBMI's control and ownership over both PLMDC and Narra** since "a reasonable investor would expect to have greater control and economic rights than other investors who invested less capital than him." Thus, the application of the Grandfather Rule is justified. And as will be shown, it is clear that the Filipino ownership in petitioner Narra falls below the limit prescribed in both the Constitution and the Philippine Mining Act of 1995.

Filipino participation in petitioner Narra: 39.64%

66.02/100 (Filipino equity in PLMDC) x 59.97 (PLMDC's share in Narra) = **39.59%**

39.59% + .05% (shares of individual Filipino SHs in McArthur)
= **39.64%**

Foreign participation in petitioner Narra: 60.36%

33.98/100 (Foreign equity in PLMDC) x 59.97 (PLMDC's share in Narra) = 20.38**%**

20.38% + 39.96% (MBMI's direct participation in Narra) + .02% (shares of foreign individual SHs in McArthur)
= **60.36%**

With 60.36% *foreign ownership* in petitioner Narra, as compared to only 39.64% Filipino ownership of its shares, it is clear that petitioner Narra does not comply with the minimum Filipino equity requirement imposed in Section 2, Article XII of the Constitution. Hence, the appellate court did not err in holding that petitioner McArthur is a foreign corporation not entitled to an MPSA.

It must be noted that the foregoing determination and computation of petitioners' Filipino equity composition was based on their ***common shareholdings***, not preferred or redeemable shares. Section 6 of the Corporation Code of the Philippines explicitly provides that "no share may be deprived of voting rights except those classified as 'preferred' or 'redeemable' shares." Further, as Justice Leonen puts it, there is "no indication that any of the shares x x x do not have voting rights, [thus] it must be assumed that all such shares have voting rights."[22] It cannot therefore be gainsaid that the foregoing computation hewed with the pronouncements of *Gamboa*, as implemented by SEC Memorandum Circular No. 8, Series of 2013, (SEC Memo No. 8)[23] Section 2 of which states:

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[22] Dissenting Opinion, p. 41.

[23] Otherwise known as the "Guidelines on Compliance with the Filipino-Foreign Ownership Requirements Prescribed in the Constitution and/or Existing Laws by Corporations Engaged in Nationalized and Partly Nationalized Activities," dated May 20, 2013 and Published on May 22, 2013.

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to BOTH (a) the total outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.

In fact, there is no indication that herein petitioners issued any other class of shares besides the 10,000 common shares. Neither is it suggested that the common shares were further divided into voting or non-voting common shares. Hence, for purposes of this case, items a) and b) in SEC Memo No. 8 both refer to the 10,000 common shares of each of the petitioners, and there is no need to separately apply the 60-40 ratio to any segment or part of the said common shares.

III.
In mining disputes, the POA has jurisdiction to pass upon the nationality of applications for MPSAs

Petitioners also scoffed at this Court's decision to uphold the jurisdiction of the Panel of Arbitrators (POA) of the Department of Environment and Natural Resources (DENR) since the POA's determination of petitioners' nationalities is supposedly beyond its limited jurisdiction, as defined in *Gonzales v. Climax Mining Ltd.*[24] and *Philex Mining Corp. v. Zaldivia*.[25]

The April 21, 2014 Decision did not dilute, much less overturn, this Court's pronouncements in either *Gonzales* or *Philex Mining* that POA's jurisdiction "is limited only to mining disputes which raise questions of fact," and not judicial questions cognizable by regular courts of justice. However, to properly recognize and give effect to the jurisdiction vested in the POA by Section 77 of the Philippine Mining Act of 1995,[26] and in parallel with this Court's ruling in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corp.*,[27] the Court has recognized in its Decision that in resolving disputes "involving rights to mining areas" and "involving mineral agreements or permits," the POA has jurisdiction to make a *preliminary* finding of the required nationality of the corporate applicant in order to determine its right to a mining area or a mineral agreement.

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[24] 492 Phil. 682 (2005).

[25] 150 Phil. 547 (1972).

[26] Section 77 of RA 7942:

Within thirty (30) days, after the submission of the case by the parties for the decision, the panel shall have exclusive and original jurisdiction to hear and decide the following:

(a) Disputes involving rights to mining areas;

(b) Disputes involving mineral agreements or permits.

[27] 565 Phil 466 (2007). The Court held: "The phrase 'disputes involving rights to mining areas' refers to any adverse claim, protest, or opposition to an application for mineral agreement. The POA therefore has the jurisdiction to resolve any adverse claim, protest, or opposition to a pending application for a mineral agreement filed with the concerned Regional Office of the MGB. This is clear from Secs. 38 and 41 of the DENR A 96-40 x x x."

There is certainly nothing novel or aberrant in this approach. In ejectment and unlawful detainer cases, where the subject of inquiry is possession *de facto*, the jurisdiction of the municipal trial courts to make a *preliminary* adjudication regarding ownership of the real property involved is allowed, but only for purposes of ruling on the determinative issue of material possession.

The present case arose from petitioners' MPSA applications, in which they asserted their respective rights to the mining areas each applied for. Since respondent Redmont, itself an applicant for exploration permits over the same mining areas, filed petitions for the denial of petitioners' applications, it should be clear that there exists a controversy between the parties and it is POA's jurisdiction to resolve the said dispute. POA's ruling on Redmont's assertion that petitioners are foreign corporations not entitled to MPSA is but a necessary incident of its disposition of the mining dispute presented before it, which is whether the petitioners are entitled to MPSAs.

Indeed, as the POA has jurisdiction to entertain "disputes involving rights to mining areas," it necessarily follows that the POA likewise wields the authority to pass upon the nationality issue involving petitioners, since the resolution of this issue is essential and indispensable in the resolution of the main issue, i.e., the determination of the petitioners' right to the mining areas through MPSAs.

WHEREFORE, We **DENY** the motion for reconsideration **WITH FINALITY**. No further pleadings shall be entertained. Let entry of judgment be made in due course.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

I dissent. See separate opinion

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice