RECENT JURISPRUDENCE IN POLITICAL LAW*

INTRODUCTION

This is a survey of recent cases decided by the Supreme Court in relation to Constitutional Law, Election Law, Local Government Law, the Law on Public Officers, and Public International Law. All these cases were decided in 2021, 2022, and 2023.

I. CONSTITUTIONAL LAW

A. *Reyes v. Director of Camp Bagong Diwa*[1]

Petitioner Jessica Lucila "Gigi" Reyes was a plunder suspect who had been detained at Camp Bagong Diwa in Taguig City since 2014. She previously served as the longtime Chief of Staff of former Senate President Juan Ponce Enrile. When news of the infamous pork barrel scam broke out in 2013, Reyes and Enrile were repeatedly implicated by whistleblowers for their supposed involvement in the scheme that saw billions of pesos diverted from the Priority Development Assistance Fund of lawmakers into bogus non-governmental organizations allegedly set up by Janet Napoles.

Reyes filed a petition for a writ of *habeas corpus* with the Supreme Court, arguing that the almost nine years she had spent in detention while her plunder case was being tried already constituted a grave abuse of her constitutional rights, particularly her rights to liberty and speedy trial. She noted that the delay in the disposition of her case can be attributed to the mistakes of the prosecution, such as when pieces of evidence were erroneously marked, resulting in avoidable postponements in hearings. She also raised international human rights standards against prolonged detention

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[1] [Hereinafter "*Reyes*"], G.R. No. 254838, Jan. 17, 2023 (First Div., J.Y. Lopez, *J.*). (slip op.)

like those enshrined in the International Covenant on Civil and Political Rights.

The Office of the Solicitor General, on behalf of the public respondent, asserted that Reyes was not entitled to a writ of *habeas corpus* as she was lawfully detained under a valid commitment order from the Sandiganbayan. It also argued that her right to speedy trial was never violated, noting that the numerous cases Reyes filed assailing the anti-graft court's interlocutory orders may have even added to the length of her trial.

The Supreme Court sided with Reyes and ordered her release, essentially widening the scope of instances when the writ of *habeas corpus* may be invoked. In addition to pre-charge[2] and post-conviction[3] scenarios, this ruling establishes a novel way to avail of an interim writ of *habeas corpus*, which can now be granted *pendente lite* to detainees whose constitutional right to speedy trial had been violated. The Court basically carved out an exception to the rule that lawfully detained persons under the custody of proper authorities cannot avail themselves of the writ, saying that "when such custody becomes vexatious, capricious, and oppressive amounting to an infringement on the constitutional right to speedy trial of an accused, the writ of habeas corpus may be provisionally availed of."[4]

The Court laid down the standards on how to avail of this novel interim writ of *habeas corpus*: (1) the petitioner must be illegally restrained; (2) while generally unavailable to those legally restrained, this writ may be granted in instances when there has been a deprivation of a constitutional right resulting in the restraint; (3) the right to speedy trial was one of the rights violated, as determined under the Barker Balancing Test in *Barker v. Wingo*[5] and the guidelines in *Cagang v. Sandiganbayan*;[6] and (4) the interim writ is only for provisional liberty and will not delve into the merits of the case.

Notably, this grant of provisional liberty to Reyes follows the Court's Decision in *Enrile v. Sandiganbayan*[7] involving the plunder proceedings of her co-accused in the pork barrel controversy, Enrile, who was similarly granted provisional freedom after being allowed to post bail in consideration of his "fragile health and advanced age."[8]

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[2] Ilagan v. Enrile, G.R. No. 70748, 223 Phil. 561 (1985).
[3] Gumabon v. Dir. of the Bureau of Prisons, G.R. No. 30026, 147 Phil. 362 (1971).
[4] *Reyes*, G.R. No. 254838, slip op. at 9.
[5] 407 U.S. 514 (1972).
[6] G.R. No. 206438, 837 Phil. 815 (2018).
[7] G.R. No. 213847, 762 SCRA 282, Aug. 18, 2015.
[8] *Id.* at 312.

B. *Maynilad Water Services, Inc. v. National Water Resources Board*[9]

In these consolidated petitions, eight groups of petitioners, including Bayan Muna Representatives Neri Colmenares and Carlos Isagani Zarate, went to the Supreme Court to raise the issue of whether Maynilad Water Services, Inc. ("Maynilad") and Manila Water Company, Inc. ("Manila Water") can be considered public utilities. This concern is rooted in the fact that the two water concessionaires had been including their corporate income taxes in the computation of their consumers' charges, leading to higher water bills for the consuming public.

Under Republic Act ("R.A.") No. 6234, which established the Metropolitan Waterworks and Sewerage System (MWSS), profits of public utilities are subject to the 12% rate of return cap. These concessionaires are likewise barred from treating corporate income taxes as business expenditures, which the Court underscored in *Republic v. Meralco*.[10]

Maynilad and Manila Water contended that they are not public utilities because they have no legislative franchise. According to them, MWSS is the public utility and they are simply "contractors" and "agents" pursuant to their respective concession agreements, which allowed them to recover business taxes. Maynilad also raised the argument that petitioners Colmenares and Zarate lacked legal standing as they were not directly injured by the case at bar. MWSS, on the other hand, considered the two as public utilities due to how they operate in delivering a fundamental need to the general public.

The Supreme Court unequivocally held that Maynilad and Manila Water are public utilities. The Court also invoked the transcendental importance doctrine with regard to the legal standing of some of the petitioners, emphasizing that "[t]he issue of access to clean and affordable water is essential to survival and of paramount importance to all."[11]

Reiterating the definition of public utilities in *Albano v. Reyes*[12] and *Kilusang Mayo Uno v. Garcia*,[13] the Supreme Court found that the services

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[9] [Hereinafter "*Maynilad*"], G.R. No. 181764, Dec. 7, 2021 (*En Banc,* Leonen, *J.*). (slip op.)

[10] G.R. No. 141314, 449 Phil. 118 (2003).

[11] *Maynilad*, G.R. No. 181764, slip op. at 55.

[12] G.R. No. 83551, 256 Phil. 718 (1989).

[13] G.R. No. 115381, 309 Phil. 358 (1994).

rendered by Maynilad and Manila Water are essential to the general public, squarely falling under the standards of what constitutes public utilities. As the Court emphasized:

> Given that public utilities provide basic commodities and services indispensable to the public's interests, a public utility—unlike an ordinary private business—cannot selectively serve a clientele, but it must provide service to an indefinite public. The inelastic demand for public service requires State regulation to prevent public utilities from prioritizing earning too much profits over providing public service for the common good.[14]

As such, they have been prohibited from passing on their income taxes to their consumers. However, the Court noted that under Section 12 of R.A. No. 6234, actions to contest water rates can only be raised within thirty days after the effectivity of such rates. There being no such actions filed at the National Water Resources within the prescribed period, the Court held that a refund to the consumers is no longer a feasible option.[15]

This Decision finally resolves the controversy at the crux of *Freedom from Debt Coalition v. MWSS*,[16] where the Court refrained from resolving the public utility status of Maynilad and Manila Water as an issue of fact that it could not resolve.

C. *Philippine Stock Exchange v. Secretary of Finance*[17]

The Department of Finance (DOF) issued Revenue Regulations No. 1-2014 upon recommendation of the Commissioner of Internal Revenue (CIR). This amended the provisions of Revenue Regulations No. 2-1998 and imposed a rule requiring all withholding agents to submit a digital "alpha list" of their employees and payees. This issuance was later clarified by Revenue Memorandum Circular No. 5-2014, which required the inclusion of the tax identification number ("TIN") of the payees, as well as their respective income and withholding taxes. The Securities and Exchange Commission (SEC) then issued Memorandum Circular No. 10-2014, directing the Philippine Depository and Trust Corporation (PDTC) and broker dealers to

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[14] *Maynilad*, G.R. No. 181764, slip op. at 66.

[15] *Id.* at 81.

[16] G.R. No. 173044, 564 Phil. 566 (2007).

[17] [Hereinafter "*PSE*"], G.R. No. 213860, July 5, 2022 (En Banc, Hernando, *J.*). (slip op.)

provide the listed companies or transfer agents an "alpha list" of all depository account holders and total shareholdings.[18]

The Philippine Stock Exchange, Bankers Association of the Philippines, Philippine Association of Securities Brokers and Dealers, Fund Managers Association of the Philippines, Trust Officers Association of the Philippines, and Marmon Holdings filed a petition for *certiorari* and prohibition directly with the Supreme Court, imputing grave abuse of discretion to the Secretary of Finance, the CIR, and the Chairperson of the SEC in issuing these regulations in violation of their rights to due process and privacy. On the other hand, the respondents argued that the petitioners did not have legal standing, as the right to privacy belongs to individuals in their private capacity and not to juridical entities.

The Court ruled that the regulations are void for being unconstitutional. Sidestepping the issue of whether juridical entities possess any rights to privacy, it held that the petitioners had third-party standing to assail the regulations. Considering that their members are subject to the information required under the regulations and that their businesses directly rely on their investors whose activities will be affected, the petitioners have a "sufficiently concrete interest"[19] in the outcome of the case.

On the merits, the Court also ruled in favor of the petitioners and found the issuances to be unconstitutional. The Court emphasized the importance of the stock market and its transactions to the country's economy and social development. The adoption of the scripless or uncertificated system of trading by the Philippine capital market is regarded as an international best practice to make trading more efficient.[20] However, while the government, through the respondents, sought to regulate the role of capital markets and stock trading, the Court noted that the Bureau of Internal Revenue is able to collect withholding taxes due from dividend income without the need to disclose personal information of the employers or payors.

The regulations in question were likewise regarded as legislative in nature, as the substantial changes in procedure imposed a new obligation on the petitioners and imposed penalties for non-compliance. Consistent with the Administrative Code's public participation requirements for rulemaking, the nature of this change required notice and hearing—both of which were lacking in this case, violating the petitioners' right to due process.

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[18] *Id.* at 5.
[19] *Id.* at 11.
[20] *Id.* at 13.

The Court also found that the right to privacy was violated, citing Section 4 of the Data Privacy Act which exempted information necessary to carry out public functions from its coverage.[21] It is possible that some investors entered into contracts expecting not to be named in "alpha lists" for withholding tax purposes.[22] The information sought to be collected, such as the TINs of the investors, are considered as sensitive personal information, and it was clear that the regulations did not include any guarantees to protect such information.

It also found that the SEC Chairperson did not have the authority to issue Memorandum Circular No. 10-2014 because the issuance sought to implement tax laws, which is outside its scope of authority.

II. ELECTION LAW

A. *PDP-Laban v. COMELEC*[23]

The Commission on Elections (COMELEC) issued Resolution No. 9991,[24] which prescribed guidelines for the submission of Statement of Contributions and Expenditures ("SOCEs") for the May 9, 2016 National and Local Elections. The Resolution directed candidates and political parties to submit their SOCEs by June 8, 2016, pursuant to Section 14 of R.A. No. 7166,[25] which provides that SOCEs should be filed within 30 days after the day of elections.

The COMELEC *En Banc* then issued Resolution No. 10147[26] on June 23, 2016, moving the deadline to file SOCEs to June 30, 2016. This Resolution stated that "the law in providing that [n]o person elected to any public office shall enter upon the duties of his office until he has filed the statement of contributions and expenditures herein required implies that the SOCEs may

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[21] *Id.* at 25.

[22] *Id.* at 25.

[23] [Hereinafter "*PDP-LABAN*"], G.R. No. 225152, June 5, 2023 (En Banc, M. Lopez, *J.*). (slip op.)

[24] Comm'n on Elections (COMELEC) Res. No. 9991 (2015). Omnibus Rules and Regulations Governing Campaign Finance and Disclosure.

[25] Rep. Act No. 7166 (1991), § 14. An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

[26] COMELEC Res. No. 10147 (2015).

be submitted beyond the 30-day period."[27] It is noteworthy that the COMELEC had also previously allowed extensions for the filing of the SOCEs upon a "legal necessity and to prevent a vacuum in the public service."[28]

Partido Demokratiko Pilipino-Lakas ng Bayan ("PDP-Laban") filed a petition for *certiorari* that questioned Resolution No. 10147, arguing that COMELEC exceeded the limits of its rule-making authority and violated Section 14 of R.A. No. 7166. PDP-Laban claimed that the June 8, 2016 deadline should have been maintained to preserve impartiality as there were candidates and parties that were able to comply with the original deadline.

In its defense, COMELEC asserted that the extensions of the 30-day period to file SOCEs are not prohibited by the language of the law, which likewise suggests that only the act of filing is mandatory under Section 14 of R.A. No. 7166. COMELEC also submitted that it possesses broad law enforcement powers and did not intend to favor any particular candidate or political party with the extension, and that the strict enforcement of the 30-day deadline would create an additional qualification not enumerated in the Local Government Code or the Constitution for political candidates.

The Office of the Solicitor General (OSG) also filed a comment expressing its disagreement with COMELEC. The OSG opined that it is mandatory for candidates to file the SOCEs within 30 days after the elections, and that COMELEC usurped legislative powers in extending the deadline.

The Court ruled that the issue raised was of transcendental importance, giving PDP-Laban standing to file the instant case. As to the substantive issue, the Court ruled that COMELEC gravely abused its discretion in extending the deadline to submit SOCEs and exempting the candidates and political parties who did not submit on time from administrative liability. It held that the inclusion of the word "shall" in the text of Section 14 of R.A. No. 7166 indicates the mandatory nature of the filing of SOCEs within the 30-day period.

The Court classified the arbitrary extension provided by COMELEC as a usurpation of legislative power. A review of the relevant legislative deliberations also indicated that the period is mandatory; thus, any extension contradicted the clear legislative intent of Congress.

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[27] *PDP-LABAN*, G.R. No. 225152, slip op. at 3.

[28] *Id.*

Nonetheless, the Court held that while it is mandatory for candidates and political parties to file complete SOCEs within the 30-day period, COMELEC may still receive SOCEs after the deadline. Failure to submit SOCEs by the prescribed deadlines will warrant administrative liability for the concerned candidates under R.A. No. 7166 and prevent the candidates from assuming office until they file their SOCEs.[29] This is in line with the Court's ruling in *Maturan v. COMELEC*[30] where Congress' power to absolutely disqualify those who did not file SOCEs was affirmed.

The Court, applying the doctrine of operative fact, accepted the SOCEs filed within the extended deadline as timely filed even if COMELEC gravely abused its discretion in issuing the extension. Consequently, the candidates who submitted within the extended deadline are deemed to have filed in good faith, as the issuance of the extension was assumed by them as a valid exercise of COMELEC's power prior to the Court's Decision.

B. *Marquez v. COMELEC*[31]

Norman Cordero Marquez filed a Certificate of Candidacy ("COC") to run as senator in the 2022 National and Local Elections. The COMELEC Law Department, however, filed a petition to declare him a nuisance candidate for having no bona fide intention to run for office; not being publicly known, except in his own locality; and having neither the personal capability to persuade a substantial number of voters from across the nation nor nationwide networks of supporters.

Marquez responded by saying that he was not a nuisance candidate as he had a bona fide intent to run. He likewise argued that he is known and has campaigned nationwide as an active animal welfare supporter, having been on numerous rescue missions which have resulted in him being featured by various media outlets. The support from those in the animal welfare sector has made him forego joining any political party as he saw the support of those from the sector as sufficient.

The COMELEC First Division declared Marquez a nuisance candidate and canceled his COC, holding that he was not able to satisfy the burden of proving that he is able to conduct a nationwide campaign and to support his claimed popularity.

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[29] *Id.* at 11−12.

[30] G.R. No. 227155, 821 SCRA 587, Mar. 27, 2017.

[31] [Hereinafter "*Marquez*"], G.R. No. 258435, June 28, 2022 (*En Banc,* Lazaro-Javier, *J.*). (slip op.)

The COMELEC *En Banc* denied Marquez's motion for reconsideration, leading him to file a petition for *certiorari* assailing the COMELEC's ruling. Marquez argued that COMELEC gravely abused its discretion in unduly shifting to him the burden of proving his bona fide intent to run, as well as in making accusations against his achievements and popularity when evidence to substantiate these can be easily found on the Internet. Marquez also sought a temporary restraining order ("TRO") from the Court, which it issued.

COMELEC moved to lift the TRO, arguing that Marquez did not prove his bona fide intent or his "capability to persuade a significant portion of the electorate."[32] COMELEC also later added that the controversy had become moot, as "crucial pre-election activities" such as the printing of the ballots and deployment of election-related equipment had already been done.[33]

The Court, in a ruling promulgated 50 days after the May 9 elections, held that the petition had already become moot. Nonetheless, the Court held that they may still rule on the issues raised as the situation is capable of repetition but evades review as in the case of *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*.[34] The Court in *Greenpeace* still ruled on the case despite the trials concerned having already being terminated as the proponents involved still expected to continue with the next phase of the project.[35] In this case, the Court stated that the COMELEC could unjustly exclude future qualified candidates from running for public office.

The Court held that COMELEC unconstitutionally conflated a candidate's financial capacity with his bona fide intention to run for public office.[36] This is consistent with the the Court's ruling in the 2019 case of *Marquez v. COMELEC*,[37] which resolved an issue regarding the same Norman Cordero Marquez's candidacy in the 2019 National Elections.

The Court likewise ruled that COMELEC had unduly shifted the burden to prove genuine intention to run in alleging that Marquez was a

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[32] *Id.*
[33] *Id.*
[34] G.R. No. 209271, 776 SCRA 434, July 26, 2016.
[35] *Id.* at 507.
[36] *Marquez*, G.R. No. 258435, slip op. at 9.
[37] G.R. No. 244247, 861 Phil. 667 (2019).

nuisance candidate. Marquez's non-membership in a political party also cannot be taken against him as party membership is neither a rule nor a requirement to run for public office. To the Court, Marquez could not be declared a nuisance candidate on the sole basis that he is "virtually unknown to the entire country" as this is not one of the grounds to refuse to give due course to or cancel a COC under Section 69 of the Omnibus Election Code.[38]

The Court also urged COMELEC to establish a plan that would ensure the resolution of pending cases on candidacies as soon as possible. It recommended that this plan factor in the time needed to resolve that case and the possible requests for injunctive relief from the courts to prevent the repetition of the incidents that occurred in both of Marquez's cases.

III. LOCAL GOVERNMENT LAW

A. *Municipality of Makati (Now City of Makati) v. Municipality of Taguig (Now City of Taguig)*[39]

The City of Taguig, then a municipality, filed a Complaint before the Regional Trial Court (RTC) of Pasig against the City of Makati, also then a municipality, involving a territorial dispute over the areas comprising the Enlisted Men's Barangays ("EMBO") and the whole of Barangay Fort Andres Bonifacio. Both cities existed during the Spanish colonization and had their juridical existence formalized under the Municipal Code of 1901. Since the American colonial period, their historical boundaries had been changed by various laws, but their specific territories had not been enumerated. The presidential proclamations assailed herein were: (1) Presidential Proclamation No. 2475, series of 1986, issued by President Ferdinand Marcos, Sr., which withdrew a portion of Fort Bonifacio, composed of the EMBO barangays situated in Makati, as a military reservation and opened it to disposition to entitled residents; and (2) Presidential Proclamation No. 518, series of 1990, issued by President Corazon Aquino, amending the Marcos-era proclamation and declaring the EMBO and inner Fort barangays to be within Makati's jurisdiction.

The RTC ruled in favor of Taguig, holding that the territories under dispute were part of its territory and that the contended proclamations were unconstitutional and invalid for having altered its boundaries and diminished

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[38] ELECT. CODE, § 69.

[39] [Hereinafter "*City of Makati*"], G.R. No. 235316, Dec. 1, 2021 (Third Div., Rosario, *J.*). (slip op.)

its territorial jurisdiction without the constitutionally required plebiscite. On appeal, however, the case was resolved in favor of Makati. The Court of Appeals (CA) found that the pieces of evidence submitted by Taguig were not properly identified and authenticated, leading to the RTC's erroneous conclusion. Further, it held that the assailed proclamations did not alter Taguig's boundaries as it merely confirmed the disputed areas to be under Makati's jurisdiction.

Notably, the Supreme Court in this case chose to sidestep procedural rules as it involves a boundary dispute between two local government units ("LGUs"). It underscored that boundaries determine the geographic scope and limits of an LGU's jurisdiction, and the same can only exercise its powers within the confines of its borders.[40] Thus, a relaxation of procedural rules was warranted in favor of substantial justice in territorial disputes, in cognizance of its effect on the lives of its residents.

As the Court had mostly historical evidence, it applied by analogy the concept of "critical date," a public international law doctrine in territorial disputes. After the critical date, the acts of parties to strengthen their respective positions are disregarded by the Court in weighing the evidence for either claim. The Court fixed the critical date on January 31, 1990, the date when Proclamation No. 518, series of 1990 was issued. This was when both parties were given notice regarding their contending claims over the disputed areas, crystalizing the parties' adverse positions and culminating in Taguig's filing of its complaint.

Ultimately, after a review of historical evidence, maps, cadastral surveys, and contemporaneous acts of lawful authorities, the Court found that Taguig was able to prove by preponderance of evidence that it has a better claim over the disputed area. The Court notably excluded the numerical cadastral surveys of Makati, which were prepared after the critical date, having been approved by the Department of the Envrionment and Natural Resources National Capital Region Technical Director on February 14, 1994.

The Court also considered the contemporaneous acts of lawful authorities, which it read as implicitly excluding the contested areas from Makati. These include Section 503 of the Revised Administrative Code of 1917, which described the then-Fort McKinley as "*near* Macati, Province of Rizal"; and Proclamaton No. 423 of July 12, 1957, which describes Parcel 4 of then-Fort McKinley as bounded on the north by the Guadalupe Estate and situated within a listing of municipalities that mentioned Taguig but excluded

[40] *Id.* at 12.

Makati. It found that, in contrast, the official proclamations that mentioned Makati only went back to 1972.

As for the COMELEC certifications presented by Makati, which attested to the inner Fort barangays' participation in that city's political exercises since 1975, the Court simply found that Congress possessed the absolute power to define territorial boundaries until 1973. While the 1973 and 1987 Constitutions would thereafter provide that the substantial alteration of boundaries of local government units is subject to approval in a plebiscite in the political areas directly affected, the Marcos-era and Aquino-era proclamations assailed in the case did not actually alter such boundaries but merely opened these areas to disposition to eligible residents.

B. *Municipality of Corella v. Philkonstrak*[41]

Petitioner Municipality of Corella, Bohol, represented by Mayor Jose Tocmo, conducted a public bidding for the rehabilitation and improvement of its municipal waterworks system project. Respondent Philkonstrak, having emerged as the winning bidder, entered into a contract agreement with Corella, through then Mayor Vito Rapal. Pursuant to the contract, the Municipality would procure the materials, equipment, and labor necessary for the construction works. Philkonstrak accomplished more than half of the work for the project, but upon Tocmo's refusal to pay, suspended its construction works. Despite the Respondent's demand letter to Tocmo requesting payment of actual expenses, Tocmo denied liability and questioned the validity of the contract. He contended that Rapal, who became the Vice Mayor of the Municipality during the pendency of this case, had no authority to enter into the contract during his mayorship.

Philkonstrak filed a complaint for collection of sum of money against Corella and Rapal before the Construction Industry Arbitration Commission (CIAC). In his answer, Rapal admitted that he was authorized to enter into the contract with Philkonstrak in accordance with Municipal Ordinance No. 2010-02. In contrast, the Municipality argued that the contract is not binding as the foregoing ordinance violated Article 107(g) of the Implementing Rules and Regulations ("IRR") of the Local Government Code ("LGC") of 1991. It added that Rapal was in bad faith, having known the ordinance was defective and ineffective, and was thus not legally authorized to enter into the subject contract as there was no valid municipal ordinance permitting the same.

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[41] [Hereinafter "*Corella*"], G.R. No. 218663, Feb. 28, 2022 (Second Div., Hernando, *J.*). (slip op.)

The CIAC found for Philkonstrak, holding that the contract between the parties was valid. It found that Mayor Tocmo's refusal to comply with the obligation constituted a breach of contract and ordered the petitioner to pay. The CA upheld the CIAC Decision, hence the petition for review on *certiorari*.

The Municipality, through Tocmo, alleged that then Mayor Rapal failed to secure proper authorization from the Sangguniang Bayan of Corella before he entered into the contract with the respondent. He therefore violated Section 22(c) of the LGC and Article 107(g) of the IRR, which require "prior authorization by the sanggunian concerned,"[42] and "the affirmative vote of a majority of all the sanggunian members"[43] for the passage of an ordinance authorizing or directing the payment of money or creating liability, respectively. Similarly, prior authorization is required by Section 37 of Republic Act No. 9184 or the Government Procurement Reform Act. Tocmo avers that the two foregoing requirements are separate and distinct, where prior authorization from the sangguniang bayan must be shown or made an integral part of the contract.[44] Further, the assailed contract merely describes the contracting parties and did not contain an ordinance to authorize Rapal to enter into the same.

The Supreme Court held that while the contract between Philkonstrak and Corella was not valid and binding, Corella was obliged to pay Philkonstrak on the basis of *quantum meruit*. On the matter of local legislation, the Court categorically confirmed its previous rulings that "'sufficient authority' in an appropriation ordinance simply means specifically and expressly setting aside an amount of money for a certain project or program."[45] No separate authorization from the sangguniang bayan was necessary in this instance as the appropriations ordinance, Municipal Ordinance No. 2010-02, identified the project or program in sufficient detail and not just in general or generic terms.[46] It considered as sufficient the details included on the project and costs.

However, as regards the application of Article 107(g) of the LGC's IRR, the Court concurred with the petitioner's argument that the questioned municipal ordinance requires a majority vote of all the members of the sangguniang bayan, not only of the members present. The general rule therein

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[42] LOCAL GOV'T CODE, § 22(c).

[43] LOCAL GOV'T CODE, Rules & Regs. (1992), art. 107(g).

[44] *Corella*, G.R. No. 218663, slip op. at 7.

[45] *Id.* at 7−8, *citing* Verceles v. Comm'n on Audit, G.R. No. 211553, Sept. 13, 2016, at 645−46.

[46] *Corella*, G.R. No. 218663, slip op. at 8.

is that no ordinance or resolution shall be passed without the prior approval of a majority of all the members of the sanggunian *present*.[47] The exception is that an affirmative vote of a majority of *all* the sanggunian members, *present or not*, is required for ordinances or resolutions authorizing or directing the payment of money or creating a liability.[48] In other words, the quorum in the general rule depends on the number of sanggunian members present, while that in the exception looks at the total number of sanggunian members voted into office.[49]

In ruling that Municipal Ordinance No. 2010-02 falls under the aforementioned exception, the Court examined the term "appropriation" as defined under Section 306, Title V of the LGC. The term "refers to an authorization made by ordinance, directing the payment of goods and services from local government funds under specified conditions or for specific purposes."[50] Comparing this to the exception under Article 107(g) of the IRR of the LGC requiring that the herein ordinance requires the affirmative vote of a majority of all sanggunian members, it is clear that an "appropriation ordinance" is an ordinance subsumed in the exception.

IV. LAW ON PUBLIC OFFICERS

A. *Fainsan v. Field Investigation Office*[51]

Former Senator Jinggoy Estrada delivered a privilege speech regarding the alleged mismanagement of funds during the Metro Manila Film Festival ("MMFF") in 2009, claiming that there were multiple disbursements made by the MMFF Executive Committee to then Metropolitan Manila Development Authority (MMDA) Chairman Bayani Fernando, presented as birthday cash gifts, expenses for cultural projects, and other incentives. This prompted the Commission on Audit (COA) to conduct a special audit through its Fraud Audit and Investigation Office.

The result of the audit led the Field Investigation Office of the Ombudsman to file a complaint against herein petitioners Fainsan, Querijero, Josef, and Ablog for violation of Section 3(e) of R.A. No. 3019, as amended, or the Anti-Graft and Corrupt Practices Act. It alleged that the disbursements

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[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] LOCAL GOV'T CODE, § 306.

[51] [Hereinafter *"Fainsan"*], G.R. No. 233446, Feb. 22, 2023 (First Div., Zalameda, *J.*). (slip op.)

were irregular, unauthorized expenditures with no legal basis and supporting documents.[52]

In answering the complaint, the petitioners argued that the MMFF Executive Committee is not a public office and therefore not subject to the jurisdiction of COA. The Ombudsman, however, found probable cause and recommended the filing of an Information against the petitioners, holding that they were public officials discharging administrative or official functions and their irregular and unauthorized expenses were done in bad faith. The petitioners contested the findings with the CA, praying for the dismissal of the criminal complaint, but the CA dismissed their petition for *certiorari* for lack of jurisdiction.[53] The petitioners then elevated the matter to the Supreme Court, contending that the Ombudsman did not have jurisdiction over them because they were not to be considered as public officials.

In resolving this issue, the Court cited Executive Order No. 86-09, which created the Executive Committee to assist the MMDA in conducting the organization and execution of the annual MMFF, an undertaking that "is a recognition of the contribution of films in entertaining and educating the public about the country's history, tradition, and struggles."[54] The recitals of the said Executive Order showed that the MMFF Executive Committee is the State's instrumentality in promoting the local film industry—a function of the sovereign delegated to it, denominating it as a public office and its members as public officers.

Moreover, while the MMFF Executive Committee is not organized as a stock or non-stock corporation, it is still subject to the jurisdiction of COA because it receives government funds.[55] The Court already explained in *Fernando v. COA*[56] that the MMFF Executive Committee should not be treated separately from the MMDA, because it was created specifically to assist the latter in conducting the annual MMFF.

The Court did not, however, address the allegation of the petitioners that Executive Order No. 86-09 was issued by the then Governor/Officer-in-Charge of the Metro Manila Commission. Although the legislative power to create a public office is theoretically delegable, the Court did not explain

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[52] *Id.* at 6.
[53] *Id.* at 7.
[54] *Id.* at 18.
[55] *Id.*
[56] G.R. No. 237938, 844 Phil. 644 (2018).

whether the Metro Manila Commission possessed any such delegated power to create a public office.

V. PUBLIC INTERNATIONAL LAW

A. *Ocampo v. Macapagal-Arroyo*[57]

In *Ocampo*, the Supreme Court resolved the constitutionality of a Joint Marine Seismic Undertaking ("JMSU") by and among the state-owned oil companies of the Republic of the Philippines (Philippine National Oil Company or PNOC), the Socialist Republic of Vietnam (Vietnam Oil and Gas Corporation or "PETROVIETNAM"), and the People's Republic of China (China National Offshore Oil Corporation or "CNOOC"), fifteen years removed from its expiration.

The JMSU, executed in 2005 with the authority of the respective governments of the company-parties, allowed the said parties to "engage in a joint research of petroleum resource potential" within an area of 142,886 square kilometers in the body of water then referred to as the South China Sea.[58] This includes areas claimed by the Philippines, China, and Vietnam, as well as "almost 80% of the Spratly Group of Islands"[59] and 24,000 square kilometers of undisputed Philippine territory.[60] It included the islands of Patag (Flat), Lawak (Nanshan), Parola (Northeast Cay), Panata (Lankiam Cay), Kota (Loaita), and Likas (West York), which were then occupied by the Philippine military.[61]

Importantly, the JMSU included a clause to ensure "effective and equal participation" by all parties in all activities relevant to its implementation, as well as a confidentiality clause which barred the parties from disclosing to any external party the information, data, and reports with respect to the undertaking during the term of the JMSU and within five years after its expiration.[62]

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[57] [Hereinafter "*Ocampo*"], G.R. No. 182734, Jan. 10, 2023 (*En Banc*, Gaerlan, *J.*). (slip op.)

[58] *Id.* at 2.

[59] *Id.* at 17.

[60] Yvonne Chua & Ellen Tordesillas, *Six RP-occupied islands covered in controversial Spratlys deals*, VERA FILES, Mar. 9, 2008, *at* https://verafiles.org/articles/six-rp-occupied-islands-covered-in-controversial-spratlys-deals.

[61] *Id.*

[62] *Ocampo*, G.R. No. 182734, slip op. at 3.

The JMSU had a term of three years and expired on June 30, 2008.[63] The undertaking hence coincided with the period during the mid-to-late 2000s described by President Gloria Macapagal-Arroyo, named respondent in this case, and President Hu Jintao as the "golden age of partnership" between the Philippines and China.[64]

The Court ruled against the constitutionality of the JMSU. It held that the JMSU did not abide by the limitations set forth in Section 2, Article XII of the Constitution[65] on the exploration, development, and utilization ("EDU") of minerals and petroleum.

The clear intent of the parties "to engage in a joint research of petroleum resource potential" in the South China Sea points to an aim "to discover petroleum which is tantamount to exploration" as contemplated in Section 2, Article XII.[66] This is further demonstrated by how, under the Petroleum Act of 1949, the discovery of petroleum can be performed through seismic surveys—a geophysical investigation which is exactly the intended "undertaking" in the JMSU.[67]

The JMSU was hence characterized by the Court as one of the four modes of EDU of natural resources pursuant to Section 2, Article XII: a large-scale exploration of petroleum, agreements for which agreements may be entered into by the President with foreign-owned corporations for financial or technical assistance. At the very least, to the Court, an agreement under this mode should be a valid service contract, since the same had been declared to be within the contemplation of a financial or technical assistance agreement ("FTAA") in the Constitution in the case of *La Bugal-B'laan Tribal Ass'n, Inc. v. Ramos*.[68]

The Court did not consider the JMSU to be a valid FTAA. In a one-paragraph analysis, the *ponencia* pointed to how the JMSU involved no financial or technical assistance between and among the PNOC, the CNOOC, and PETROVIETNAM, and how each of the parties were to "shoulder the costs of its own personnel designated for the implementation of the

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[63] *Id.* at 5.

[64] *Joint Statement of the People's Republic of China and the Republic of the Philippines*, EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN THE REPUBLIC OF THE PHILIPPINES WEBSITE, Apr. 28, 2005, *at* http://ph.china-embassy.gov.cn/eng/zfgx/zzgx/200504/t20050428_1336107.htm.

[65] CONST. art. XII, § 2.

[66] *Ocampo*, G.R. No. 182734, slip op. at 20.

[67] *Id.*

[68] [Hereinafter, "*La Bugal*"], G.R. No. 127882, 486 Phil. 754 (2004).

agreement" as well as the costs of the seismic work.[69] Neither did the Court consider the JMSU as a valid service contract pursuant to the doctrine in *La Bugal*, as it failed to contain the necessary "safeguards" declared in that case, such as: (1) the service contract must be in accordance with a general law that will set the standard or uniform terms; (2) the President shall be the signatory; and (3) the President shall report the service contract to Congress.[70] Hence, the JMSU is large-scale exploration of state resources in a form not sanctioned by the Constitution.

The JMSU was likewise struck down for violating the State's full control and supervision over its natural resources as mandated by the Constitution.[71] The petitioners argued that the JMSU is unconstitutional as it provides that the information acquired during the seismic survey and its interpretation shall be jointly owned by the parties. To them, this constituted a concession of ownership over the natural resources that are the subject of the information acquired, in violation of the full control clause. The Court agreed with this argument:

> We rule that the PNOC and/or the Government cannot legally share the information acquired in the Agreement. The information regarding on [sic] the existence/non-existence of petroleum in the Agreement Area is a product of exploration. It is part of the exploration itself inasmuch as the petroleum discovered. The fact that under the JMSU, CNOOC and PETROVIETNAM were not granted rights to extract or to share in the petroleum resources is immaterial. Extraction is not a part of exploration but is already within the realm of "utilization" of natural resources.[72]

The *ponencia* likewise alluded to the dissent of Justice Antonio T. Carpio in *La Bugal* in holding that the State cannot allow foreign corporations to explore natural resources, "because information derived from such exploration may have national security implications."[73] This portion of the ruling veers into self-contradiction, as both the literal text of Section 2, Article XII and the ruling in *La Bugal*—a case herein relied on so heavily—clearly show that foreign corporations are permitted to partake in the exploration of natural resources.

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[69] *Ocampo*, G.R. No. 182734, slip op. at 23.
[70] *La Bugal*, 486 Phil. at 790−91.
[71] CONST. art. XII, § 2.
[72] *Ocampo*, G.R. No. 182734, slip op. at 28.
[73] *Id.* at 28−29, *citing La Bugal*, 486 Phil. at 1036 (Carpio, *J.*, *dissenting*).

Still, the Court ruled that through the JMSU, the PNOC "bargained away the State's supposed full control of all the information acquired from the seismic survey."[74]

Given that the JMSU was backed by the respective governments of the parties involved, the decision also significantly departs from the Court's foreign relations jurisprudence which tends to be highly deferential to the Executive.[75]

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[74] *Id.* at 30.

[75] *See, e.g.*, Panglinan v. Cayetano, G.R. No. 238875, Mar. 16, 2021. (slip op.)