

Republic of the Philippines
Supreme Court
Manila

EN BANC

THE SENATE OF THE PHILIPPINES, represented by SENATE PRESIDENT VICENTE C. SOTTO III, SENATE PRESIDENT PRO TEMPORE RALPH G. RECTO, SENATE MAJORITY FLOOR LEADER JUAN MIGUEL F. ZUBIRI, SENATE MINORITY FLOOR LEADER FRANKLIN M. DRILON, and SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS CHAIRPERSON RICHARD J. GORDON, and in their official and individual capacities as members of the Senate of the Philippines,
Petitioners,

G.R. No. 257608

Members:

GESMUNDO, *Chief Justice,*
LEONEN, *SAJ,*
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.
GAERLAN,
ROSARIO,
LOPEZ, J.
DIMAAMPAO,
MARQUEZ,
KHO, JR.
SINGH, *JJ.*

-versus-

Promulgated:

July 5, 2022

THE EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA and SECRETARY OF HEALTH FRANCISCO T. DUQUE III,
Respondents.

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DECISION

LAZARO-JAVIER, J.:

In this Petition for *Certiorari* and Prohibition,¹ the Senate of the Philippines, represented by Senate President Vicente C. Sotto, III, Senate President *Pro Tempore* Ralph G. Recto, Senate Majority Floor Leader Juan Miguel F. Zubiri, Senate Minority Floor Leader Franklin M. Drilon, and Chairperson Richard J. Gordon of the Senate Committee on Accountability of Public Officers and Investigations seek to nullify *Memorandum*² dated October 4, 2021, *Re: Attendance in the Senate Blue Ribbon Committee Hearings on the 2020 Commission on Audit Report* issued by President Rodrigo R. Duterte (President Duterte) through Executive Secretary Salvador C. Medialdea (*Executive Secretary Medialdea*).

Antecedents

The facts are undisputed.

The Covid-19 pandemic caused the stoppage of commerce and trade. People suddenly found themselves in the comfort of their homes on a daily basis. Their daily hustle suddenly stopped. Most citizens lost their sources of income. Inevitably, the State had to promptly step in. The Congress itself passed unprecedented appropriations to address the adverse effects of the pandemic.

The Department of Health (*DOH*) alone received seventy-seven billion pesos (₱77,000,000,000.00) to address the health crisis. Of the said fund, thirty-seven billion pesos (₱37,000,000,000.00) was allotted for the procurement of Personal Protective Equipment (*PPE*).³

In its 2020 Annual Audit Report, the Commission on Audit (*COA*) noted a deficiency of ₱67,323,186,570.57 in public funds intended for the government's Covid-19 response. This spurred an investigation by the Senate Blue Ribbon Committee on the budget utilization of the *DOH*.⁴

¹ *Rollo*, pp. 3--81.

² *Id.* at 86. HEADS OF DEPARTMENTS, AGENCIES, OFFICES, AND INSTRUMENTALITIES OF THE GOVERNMENT, GOVERNMENT-OWNED OR -OR CONTROLLED CORPORATIONS, AND GOVERNMENT FINANCIAL INSTITUTIONS.

³ *Id.* at 9.

⁴ *Id.*

Meantime, several senators authored resolutions directing various committees of the Senate to conduct inquiries relative to the disbursement of funds to address the Covid-19 pandemic, viz.:

1. Senate Resolution No. 858 entitled *Resolution Directing the Senate Committee of the Whole on the Vaccination Program to Conduct an Inquiry on the Procurement of COVID-19 Vaccines by Local Government Units and the Private Sector Through the Multi-Party Agreements, with the End in View of Ramping Up Vaccination in the Rural Areas and in the Private Sector, and Achieving Herd Immunity Against COVID-19 for the Country* authored by Senator Juan Miguel F. Zubiri.⁵

2. Senate Resolution No. 859 entitled *Resolution Directing the Appropriate Senate Committee to Conduct an Inquiry, in Aid of Legislation, on the Findings of Commission on Audit (COA) Report on the Department of Health (DOH) on the Reported Unspent Funds, Misstatements, Irregularities[,] and Deficiencies, with the End View of Addressing Recurrent Issues that has Plagued its Services, as well as the Persistent Faults and Lapses that Gave Rise to Wastage Even Amidst Times of Scarcity and Shortage, and Identifying and Holding Accountable Those Responsible for the Same* authored by Senator Leila M. De Lima.⁶

3. Senate Resolution No. 880 entitled *Resolution Directing the Appropriate Senate Committee to Conduct an Investigation in Aid of Legislation on the Payment Claims Issues between PhilHealth and Private Hospitals with the End in View of Ensuring Uninterrupted Health Care and Social Protection for Filipinos* authored by Senator Risa Hontiveros.⁷

The Senate Blue Ribbon Committee claims it had been undertaking an inquiry in aid of legislation on the following matters:

1. DOH's underutilization of its 2020 budget;
2. Inquiries on the procurement of COVID-19 vaccines by local government units and the private sector.
3. Unspent funds, misstatements, irregularities, and deficiencies of the DOH, as noted in the COA findings; and
4. Payment claims issues between Philippine Health Insurance Corporation and private hospitals.⁸

⁵ Id. at 262-263.

⁶ Id. at 265-271.

⁷ Id. at 273-274.

⁸ Id. at 13.

Questions propounded during the inquiry included but were not limited to:

1. Did key purchases undergo any public bidding?
2. How did the government spend the appropriations made by Congress for healthcare workers?
3. How expensive were government purchases of personal protective equipment (PPE) in relation to alternatives?
4. Did executive officials perform due diligence on prospective suppliers?
5. How did procurement contracts end up with foreign companies instead of Filipino suppliers?⁹

The inquiry had been taking place for several hearings already when President Duterte initially complained of the alleged browbeating of Executive Department officials appearing as resource persons at these hearings.

The President's reaction came to a head when, through Executive Secretary Medialdea, he authorized the issuance of the subject *Memorandum* dated October 4, 2021 prohibiting all officials and employees of the Executive Department from appearing and attending the inquiry, viz.:

The Senate Blue Ribbon Committee hearings on the 2020 Audit Report of the Commission on Audit have been going on for nearly two months now. The Executive has been showing due respect to such Committee, through the faithful attendance and participation of its officials and employees in the aforesaid hearings. However, the point has been reached where the participation of the Executive is already greatly affecting its ability to fulfill its core mandates in the Constitution and laws, most of all[,] the protection of our people's right to health in this time of pandemic.

Moreover, given the manner that the inquiry has been conducted, and clear indications that the hearings are meant to go on indefinitely, it has become evident that the said hearings are conducted not in aid of legislation, but to identify persons to hold accountable for alleged irregularities already punishable under existing laws. In so doing, the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government, and has deprived itself of the only basis to compel attendance to its hearings.

Thus, on the premise that the principle of separation of powers requires mutual respect among the different branches of government, and in view of Article II, Section 15 of the 1987 Constitution on the protection and promotion by the State of the right to health of the people, *the President has DIRECTED all officials and employees of the Executive Department to no longer appear before or attend the abovementioned Senate Blue Ribbon Committee hearings, effective immediately. Instead, they shall focus all their time and effort on the implementation of measures to address the current State of Calamity on account of COVID-19, and in carrying out their other functions.*

⁹ Id. at 58-59.

All officials and employees of the Executive Department are reminded to perform their functions in accordance with the Constitution and laws, and observe utmost responsibility, integrity and efficiency. This Administration shall continue and shall not hesitate to investigate and file charges against corrupt officials and employees in the proper forum.

For strict compliance.

By order of the President:

Sgd.

SALVADOR C. MEDIALDEA¹⁰

As worded, the *Memorandum* bore an instruction “[f]or strict compliance.”

It did not bear though the initial ground of the President for objecting to the appearance and attendance of Executive Department officials at the hearings. Instead, the *Memorandum* complained of their inability to fulfil their duties in relation to the people’s right to health during the pandemic and contested the purpose of the inquiry as being in aid of legislation. The *Memorandum* further asserted that the inquiry has turned into a preliminary investigation of sorts meant to identify the person or persons allegedly liable for irregularities that existing statutes already define and punish –

However, the point has been reached where the participation of the Executive is already greatly affecting its ability to fulfil its core mandates in the Constitution and laws, most of all the violation of our people’s right to health in this time of pandemic.

Moreover, given the manner that the inquiry has been conducted, and clear indications that the hearings are meant to go on indefinitely, it has become evident that the said hearings are conducted not in aid of legislation, but to identify persons to hold accountable for alleged irregularities already punishable under existing laws. In so doing, the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government, and has deprived itself of the only basis to compel attendance to its hearings.¹¹

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The Senate noted that after the issuance of the *Memorandum*, Executive Department officials invited to attend the inquiry had begged off citing the prohibition. This Senate invitation uniformly stated:

¹⁰ Id. at 86.

¹¹ Id.

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In accordance with Rule X, Section 13 (2) of the Senate Rules, please be informed that the Committee on Accountability of Public Officers and Investigations (Blue Ribbon), *motu proprio*...

In this connection, may we request your presence during the [_____ NTH] public hearing thereon (*via* videoconferencing) on [_____ day], [_____] at [_____]. The Committee will be using the CISCO Webex as virtual platform. Please send to blueribbon.hearings@gmail.com the email addresses that Your Honor and your staff will be using for the link.

For your Honors' information and guidance. Thank you.¹²

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Executive officials, including DOH Secretary Francisco T. Duque, III (*DOH Secretary Duque*), who initially graced the hearings, had ceased to attend the subsequent hearings on the inquiry. In his Letter¹³ dated October 5, 2021 addressed to Senator Gordon, Secretary Duque stated:

5 October 2021

HON. RICHARD J. GORDON
Chairperson
Committee on Accountability of
Public Officers and Investigation
Senate of the Philippines
GSIS Building, Financial Center,
Roxas Boulevard, Pasay City

Dear Senator Gordon:

The Department of Health extends our gratitude to the Committee on Accountability of Public Officers and Investigations for your vigilance and resolve to surface the truth, particularly in matters that relate to the use of government funds during the course of our pandemic response.

In as much as we would like to maintain our faithful attendance and participation as we have in the past ten hearings, the DOH family extends our sincere regrets for being unable to send representative officials and employees to attend today's hearing. We have been directed to give way to equally important COVID-19 response activities, as communicated through the Memorandum from the Executive Secretary dated October 4, 2021 on the Attendance in the Senate Blue Ribbon Committee Hearings on the 2020 Commission on Audit Report. The said memorandum is attached for your reference.

We give you our firm assurances that we remain cooperative with the Committee and commit to submit any and all documents that may aid the good Committee over the course of their investigations.

¹² Id. 286.

¹³ Id. at 88.

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Once again, we thank you and we are one with you in your pursuit of truth and integrity in public service.

Thank you very much.

Very truly yours,

Sgd.

FRANCISCO T. DUQUE III, MD, MSc
Secretary of Health¹⁴

DOH Secretary Duque referenced the *Memorandum* as the reason he had to excuse himself.

Viewing the subject *Memorandum* as an obstruction to their constitutional function to conduct inquiries in aid of legislation, the Senate, through Resolution no. 131¹⁵ dated November 9, 2021, resolved to challenge it before the Court, *viz.*:

RESOLUTION AUTHORIZING AND DIRECTING THE FILING OF THE APPROPRIATE PETITION IN THE SUPREME COURT TO ASSERT THE POWER OF THE SENATE IN INQUIRES IN AID OF LEGISLATION AS PROVIDED UNDER ARTICLE VI, SECTION 21 OF THE CONSTITUTION

Whereas, Article VI, Section 21 of the Constitution provides, in part, '[T]he Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure';

Whereas, on October 4, 2021, the Executive Secretary issued a memorandum directing all officials and employees of the Executive Department to 'stop attending the Senate Blue Ribbon Committee hearings on the 2020 Commission on Audit Report effective immediately';

Whereas, it is the inherent right and solemn duty of the Senate to preserve, uphold and protect its and its committees' constitutional mandate to conduct inquiries in aid of legislation, including the power to issue compulsory processes, and to accordingly seek judicial relief and affirmation of its rights and prerogatives under the Constitution if and when challenged or interfered with by any branch, department agency, or instrumentality of the government or by any individual: Now, therefore be it.

Resolved by the Senate of the Philippines, To authorize and direct, as it hereby authorizes and directs the filing of the appropriate petition in

¹⁴ Id.

¹⁵ Id. at 296.

the Supreme Court to assert the power of the Senate in inquires in aid of legislation.¹⁶

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Invoking *Senate of the Philippines Executive v. Executive Secretary Ermita* (Senate v. Ermita)¹⁷ and related case law, the petition seeks to declare the *Memorandum* as unconstitutional and further to –

(i) require the invited Executive Department officials to attend the hearings of the Senate Blue Ribbon Committee and its other committees;

(ii) restrain the enforcement of the *Memorandum* and all other issuances that would prevent invited Executive Department officials from attending hearings of the various committees of the Senate;

(iii) restrain the Executive Department from issuing directives preventing invited Executive Department officials from attending hearings of the various committees of the Senate;

(iv) restrain the Executive Department from issuing directives to law enforcement agencies to obstruct Senate proceedings or withhold assistance in the enforcement of the Senate's compulsory processes; and

(v) restrain Executive Department officials, especially the Secretary of Health, from complying with the *Memorandum*.

The petition does not mention that the Senate or any of its Committee had ruled on the jurisdictional challenge raised in the *Memorandum*. We therefore infer that this jurisdictional challenge has prudently remained unresolved.

Finally, petitioner repleads the aforesaid allegations in support of their application for a writ of preliminary injunction.

In their Comment,¹⁸ respondents Executive Secretary Medialdea and DOH Secretary Duque, through the Office of the Solicitor General (*OSG*), pray that the petition be immediately dismissed. They essentially argue:

¹⁶ *Id*

¹⁷ 522 Phil. 1 (2006).

¹⁸ *Rollo*, pp. 322-541.

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One. Petitioner failed to prove the existence of an actual case or controversy. It mischaracterized the subject hearings as inquiries in aid of legislation. In reality, petitioner conducted the subject hearings in the exercise of its oversight functions (that is, *to confront and exact accountability*, to use the words of *Senate v. Ermita itself* when it distinguished the *power to inquire in aid of legislation* under Section 21¹⁹ of Article VI of the 1987 Constitution and the *power to inquire in aid of confrontation to seek accountability of the officers of the Executive Branch* under Section 22 of Article VI of the Constitution). For the focal point of the inquiries was not the 2020 COA Report but the alleged anomalies in the measures undertaken for the Covid-19 pandemic response, specifically:

- a. To identify persons whom the Committee finds as accountable and responsible in the alleged anomalies pertaining to the procurement of PPEs, face masks, and face shields during the pandemic; and
- b. To find out whether the laws in relation to the benefits of the healthcare workers were executed accordingly.

Jurisdiction over the above matters properly pertained to the Joint Congressional Oversight Committee created under the *Bayanihan Acts*²⁰ and vested with the power to investigate the use of funds in the implementation of the said laws. Special law by nature - the *Bayanihan Acts* superseded the Senate Rules and divested the Senate Blue Ribbon Committee of its oversight functions, relative to their implementation and allotted funds.

As the hearings were conducted in the exercise of an oversight function under Section 22, Article VI of the 1987 Constitution, the presence of the Executive Officials may not be compelled without the consent of the President. Besides, the Senate does not stand to be directly injured by the issuance of the *Memorandum* considering that in the first place, it lacked jurisdiction to conduct the hearings in question.

¹⁹ Sec. 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

²⁰ REPUBLIC ACT NO. 11469, entitled: "AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECLARED NATIONAL POLICY AND FOR OTHER PURPOSES" otherwise known as "Bayanihan to Heal as One Act," Approved on March 24, 2020; REPUBLIC ACT NO. 11494, otherwise known as "Bayanihan to Recover as One Act, Republic Act No. 11494, Approved on September 11, 2020.

Respondents next posit that the petition is moot. For one, bills²¹ had already been filed seeking to address non-payment of or low allowances for health workers. For another, the Senate not only reached a conclusion but in fact, a Committee Report had already been prepared with specific recommendations on the crimes allegedly committed and the persons probably liable therefor. The adoption of the Committee Report, though denominated as a partial report - terminated the legislative inquiry.

Two. Apart from conducting the hearings without jurisdiction, the Senate even violated not only its own rules but also the rights of the Executive Officials attending the hearings. The Senate transgressed its own Rules when:

1. The Notice of Public Hearings sent to the DOH did not specify until what time each hearing date would end – leaving the DOH Officials at the mercy of the Senate;
2. The conduct of the hearings was unparliamentary; and
3. The Senate did not provide the DOH Officials a copy of the questions in advance.

Meanwhile, the Senate Blue Ribbon Committee, particularly its Chairperson, Senator Gordon allegedly acted in an offensive or unparliamentary manner and degraded the dignity of the resource persons. The Executive Officials who graced the invitations to the hearings were subjected to humiliation, bullying, and belittlement. Worse, the witnesses were not apprised of the possibility of being charged with violations of the *Bayanihan* Acts.

If anomalies were indeed existent, the Senate should leave the same to the prosecutorial bodies of the government and the courts for a proper determination of whether the persons allegedly involved are guilty.

Three. The President issued the *Memorandum* pursuant to his power of control and the emergency powers granted him under the *Bayanihan* Acts. It is an affirmation of the commitment of the Executive Department to fulfill its

²¹ Senate Bill No. 2371, introduced by Senators Richard J. Gordon, Sonny Angara, Imee R. Marcos, Maria Lourdes Nancy S. Binay, Risa Hontiveros, Joel Villanueva, and Juan Miguel F. Zubiri, entitled "AN ACT GRANTING CONTINUING COVID-19 BENEFITS TO PUBLIC AND PRIVATE HEALTH WORKERS DURING THE PERIOD OF THE COVID-19 PANDEMIC, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES;" Senate Bill No. 2398 introduced by Senator Christopher Lawrence T. Go, entitled "AN ACT PROVIDING FOR ALLOWANCES AND BENEFITS FOR HEALTHCARE WORKERS DURING THE COVID-19 PANDEMIC, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES;" Senate Bill No. 2406 introduced by Senator Ronald "Bato" Dela Rosa, entitled "AN ACT PROVIDING FOR ALLOWANCES AND BENEFITS FOR HEALTH WORKERS DURING THE PERIOD OF THE COVID-19 PANDEMIC, APPROPRIATING FUNDS THEREFOR".

Constitutional duties, and consequently, address the adverse impacts of the Covid-19 pandemic. It is within the discretion of the Executive Department to prioritize pandemic response following its full participation in the subject hearings. The *Memorandum* merely keeps the separation of powers in place as it reminds the Executive Officials of their primary duty to attend to their responsibilities *vis-a-vis* the government's Covid-19 response. On this score, the Senate failed to show that the issuance of the *Memorandum* was tainted with grave abuse of discretion.

Four. The petition should have been filed with the Regional Trial Court of Manila considering that *first*, Executive Secretary Medialdea and DOH Secretary Duque hold their respective offices within its territorial jurisdiction; and *second*, in deference to the hierarchy of courts.

Five. The discretion of the President on how to combat the Covid-19 pandemic and implement the *Bayanihan* Acts is a political question. As such, the wisdom of this exercise cannot be questioned by the Senate nor by this Court.

Six. The *Memorandum* does not violate the constitutional right of the people to information. For there is no showing that respondents withheld or attempted to withhold any piece of information from the public. On the contrary, pertinent data on the government's Covid-19 response are readily available at the Official Gazette Website.

Lastly, courts are enjoined from issuing a writ of injunction or temporary restraining order on the ground alone that the law, ordinance, administrative regulation, circular, or memorandum is claimed to be invalid, otherwise, there would be a premature disposition of the main case. The right to be free from obstruction only attaches to the power of the Senate to conduct inquiries in aid of legislation. Since jurisdiction over the subject hearings properly pertains to the Joint Congressional Oversight Committee, the Senate cannot invoke a right in *esse* to compel the attendance of the DOH officials during the hearings in question, let alone, claim an irreparable injury arising from the assailed *Memorandum* of the President.

The Threshold Issue

Is direct resort to the Supreme Court *via* a Petition for *Certiorari* and Prohibition the proper remedy to compel the attendance of officials of the Executive Department following the President's jurisdictional challenge to the legislative inquiry?

Our Ruling

Under Section 1, Rule 65²² of the Rules of Court, a petition for *certiorari* is an extraordinary remedy that is available only upon showing that a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.²³

The writ of *certiorari* is not issued to correct every error that may have been committed by lower courts and tribunals. It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction.²⁴

For *certiorari* to prosper, the following requisites must concur:

1. The writ is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions;
2. Such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and
3. There is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.²⁵

We focus on the third requisite.

The Blue Ribbon Committee of the Senate is required by its own Rules of Procedure Governing Inquiries in Aid of Legislation to first resolve the jurisdictional challenge before proceeding with its legislative inquiry.

²² Rules of Court, Rule 65, *Certiorari*, Prohibition and Mandamus.

Sec. 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46(1a).

²³ See *Tolentino v. Senate Electoral Tribunal*, G.R. No. 248005, May 11, 2021.

²⁴ *Id.*

²⁵ *Aquino v. Municipality of Malay, Aklan*, 744 Phil. 497, 510-511 (2014).

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It is basic that Rule 65 may be availed of only when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Thus, where this remedy actually exists but the same is peremptorily omitted, a Rule 65 petition will not prosper.

We look back on the events leading to the filing of the petition. In its 2020 Annual Audit Report, the COA noted a deficiency of ₱67,323,186,570.57 in public funds intended for the government's Covid-19 response which spurred the Senate hearings.

The hearings initially went smoothly. Invited officials from the Executive Department attended these initial hearings. It was not until the subject *Memorandum* got issued on October 4, 2021 that these officials stopped attending the subsequent hearings, *viz.*:

The Senate Blue Ribbon Committee hearings on the 2020 Audit Report of the Commission on Audit have been going on for nearly two months now. The Executive has been showing due respect to such Committee, through the faithful attendance and participation of its officials and employees in the aforesaid hearings. However, the point has been reached where the participation of the Executive is already greatly affecting its ability to fulfill its core mandates in the Constitution and laws, most of all[,] the protection of our people's right to health in this time of pandemic.

Moreover, given the manner that the inquiry has been conducted, and clear indications that the hearings are meant to go on indefinitely, it has become evident that the *said hearings are conducted not in aid of legislation, but to identify persons to hold accountable for alleged irregularities already punishable under existing laws.* In so doing, the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government, and has deprived itself of the only basis to compel attendance to its hearings.

Thus, on the premise that the principle of separation of powers requires mutual respect among the different branches of government, and in view of Article II, Section 15 of the 1987 Constitution on the protection and promotion by the State of the right to health of the people, *the President has DIRECTED all officials and employees of the Executive Department to no longer appear before or attend the abovementioned Senate Blue Ribbon Committee hearings, effective immediately. Instead, they shall focus all their time and effort on the implementation of measures to address the current State of Calamity on account of COVID-19, and in carrying out their other functions.*

All officials and employees of the Executive Department are reminded to perform their functions in accordance with the Constitution and laws, and observe utmost responsibility, integrity[,] and efficiency. This Administration shall continue and shall not hesitate to investigate and file charges against corrupt officials and employees in the proper forum.

For strict compliance. (Emphases supplied)

By order of the President:

Sgd
SALVADOR C. MEDIALDEA²⁶

For the Senate, the *Memorandum* was an affront to its Constitutional duty to conduct inquiries in aid of legislation.

We expound.

The power of Congress to conduct inquiries in aid of legislation is inherent in its power to legislate.²⁷ It is broad-based as it was on the proposition that a **legislative body cannot legislate wisely or effectively** in the absence of information respecting the conditions which the legislation is intended to affect or change.²⁸ Section 21, Article VI of the 1987 Constitution empowers the Congress to conduct inquiries in aid of legislation, thus:

SECTION 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

Specifically, Section 1 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation states:

SECTION 1. *Power to Conduct Formal Inquiries or Investigations.*
The Senate or any of its Committees may conduct formal inquiries or investigations in aid of legislation in accordance with these Rules.

Such inquiries may refer to the implementation or re-examination of any law or appropriation, or in connection with any proposed legislation or the formulation of, or in connection with future legislation, or will aid in the review or formulation of a new legislative policy or enactment. They may also extend to any and all matters vested by the Constitution in Congress and/or in the Senate alone.

Inquiries in aid of legislation serve as tools to enable the legislative body to gather information and, thus, **legislate wisely and effectively**; and to determine whether there is a **need to improve existing laws or enact new or remedial legislation**, albeit the inquiry need not result in any potential

²⁶ *Rollo*, p. 86.

²⁷ *Supra* note 17 at 33–34.

²⁸ *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 572 Phil. 554, 643 (2008).

legislation.²⁹ To be within the jurisdiction of the legislative body making it, the inquiry must be **material or necessary to the exercise of a power vested in it by the Constitution**, such as **to legislate or to expel** a member.³⁰

Respondents, on the other hand, argue that the Senate Blue Ribbon Committee did not have jurisdiction to conduct the hearings in question. The focal point of the inquiries, according to them, was not the 2020 COA Report but the alleged anomalies in the measures undertaken for the Covid-19 pandemic response – matters which fall within the jurisdiction of the Joint Congressional Oversight Committee created under the *Bayanihan* Acts.

Section 5 of RA 11469 or the *Bayanihan to Heal as One Act* indeed created an oversight committee composed of four (4) members of each house to be appointed by the Senate President and the House Speaker, respectively. Said Committee was tasked to determine whether the acts, orders, rules, and regulations of the President were within the restrictions provided in the law.

SECTION 5. Reports to Congress and Creation of an Oversight Committee. — The President, during Monday of every week, shall submit a weekly report to Congress of all acts performed pursuant to this Act during the immediately preceding week. The report shall likewise include the amount and corresponding utilization of the funds used, augmented, reprogrammed, reallocated and realigned pursuant to this Act.

For this purpose, the Congress shall establish a Joint Congressional Oversight Committee composed of four (4) members of each house to be appointed by the Senate President and the House Speaker, respectively. This Committee shall determine whether such acts, orders, rules and regulations are within the restrictions provided herein.

The oversight committee was retained in RA 11494 or the *Bayanihan to Recover as One Act*, viz.:

SECTION 14. Reportorial Requirement and Creation of an Oversight Committee. — The President, every first Monday of the month, shall submit a monthly report to Congress and to the Commission on Audit (COA) of all acts performed pursuant to this Act during the immediately preceding month including a report on the targets and actual accomplishments of government programs, strategies, plans, and efforts relative to the COVID-19 pandemic as well as relevant and more granulated health-related data, and such other information which Congress and COA may require. The terms and conditions of any loan entered into by the government to finance the programs and projects to implement this law shall likewise be included in the Report. The Report shall also contain detailed BESF tables for COVID-19, similar to the BESF tables submitted to Congress by the Development Budget Coordination Committee.

²⁹ *Romero II v. Senator Estrada*, 602 Phil. 312, 321 (2009).

³⁰ *Bengzon Jr. v. Senate Blue Ribbon Committee*, 280 Phil. 829, 841-842 (1991).

For this purpose, the Congress shall establish a Joint Congressional Oversight Committee composed of four (4) members of each House to be appointed by the Senate President and the House Speaker, respectively. This Committee shall determine whether such acts, orders, rules and regulations are within the restrictions provided herein.

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Respondents assert that the hearings in question were conducted in the exercise of the Senate's oversight function under Section 22, Article VI of the 1987 Constitution, *viz.*:

SECTION 22. The heads of departments may upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

Verily, the *Memorandum* is founded on a jurisdictional challenge – whether the subject inquiry of the Senate Blue Ribbon Committee properly falls within its jurisdiction or the within the jurisdiction of the Joint Congressional Oversight Committee created under the *Bayanihan* Acts.

In asserting that the subject inquiry falls within the jurisdiction of the Joint Congressional Oversight Committee created under the *Bayanihan* Acts, may the President object to the inquiry as not being in aid of legislation? *Senate v. Ermita*³¹ has ruled in the affirmative:

As discussed in *Arnault*, the power of inquiry, “with process to enforce it,” is grounded on the **necessity of information in the legislative process**. If the information possessed by executive officials on the operation of their offices is **necessary for wise legislation** on that subject, by parity of reasoning, Congress has the right to that information and the power to compel the disclosure thereof.

As evidenced by the American experience during the so-called “McCarthy era,” however, the right of Congress **to conduct inquiries in aid of legislation** is, in theory, no less susceptible to abuse than executive or judicial power. It may thus be subjected to judicial review pursuant to the Court's *certiorari* powers under Section 1, Article VIII of the Constitution.

³¹ *Supra* note 17.

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For one, as noted in *Bengzon v. Senate Blue Ribbon Committee*, **the inquiry itself might not properly be in aid of legislation, and thus beyond the constitutional power of Congress. Such inquiry could not usurp judicial functions. Parenthetically, one possible way for Congress to avoid such a result as occurred in *Bengzon* is to indicate in its invitations to the public officials concerned, or to any person for that matter, the possible needed statute which prompted the need for the inquiry.** Given such statement in its invitations, along with the usual indication of the subject of inquiry and the questions relative to and in furtherance thereof, there would be **less room for speculation on the part of the person invited on whether the inquiry is in aid of legislation.**

Section 21, Article VI likewise establishes crucial safeguards that proscribe the legislative power of inquiry. The provision requires that the inquiry be done in accordance with the Senate or House's duly published rules of procedure, necessarily implying the constitutional infirmity of an inquiry conducted without duly published rules of procedure. Section 21 also mandates that **the rights of persons appearing in or affected by such inquiries be respected**, an imposition that obligates Congress to adhere to the guarantees in the Bill of Rights.

These abuses are, of course, remediable before the courts, upon the proper suit filed by the persons affected, even if they belong to the executive branch. Nonetheless, there may be exceptional circumstances, none appearing to obtain at present, wherein a clear pattern of abuse of the legislative power of inquiry might be established, resulting in palpable violations of the rights guaranteed to members of the executive department under the Bill of Rights. In such instances, depending on the particulars of each case, attempts by the Executive Branch to forestall these abuses may be accorded judicial sanction.³² (Emphasis supplied)

x x x x

Notably, the **forum** to address such jurisdictional claim is the Senate and its committees themselves. This recognition is meant to accord the highest respect for the Senate's own *Rules of Procedure Governing Inquiries in Aid of Legislation*, viz.:

SECTION. 3. *Jurisdictional Challenge.* If the jurisdiction of the Committee is challenged on any ground, the said issue must first be resolved by the Committee before proceeding with the inquiry.

If the Committee, by a majority vote of its members present there being a quorum, decides that its inquiry is pertinent or relevant to the implementation or re-examination of any law or appropriation or in connection with any pending or proposed legislation or will aid in the review or formulation of a new legislative policy or enactment, or extends to any and all matters vested by the Constitution in Congress and/or in the Senate alone, it shall overrule such objection and proceed with the investigation.

³² Id. at 35-36.

Only one challenge on the same ground shall be permitted.

The filing or pendency of any prosecution of criminal or administrative action shall not stop or abate any inquiry to carry out a legislative purpose.

Undeniably, therefore, the Blue Ribbon Committee of the Senate has a remedy within its office to resolve the jurisdictional challenge raised by the President.

To be sure, the Court cannot exercise the power on behalf of the Blue Ribbon Committee of the Senate lest the sacred principle of separation of powers where mutual respect by and between the three departments of the government be unduly violated.³³

We consequently defer to the remedy found within the Senate's own lofty jurisdiction. The availability of this remedy under Section 3 of the *Senate Rules of Procedure Governing Inquiries in Aid of Legislation* effectively proscribes a premature resort to the present special civil action for *certiorari*.

In the same breadth, we cannot rule that there exists an actual case or controversy that is ripe for judicial adjudication. There is no immediate or threatened injury to the power of the Senate because it has yet to exercise the same. Hence, we still cannot tell whether this power, despite its proper exercise, has been disobeyed by the President as a result of his *Memorandum*.

Unless and until the Senate has resolved with finality the jurisdictional challenge of the President, there can be no actual case or controversy to speak of yet.

In sum, the resolution of the petition does not hinge ultimately on the constitutionality or unconstitutionality of the *Memorandum*. The Constitutional challenge may be resolved on some other ground – here, by referencing the aforementioned power of the Senate under its own *Rules of Procedure Governing Inquiries in Aid of Legislation*.

The petition is easily differentiated from *Senate v. Ermita*. The present case presents a direct jurisdictional challenge to the subject inquiry and its characterization. The President asserts – the inquiry falls within the jurisdiction of the Joint Congressional Oversight Committee created under the *Bayanihan* Acts, hence, beyond the power of legislative inquiry of the Senate and its Committees. The Senate **has yet to resolve** this claim and the arising

³³ See *Celendro v. Court of Appeals*, 369 Phil. 1102, 1112 (1999).

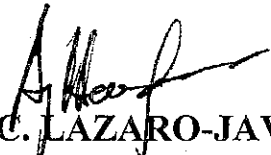
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challenge in the manner set forth in the *Rules of Procedure Governing Inquiries in Aid of Legislation*. On the other hand, *Ermita* involved a challenge on the ground of executive privilege and a blanket prohibition that did not reject any subject inquiry as one in aid of legislation.

All told, the Court is constrained to dismiss the petition for having been prematurely filed. The Court deems it no longer necessary to resolve the other issues raised by the parties.

ACCORDINGLY, the petition is **DISMISSED**, and the application for preliminary injunction, **DENIED**.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

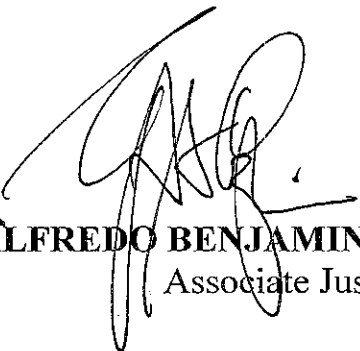
WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice

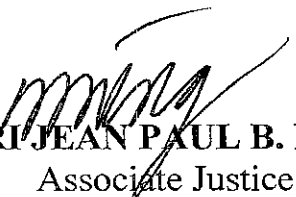
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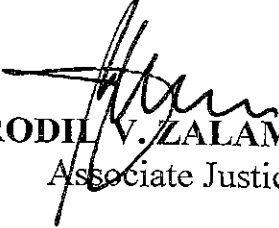
*See Dissenting
Opinion*


MARVIC M.V.F. LEONEN
Senior Associate Justice

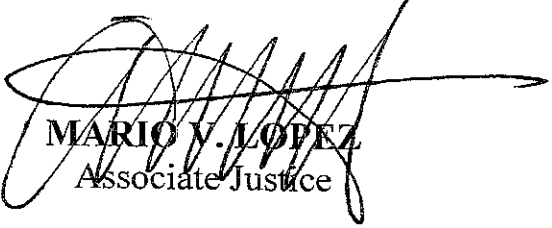

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



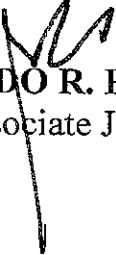
RODIL V. ZALAMEDA
Associate Justice




MARIO V. LOPEZ
Associate Justice



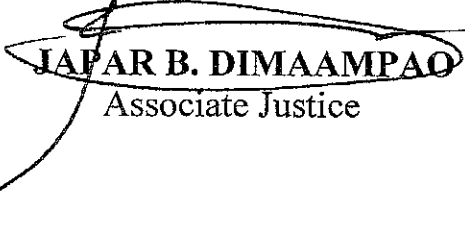
SAMUEL H. GAERLAN
Associate Justice



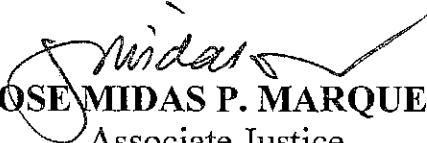
RICARDO R. ROSARIO
Associate Justice



JHOSEP V. LOPEZ
Associate Justice



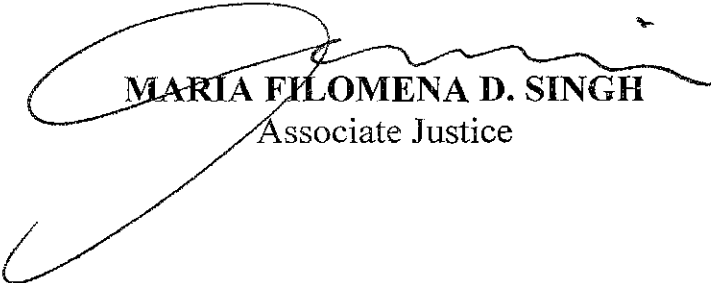
JAPAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

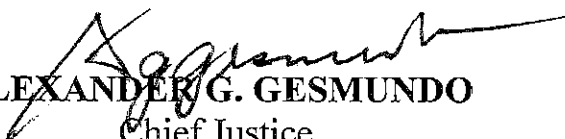


MARIA FILOMENA D. SINGH
Associate Justice



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ALEXANDER G. GESMUNDO
Chief Justice

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