

EN BANC

G.R. No. 217158 – GIOS-SAMAR, INC., represented by its Chairperson GERARDO M. MALINAO, *Petitioner*, v. DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS and CIVIL AVIATION AUTHORITY OF THE PHILIPPINES, *Respondents*.

Promulgated:
March 12, 2019

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CONCURRING OPINION

LEONEN, J.:

I agree with the disposition of this case as proposed in the Decision written by Associate Justice Francis H. Jardeleza. To clarify the reasons for my vote, I add the following brief points.

I

Indeed, the claims made by petitioner GIOS-SAMAR, Inc. require a more contextual appreciation of the evidence that it may present to support its claims. The nature of its various allegations requires the presentation of evidence and inferences, which should, at first instance, be done by a trial court.¹

Monopolization should not be lightly inferred especially since efficient business organizations are rewarded by the market with growth. Due to the high barriers to economic entry and long gestation periods, it is reasonable for the government to bundle infrastructure projects. There is, indeed, a difference between abuse of dominant position in a relevant market² and combinations in restraint of trade.³ The Petition seems to have confused these two (2) competition law concepts and it has not made clear which concept it wished to apply.

Further, broad allegations amounting to a generalization that certain corporations allow themselves to serve as dummies for cartels or foreigners cannot hold ground in this Court. These constitute criminal acts. The Constitution requires that judicial action proceed carefully and always from a presumption of innocence. Tall tales of conspiratorial actions—though

¹ See *Knights of Rizal v. DMCI Homes, Inc.*, G.R. No. 213948, April 25, 2017, 824 SCRA 327, 404-405 [Per J. Carpio, En Banc].

² Rep. Act No. 10667 (2015), ch. III, sec. 15.

³ CONST., art. XII, sec. 19.

they may be salacious, make for interesting fiction, and are fodder for social media—do not deserve any judicial action. Broad generalizations of facts without corresponding evidence border on the contemptuous.

Although the Constitution grants original and concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals over actions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*, this Court generally does not receive evidence, and thus, rarely makes findings of facts contested by the parties at first instance. In *The Diocese of Bacolod v. Commission on Elections*,⁴ this Court held:

The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the ‘actual case’ that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.⁵ (Citation omitted)

This is true whether the remedy used is the original action for certiorari or prohibition, regardless of whether this is brought under Rule 65 of the Rules of Court or the expanded power to examine if there has been

⁴ 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

⁵ Id. at 329–330.

grave abuse of discretion by any government branch or instrumentality,⁶ as held in *Araullo v. Aquino III*,⁷ among others.

Through the classic eloquence of the ponente, this case reiterates the doctrine that the finding of grave abuse of discretion made by this Court in its original jurisdiction is generally only over cases where the material facts are not contested. Further, this case highlights that petitioners bear the burden of clearly and convincingly elaborating on why the doctrine of respect for the hierarchy of courts may have been apparently violated.⁸

Reiterating these rules is important. A single instance when a ruling is laid means mere *ratio decidendi*. *Ratio decidendi*, when repeated in several various compositions of this Court, endows it with the status of an evolving doctrine. When reiterated in a number of cases over the years, an evolving doctrine becomes canon. The *ratio decidendi*, barring other factors, is strengthened with reiteration and reexamination of its rationale in subsequent cases.

However, to be more precise, I propose that we clarify that even if the issues raised are questions of law, this Court is not devoid of its discretion to deny addressing the constitutional issues entirely.

This means restating the difference between the concept of jurisdiction and justiciability in constitutional adjudication.

II

Jurisdiction is the competence “to hear, try[,] and decide a case.”⁹ It is a power that is granted by the Constitution and by law.¹⁰ In situations where several courts may exercise jurisdiction either originally or on an appeal, the court that first seized of the issues holds jurisdiction over the case, to the exclusion of the rest.¹¹

Jurisdiction, or the competence to proceed with the case, requires several elements. To determine jurisdiction, courts assess: (1) the remedy or

⁶ CONST., art. VIII, sec. 1.

⁷ 737 Phil. 457 (2014) [Per J. Bersamin, En Banc].

⁸ See *Review Center Association of the Philippines v. Ermita*, 602 Phil. 342, 360 (2009) [Per J. Carpio, En Banc]; *Bagabuyo v. Commission on Elections*, 593 Phil. 678, 689 (2008) [Per J. Brion, En Banc]; and *Civil Service Commission v. Department of Budget and Management*, 502 Phil. 372, 384 (2005) [Per J. Carpio Morales, En Banc].

⁹ *Land Bank of the Philippines v. Dalauta*, G.R. No. 190004, August 8, 2017, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/190004.pdf>> 8 [Per J. Mendoza, En Banc].

¹⁰ Id.

¹¹ See *Laquian v. Baltazar*, 142 Phil. 531 (1970) [Per C.J. Concepcion, Second Division].

the procedural vehicle for raising the issues;¹² (2) the subject matter of the controversy;¹³ (3) the issues as framed by the parties;¹⁴ and (4) the processes served on the parties themselves vis-à-vis the constitutional or law provisions that grant competence.¹⁵

Related to jurisdiction is our application of the doctrine of granting the primary administrative jurisdiction, when statutorily warranted, to the executive department.¹⁶ This is different from the rule on exhaustion of administrative remedies¹⁷ or the doctrine of respect for the hierarchy of courts,¹⁸ which are matters of justiciability, not jurisdiction.

Jurisdiction, once acquired, cannot be waived.¹⁹

Determining whether the case, or any of the issues raised, is justiciable is an exercise of the power granted to a court with jurisdiction over a case that involves constitutional adjudication. Thus, even if this Court has jurisdiction, the canons of constitutional adjudication in our jurisdiction allow us to disregard the questions raised at our discretion.

The general rule with respect to justiciability is one of constitutional avoidance. That is, before we proceed with even considering how a word or phrase in the Constitution is violated, we first examine whether there is an actual case or controversy. The justiciability of a controversy is often couched in four (4) elements: (1) that there is an actual case or controversy;²⁰ (2) that the party raising the issues has *locus standi*;²¹ (3) that the case is ripe for adjudication;²² and (4) that the constitutional issue is the very *lis mota* of the case.²³

¹² *The City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 517 (2014) [Per J. Leonen, Second Division].

¹³ *Id.* at 515.

¹⁴ *Dy v. Yu*, 763 Phil. 491, 518 (2015) [Per J. Perlas-Bernabe, First Division].

¹⁵ *The City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 516 (2014) [Per J. Leonen, Second Division].

¹⁶ *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf>> 18 [Per J. Leonen, En Banc].

¹⁷ *Id.* at 19.

¹⁸ *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 329–330 (2015) [Per J. Leonen, En Banc].

¹⁹ *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, 706 Phil. 442, 450 (2013) [Per J. Mendoza, Third Division].

²⁰ *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf>> 24 [Per J. Leonen, En Banc].

²¹ *Id.*

²² *Id.*

²³ *Id.*

The third element may be rephrased into two (2) queries. The court considers whether the case has already become moot,²⁴ or whether the issues that call for constitutional interpretation are prematurely raised.²⁵

The doctrine of avoidance is palpable when we refuse to decide on the constitutional issue by ruling that the parties have not exhausted administrative remedies,²⁶ or that they have violated the doctrine of respect for the hierarchy of courts.²⁷ These are specific variants or corollaries of the rule that the case should be ripe for constitutional adjudication.

The fourth element allows this Court to grant or deny the reliefs prayed for by any petitioner if there is a statutory or procedural rule that can be applied to resolve the issues raised, rather than deal with the interpretation of a constitutional issue.²⁸

*Angara v. Electoral Commission*²⁹ imbues these rules with its libertarian character. Principally, *Angara* emphasized the liberal deference to another constitutional department or organ given the majoritarian and representative character of the political deliberations in their forums. It is not merely a judicial stance dictated by courtesy, but is rooted on the very nature of this Court. Unless congealed in constitutional or statutory text and imperatively called for by the actual and non-controversial facts of the case, this Court does not express policy. This Court should channel democratic deliberation where it should take place.

When interpretations of a constitutional provision are equally valid but lead to contrary results, this Court should exercise judicial restraint and allow the political forces to shed light on a choice. This Court steps in only when it discerns clear fallacies in the application of certain norms or their interpretation. Judicial restraint requires that this Court does not involve itself into matters in which only those who join in democratic political deliberation should participate. As magistrates of the highest court, we should distinguish our role from that of an ordinary citizen who can vote.

Judicial restraint is also founded on a policy of conscious and deliberate caution. This Court should refrain from speculating on the facts of a case and should allow parties to shape their case instead. Likewise, this Court should avoid projecting hypothetical situations where none of the parties can fully argue simply because they have not established the facts or

²⁴ *Baldo, Jr. v. Commission on Elections*, 607 Phil. 281 (2009) [Per J. Chico-Nazario, En Banc].

²⁵ *See Corales v. Republic*, 716 Phil. 432 (2013) [Per J. Perez, En Banc].

²⁶ *Aala v. Uy*, G.R. No. 202781, January 10, 2017, 814 SCRA 41, 66 [Per J. Leonen, En Banc].

²⁷ *Id.* at 60.

²⁸ *See General v. Urro*, 662 Phil. 132 (2011) [Per J. Brion, En Banc].

²⁹ 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

are not interested in the issues raised by the hypothetical situations.³⁰ In a way, courts are mandated to adopt an attitude of judicial skepticism. What we think may be happening may not at all be the case. Therefore, this Court should always await the proper case to be properly pleaded and proved.

Plainly put, majority opinions that rule on constitutional issues as *obiter dictum* is dangerous not only because it is injudicious, but also because it undermines the constitutional framework of governance.

III

Thus, I propose that we further tame the concept that a case's "transcendental importance"³¹ creates exceptions to justiciability. The elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear. They should be properly pleaded by the petitioner so that whether there is any transcendental importance to a case is made an issue. That a case has transcendental importance, as applied, may have been too ambiguous and subjective that it undermines the structural relationship that this Court has with the sovereign people and other departments under the Constitution. Our rules on jurisdiction and our interpretation of what is justiciable, refined with relevant cases, may be enough.

However, consistent with this opinion, we cannot wholly abandon the doctrinal application of cases with transcendental importance.³² That approach just does not apply in this case. Here, we have just established that cases calling for questions of fact generally cannot be cases from which we establish transcendental importance. Generally, we follow the doctrine of respect for hierarchy of courts for matters within our concurrent original jurisdiction.

IV

Critically, the nuances of the cases we find justiciable signal our philosophy of adjudication. Even as we try to filter out and dispose of the

³⁰ See *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf>> [Per J. Leonen, En Banc]; *Republic v. Roque*, 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, En Banc]; and *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per J. Carpio-Morales, En Banc].

³¹ See *Araneta v. Dinglasan*, 84 Phil. 368, 373 (1949) [Per J. Tuason, En Banc] involving the Emergency Power Act. This Court took cognizance of the cases in *Araneta*, saying for the first time that "the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure."

³² See *The Province of Batangas v. Hon. Romulo*, 473 Phil. 806, 827 (2004) [Per J. Callejo, Sr., En Banc]; *Senator Jaworski v. Philippine Amusement and Gaming Corporation*, 464 Phil. 375, 285 (2004) [Per J. Ynares-Santiago, En Banc]; and *Agan, Jr. v. Philippine International Air Terminals, Co., Inc.*, 450 Phil. 744, 805 (2003) [Per J. Puno, En Banc].

cases pending in our docket, this Court's role is not simply to settle disputes. This Court also performs the important public function of clarifying the values embedded in our legal order anchored on the Constitution, laws, and other issuances by competent authorities.

As this Court finds ways to dispose of its cases, it should be sensitive to the quality of the doctrines it emphasizes and the choice of cases on which it decides. Both of these will facilitate the vibrant democracy and achievement of social justice envisioned by our Constitution.

Every case filed before this Court has the potential of undoing the act of a majority in one (1) of the political and co-equal departments of our government. Our Constitution allows that its congealed and just values be used by a reasonable minority to convince this Court to undo the majority's action. In doing so, this Court is required to make its reasons precise, transparent, and responsive to the arguments pleaded by the parties. The trend, therefore, should be to clarify broad doctrines laid down in the past. The concept of a case with transcendental importance is one (1) of them.


Our democracy, after all, is a reasoned democracy: one with a commitment not only to the majority's rule, but also to fundamental and social rights.

Even as we recall the canonical doctrines that inform the structure of our Constitution, we should never lose sight of the innovations that our fundamental law has introduced. We have envisioned a more engaged citizenry and political forums that welcome formerly marginalized communities and identities. Hence, we have encoded the concepts of social justice, acknowledged social and human rights, and expanded the provisions in our Bill of Rights.


We should always be careful that in our desire to achieve judicial efficiency, we do not filter cases that bring out these values.

This Court, therefore, has a duty to realize this vision. The more guarded but active part of judicial review pertains to situations where there may have been a deficit in democratic participation, especially where the hegemony or patriarchy ensures the inability of discrete and insular minorities to participate fully. While this Court should presume representation in the deliberative and political forums, it should not be blind to present realities.

Certainly, this case falls woefully short of these noble expectations.



ACCORDINGLY, I vote to **DISMISS** the Petition.


MARVIC M.V.F. LEONEN
Associate Justice