

EN BANC

G.R. No. 213212 – RENE FIGUEROA, *Petitioner*, v. COMMISSION ON AUDIT, *Respondent*;

G.R. No. 213497 – PHILIP G. LO and MANUEL C. ROXAS, *Petitioners*, v. COMMISSION ON AUDIT, *Respondent*;

G.R. No. 213655 – EFRAIM C. GENUINO, *Petitioner*, v. COMMISSION ON AUDIT, *ET AL.*, *Respondents*.

Promulgated:

April 27, 2021

X-----*Perlas-Bernabe*-----X

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur in the result.

As the *ponencia* holds, Section 15<sup>1</sup> of Presidential Decree No. 1869,<sup>2</sup> or the revised and consolidated “*Philippine Amusement and Gaming Corporation (PAGCOR) Charter*,” which limits the Commission on Audit’s (COA) jurisdiction over the PAGCOR to the determination of the five percent (5%) franchise tax and the government’s 50% share of its gross earnings,<sup>3</sup> applies in this case.

<sup>1</sup> See Section 15, in relation to Presidential Decree No. 1869’s whereas clauses, which reads:

WHEREAS, to make it more dynamic and effective in its tasks, PAGCOR should now be reorganized by x x x (c) providing for greater flexibility in operation by limiting governmental audit only to the determination of the 5% franchise tax and the Government’s share of 50% of the gross earnings;

x x x x

SECTION 15. *Auditor*. — The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share. (Emphases and underseoring supplied)

<sup>2</sup> Entitled “CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR),” approved on July 11, 1983.

<sup>3</sup> See *ponencia*, pp. 12-14.

N

As the records show, the disallowed amount in this case was sourced from PAGCOR's operating expense fund, particularly under its marketing expense fund.<sup>4</sup> Thus, the *ponencia* correctly granted the instant petition, thereby setting aside the COA's assailed rulings and notice of disallowance for lack of jurisdiction.<sup>5</sup>

To be sure, the COA's lack of jurisdiction in this case is intrinsically linked to Section 15 of the PAGCOR Charter, which is presumed to be valid and constitutional. Indeed, as the *ponencia* observes, since this provision has not been specifically repealed by Congress or struck down by the Court, it remains part of our legal system with the full force and effect of law until definitively settled in the appropriate case therefor.<sup>6</sup>

It should be borne in mind that, while the instant parties argued at the COA level regarding the limits of the COA's audit jurisdiction over PAGCOR, the Court cannot squarely rule on the constitutionality of Section 15 of the PAGCOR Charter in this case, considering that PAGCOR, whose charter is under scrutiny and the entity that is directly and adversely affected by the issue of constitutionality, was not impleaded as a party-litigant.<sup>7</sup>

More significantly, it must be highlighted that the present consolidated petitions, which were filed under Rule 64, in relation to Rule 65 of the Rules of Court, constitute a *certiorari* review of an expenditure disallowed by the COA, and not a direct attack on the constitutionality of Section 15 of the PAGCOR Charter. In this regard, "[n]othing is more settled than the rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally. A collateral attack on a presumably valid law is not permissible. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands."<sup>8</sup>

Hence, up until Section 15 of the PAGCOR Charter is declared as unconstitutional in the proper proceeding, the same is valid. Accordingly, since the amount disallowed in this case does not fall within the ambit of the

---

<sup>4</sup> See *id.*

<sup>5</sup> See *id.* at 17.

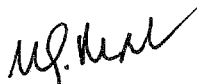
<sup>6</sup> See *Lim v. Pacquing*, 310 Phil. 722 (1995); *Macalintal v. Commission on Elections*, 453 Phil. 586 (2003).

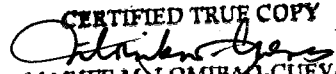
<sup>7</sup> See *Liban v. Gordon* (654 Phil. 680 [2011]), where one of the reasons cited by the Court in modifying its earlier Decision declaring void the Philippine National Red Cross (PNRC) charter and holding that it should have exercised judicial restraint in ruling upon the constitutionality of the said law, was that the PNRC was not an original party to the case (though it intervened subsequently):

x x x x **this Court should not have declared void certain sections of R.A. No. 95**, as amended by Presidential Decree (P.D.) Nos. 1264 and 1643, the PNRC Charter. Instead, the **Court should have exercised judicial restraint on this matter**, especially since there was some other ground upon which the Court could have based its judgment. Furthermore, **the PNRC, the entity most adversely affected by this declaration of unconstitutionality, which was not even originally a party to this case**, was being compelled, as a consequence of the Decision, to suddenly reorganize and incorporate under the Corporation Code, after more than sixty (60) years of existence in this country. (Emphases and underscoring supplied)

<sup>8</sup> *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132, 153 (2013).

COA's limited audit jurisdiction as per the said provision, which – to reiterate – is presumed to be valid until struck down in the proper proceeding therefor, I concur in the result to grant the consolidated petitions and set aside the assailed disallowance for lack of jurisdiction.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

  
**MARIFE M. LOMIBAO-CUEVAS**  
Clerk of Court  
Supreme Court