G.R. No. 199802 – *Congressman Hermilando I. Mandanas, et al. v. Executive Secretary Paquito N. Ochoa, Jr., et al.*

G.R. No. 208488 – *Honorable Enrique T. Garcia, Jr., in his personal and official capacity as Representative of the 2nd District of the Province of Bataan v. Honorable Paquito N. Ochoa, Jr., Executive Secretary, et al.*

Promulgated

July 3, 2018

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SEPARATE OPINION

CAGUIOA, *J.*:

Every statute has in its favor the presumption of constitutionality. This presumption rests on the doctrine of separation of powers, which enjoins the three branches of government to encroach upon the duties and powers of another.[1] It is based on the respect that the judicial branch accords to the legislature, which is presumed to have passed every law with careful scrutiny to ensure that it is in accord with the Constitution.[2] Thus, before a law is declared unconstitutional, there must be a clear and unequivocal showing that what the Constitution prohibits, the statute permits.[3] In other words, laws shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt.[4] To doubt is to sustain the constitutionality of the assailed statute.[5]

In the present case, doubt exists as to whether Section 284 of the Local Government Code (LGC) directly contravenes Section 6, Article X of the 1987 Constitution because the latter is susceptible of two interpretations.

Section 6, Article X of the 1987 Constitution states:

> SECTION 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

In *Province of Batangas v. Romulo,*[6] the Court explained that the foregoing provision mandates that (1) the local government units (LGUs) shall have a "just share" in the national taxes; (2) the "just share" shall be

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1 See *Cawaling, Jr. v. Commission on Elections*, 420 Phil. 524, 530 (2001).
2 See id.; see also *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001).
3 *Garcia v. Commission on Elections*, 297 Phil. 1034, 1047 (1993).
4 *Rama v. Moises*, G.R. No. 197146, August 8, 2017.
5 See *Garcia v. Commission on Elections*, supra note 3, at 1047.
6 473 Phil. 806, 830 (2004).

determined by law; and (3) the "just share" shall be automatically released to the LGUs.

The issue now before this Court is what constitutes a "just share".

The *ponencia* offers a restrictive interpretation of the term "just share" as referring only to a percentage or fractional value of the entire pie of national taxes. This necessarily results in finding Section 284 of the LGC too restrictive as it limits the pie to internal revenue taxes only. Thus, the *ponencia* finds the words "internal revenue" in Section 284 of the LGC constitutionally infirm and deems the same as not written.

Justice Leonen, on the other hand, provides a liberal interpretation. According to him the term "just share" may refer to the classes of national taxes as well as to the percentages of such classes, since other than the term "just", no other restrictions on how the share of the LGUs should be determined are provided by the Constitution. He posits that the Constitution left the sole discretion to Congress in determining the "just share" of the LGUs, which authority necessarily includes the power to fix the revenue base (*i.e.*, only a portion of "national taxes") and the rate for the computation of the allotment to the LGUs.

It is a settled rule in the construction of laws, that "[i]f there is doubt or uncertainty as to the meaning of the legislature, if the words or provisions of the statute are obscure, or if the enactment is fairly susceptible of two or more constructions, that interpretation will be adopted which will avoid the effect of unconstitutionality, even though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language employed."[7]

I find the foregoing rule applicable even to the construction of the Constitution. Thus, as between the *ponencia*'s restrictive approach and Justice Leonen's liberal approach, I submit that the latter should be upheld. The Court's ruling in *Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service,*[8] lends credence:

> Indeed, "all presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; **that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases**; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; **and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted**."[9]

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7 *In re Guariña*, 24 Phil. 37, 47 (1913).

8 726 Phil. 104 (2014).

9 Id. at 126. Emphasis supplied.

Moreover, I join the position of Justice Leonen that the Constitution gave Congress the absolute authority and discretion to determine the LGUs' "just share" — which include both the classes of national taxes and the percentages thereof. The exercise of this plenary power vested upon Congress, through the latter's enactment of laws, including the LGC, the National Internal Revenue Code and the general appropriations act, is beyond the Court's judicial review as this pertains to policy and wisdom of the legislature.

I echo Justice Leonen's statement that appropriation is not a judicial function. Congress, which holds the power of the purse, is in the best position to determine the "just share" of the LGUs based on their needs and circumstances. Courts cannot provide a new formula for the Internal Revenue Allotments (IRA) or substitute its own determination of what "just share" should be, absent a clear showing that the assailed act of Congress (*i.e.*, Section 284 of the LGC) is prohibited by the fundamental law. To do so would be to tread the dangerous grounds of judicial legislation and violate the deeply rooted doctrine of separation of powers.

Finally, even assuming that Section 284 of the LGC is constitutionally infirm, I agree with the *ponencia's* position that the operative fact doctrine should apply to this case. The doctrine nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law.[10] In *Araullo v. Aquino III,*[11] the doctrine was held to apply to recognize the positive results of the implementation of the unconstitutional law or executive issuance to the economic welfare of the country. Not to apply the doctrine of operative fact would result in most undesirable wastefulness and would be enormously burdensome for the Government. [12]

In the same vein, petitioners cannot claim deficiency IRA from previous fiscal years as these funds may have already been used for government projects, the undoing of which would not only be physically impossible but also impractical and burdensome for the Government.

Verily, considering that the decisions of this Court can only be applied prospectively, I find the Court's computation of "just share" of no practical value to petitioners and other LGUs; because while LGUs, in accordance with the Court's ruling, are now entitled to share directly from national taxes, Congress, as they may see fit, can simply enact a law lowering the

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[10] *Film Development Council of the Phils. v. Colon Heritage Realty Corp.*, 760 Phil. 519, 552-553 (2015), citing *Yap v. Thenamaris Ship's Management*, 664 Phil. 614, 627 (2011).

[11] 737 Phil. 457 (2014).

[12] Id. at 624-625.

percentage shares of LGUs equivalent to the amount initially granted to them. In fine, and in all practicality, this case is much ado over nothing.

For the foregoing reasons, I vote to **DISMISS** the Petitions.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice