



Republic of the Philippines  
Supreme Court  
Baguio City

EN BANC

MATTHEW WESTFALL,

*Petitioner,*

G.R. No. 250763

Present:

- versus -

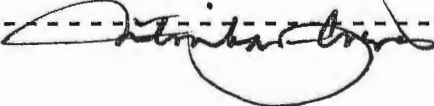
MARIA CARMELA D. LOCSIN,  
AMY LEUNG, NORIKO OGAWA,  
GIL-HONG KIM, DIWESH  
SHARAN, RAMESH  
SUBRAMANIAM, KEN L. CHEE,  
BIBIANA VICTORIA G.  
FRANCISCO, TAKEHIKO  
NAKAO, TOSHIO OYA, MAKOTO  
KUBOTA, CHRISTOPHER  
STEPHENS, RAMIT K. NAGPAL,  
AND DEBORAH STOKES,

*Respondents.*

GESMUNDO, C.J.,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,  
ROSARIO,\*  
LOPEZ, J.  
DIMAAMPAO,  
MARQUEZ,  
KHO, JR., and  
SINGH, JJ.

**Promulgated:**

April 16, 2024

X----------X

DECISION

ZALAMEDA, J.:

\* No part. Prior participation in CA Decision (CA GR SP No. 154420).

Functional immunity does not extend to all acts and utterances made by officials and personnel of the Asian Development Bank. The protection is limited, applying only to acts performed in an official capacity. Where the act is *ultra vires*, such as a crime or an act contrary to law, immunity does not apply. Courts have the power and duty to inquire into the factual basis of the invoked protection.

This resolves the Motion for Partial Reconsideration *Ad Cautelam* with Motion to Refer the Case to the Court *En Banc* and Set the Case for Oral Arguments (Motions)<sup>1</sup> filed by respondents Maria Carmela D. Locsin, Amy Leung, Noriko Ogawa, Gil-Hong Kim, Diwesh Sharan, Ramesh Subramaniam, Ken L. Chee, Bibiana Victoria G. Francisco, Takehiko Nakao, Toshio Oya, Makoto Kubota, Christopher Stephens, Ramit K. Nagpal, and Deborah Stokes (collectively, respondents).

The Motions seek reconsideration of the Court's Resolution<sup>2</sup> dated April 27, 2022 insofar as it partly granted the Petition for Review on *Certiorari* (Petition) of Matthew Westfall (Westfall), reinstated his complaint for damages, and remanded the case to the trial court to determine if respondents Maria Carmela D. Locsin, Amy Leung, Noriko Ogawa, Gil-Hong Kim, Diwesh Sharan, Ramesh Subramaniam, Ken L. Chee, and Bibiana Victoria G. Francisco (Locsin et al.) were acting in their official capacities. Locsin et al. further pray that the case be referred to the Court *En Banc* and be set for oral arguments.<sup>3</sup> The dispositive portion of the assailed Resolution reads:

**WHEREFORE**, the Petition is **PARTLY GRANTED**. The Decision dated 22 April 2019 and Resolution dated 26 November 2019 of the Court of Appeals in CA-G.R. SP No. 154420 are **MODIFIED**. Petitioner Matthew Westfall's Complaint is **REINSTATED** and the trial court is **DIRECTED** to hear Civil Case No. R-MKT-17-01365-CV and determine if respondents Maria Carmela D. Locsin, Amy Leung, Noriko Ogawa, Gil-Hong Kim, Diwesh Sharan, Ramesh Subramaniam, Ken L. Chee, and Bibiana Victoria G. Francisco were acting in their official capacities and accordingly, decide if diplomatic immunity will apply.

The dismissal of the Complaint with respect to respondents Takehiko Nakao, Toshio Oya, Makoto Kubota, Christopher Stephens, Ramit Nagpal and Deborah Stokes for failure to state cause of action is **AFFIRMED**.

**SO ORDERED**<sup>4</sup>

<sup>1</sup> *Rollo*, pp. 1179–1224.

<sup>2</sup> *Id.* at 1101–1121.

<sup>3</sup> *Id.* at 1120.

<sup>4</sup> *Id.* at 1121.

### Antecedents

The Petition stemmed from a Complaint<sup>5</sup> for damages filed by Westfall against Locsin et al. for abuse of right and statements allegedly defamatory and damaging to Westfall's professional reputation. Westfall specifically referred to statements in the VP Panel Notes<sup>6</sup> and Interview Report<sup>7</sup> describing his knowledge, experience, and capabilities. These documents were prepared by the Screening Committee (SC) for the position of Technical Advisor (Urban and Water) in the Asian Development Bank (ADB). Respondents Locsin et al. were members of the SC. Westfall, a former staff of the ADB, applied for the position but was not selected.

Aggrieved, Westfall resorted to ADB's internal grievance process on the ground that the selection process violated ADB's administrative procedures. He pointed to two documents from ADB that contained allegedly defamatory statements:

1. The first document was a redacted copy of the VP Panel Notes<sup>8</sup> dated February 16, 2015 prepared by the SC. The document stated that "Mr. Westfall has been away from the urban sector work for quite some time and he has not kept his knowledge current."<sup>9</sup> Westfall considered this as "highly disparaging, grossly inaccurate and factually incorrect."<sup>10</sup> According to Westfall, the Notes included "highly defamatory language that maliciously maligned [Westfall's] reputation, imputed upon him alleged defects in his credentials and discredited his person and professional background."<sup>11</sup>
2. The second document was the Interview Report,<sup>12</sup> likewise prepared by the SC, containing notes on Westfall's interview. He claimed that the Interview Report contained unfounded, deeply malicious, and false statements, as the statements failed to accurately reflect his strong performance evaluations and years of professional contributions to ADB.<sup>13</sup>

Petitioner also filed a criminal complaint for libel against the SC

<sup>5</sup> *Id.* at 133-149.

<sup>6</sup> *Id.* at 192-195.

<sup>7</sup> *Id.* at 201.

<sup>8</sup> *Id.* at 192-195.

<sup>9</sup> *Id.* at 14.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Id.* at 201.

<sup>13</sup> *Id.*

In their defense, Locsin et al. averred that, as ADB officers and employees, they are immune from all legal processes of any kind with respect to acts performed in their official capacities.<sup>14</sup> They further claimed that the complaint failed to state a cause of action with respect to respondents Takehiko Nakao, Toshio Oya, Makoto Kubota, Christopher Stephens, Ramit K. Nagpal, and Deborah Stokes (Nakao et al.).

Westfall countered that diplomatic immunity does not extend to respondents' allegedly abusive and criminal acts.<sup>15</sup> Also, both the complaint and annexes must be considered in resolving a motion to dismiss based on failure to state a cause of action.<sup>16</sup>

Sustaining Locsin et al.'s defenses of functional immunity and failure to state a cause of action, Branch 138, Regional Trial Court (RTC) of Makati City dismissed the complaint.<sup>17</sup> The RTC held that Locsin et al. have immunities with respect to acts performed in their official capacities. It then concluded that they "acted in the performance of their official duties for the nature of their work necessitated a discussion and recording of the candidate's merits and demerits."<sup>18</sup> The RTC further ruled that the complaint failed to state a cause of action with respect to respondents Nakao, et al.<sup>19</sup>

Westfall moved for reconsideration, but the RTC denied his motion.<sup>20</sup> On *certiorari* with the Court of Appeals (CA), the CA denied the petition for lack of merit.<sup>21</sup> It ruled that whether Locsin et al. acted in their official capacity is a question of fact, and, therefore, outside the purview of a Rule 65 petition.<sup>22</sup> However, even if the CA were to review the question of fact, it is convinced that there is sufficient evidence that Locsin et al., as members of the SC, were acting in their official capacity and within the scope of their authority.<sup>23</sup> The CA also affirmed the RTC's finding that the complaint failed to state a cause of action against Nakao et al.<sup>24</sup>

Hence, the Petition filed with this Court.

In the assailed Resolution dated April 27, 2022,<sup>25</sup> the Court reinstated

<sup>14</sup> *Id.* at 205–209.

<sup>15</sup> *Id.* at 237–246.

<sup>16</sup> *Id.* at 246–252.

<sup>17</sup> *Id.* at 125–130. The August 17, 2017 Order in Civil Case No. R-MKT-17-01365-CV was penned by Presiding Judge Josefina A. Subia of Branch 138, Regional Trial Court, Makati City.

<sup>18</sup> *Id.* at 129.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 131–132.

<sup>21</sup> *Id.* at 65–83. The April 22, 2019 Decision in CA-G.R. SP No. 154420 was penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Ricardo R. Rosario (now a Member of this Court) and Nina G. Antonio-Valenzuela of the Eleventh Division, Court of Appeals, Manila.

<sup>22</sup> *Id.* at 77.

<sup>23</sup> *Id.* at 80–83.

<sup>24</sup> *Id.* at 72–74.

<sup>25</sup> *Id.* at 1101–1121.

Westfall's complaint but dismissed it as against Nakao et al. for failure to state a cause of action. The Court held that the immunity enjoyed by ADB officials extends only to acts done in their official capacity. Thus, before applying immunity, courts must first conduct a factual inquiry to determine if an act was done in the performance of official duties.<sup>26</sup> Since the CA and the RTC simply applied diplomatic immunity without a thorough consideration of the facts on record, the Court remanded the case for further proceedings to determine if the alleged acts are covered by immunity.<sup>27</sup> Nonetheless, the Court affirmed the dismissal of the complaint as against Nakao et al. for failure to state a cause of action.<sup>28</sup>

### Issues

Summarizing the arguments raised in the Motions, the issues for the Court's resolution are as follows:

1. Whether the case should be referred to the Court *En Banc* and set for oral arguments;
2. Whether the Court erred in remanding the case to the RTC for further proceedings; and
3. Whether the Court committed a reversible error in failing to consider that the acts subject of the complaint were performed by Locsin, et al. in their official capacities and were not abusive and defamatory.

Specifically, in their motions, Locsin et al. pray that this case be referred to the Court *En Banc* as it involves novel questions of law, doctrines that may be modified or reversed, and a significant impact on businesses and local communities.<sup>29</sup> They also pray that the case be set for oral arguments to give Locsin et al. an opportunity to articulate their arguments in open court.<sup>30</sup>

Moreover, Locsin et al. claim that the Court erred in remanding the case to the RTC despite the absence of a question of fact. They aver that the difference in the versions of events advanced by them and Westfall is legal in nature.<sup>31</sup> The Court may validly rule on this question of law without

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<sup>26</sup> *Id.* at 1111.

<sup>27</sup> *Id.* at 1115.

<sup>28</sup> *Id.* at 1120.

<sup>29</sup> *Id.* at 1212-1218.

<sup>30</sup> *Id.* at 1219.

<sup>31</sup> *Id.* at 1184-1188.

remanding the case to the RTC.<sup>32</sup> Locsin et al. further argue that remanding the case to the RTC for further proceedings would render ADB officials' functional immunity nugatory.<sup>33</sup> The Court erred in failing to consider that the subject acts were performed by Locsin et al. in their official capacities and were not abusive and defamatory.<sup>34</sup>

Meanwhile, in his Opposition [Re: [Westfall's] Motion for Partial Reconsideration *Ad Cautelam* with Motion to Refer the Case to the Court *En Banc* and Set the Case for Oral Arguments] (Opposition),<sup>35</sup> Westfall asserts that Locsin et al. merely repeated the arguments in their Comment, which have already been passed upon by the Court.<sup>36</sup> Nonetheless, Westfall maintains that there exists contradictory factual allegations, which warrant a remand of the case to the RTC.<sup>37</sup> Particularly, whether the acts complained of are covered by the functional immunity of Locsin et al. is a question of fact.<sup>38</sup> Likewise, Westfall insists that the remand of the case does not render nugatory the functional immunity of ADB officials, nor does it open the door for interference in the conduct of ADB's internal affairs and other international organizations similarly situated.<sup>39</sup>

Further, Westfall submits that the assailed acts were not performed by Locsin et al. in their official capacity and were abusive and defamatory.<sup>40</sup> The determination of whether their acts were made pursuant to their official functions can only be made after a full trial on the merits.<sup>41</sup> Lastly, Westfall avers that there is no basis to refer the matter to the Court *En Banc* or to set the case for oral arguments.<sup>42</sup>

Verily, Our ruling on the complaint's failure to state a cause of action against Nakao et al. was no longer assailed by Westfall. Thus, this portion of the assailed Resolution is deemed final.

### Ruling of the Court

After a thorough review and consideration of the arguments raised in the Motions, coupled with a second look at the documents and admissions on record, the Court resolves to partly grant the Motions insofar as they pray

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<sup>32</sup> *Id.* at 1192.

<sup>33</sup> *Id.* at 1193.

<sup>34</sup> *Id.* at 1198.

<sup>35</sup> *Id.*, unpaginated.

<sup>36</sup> *Id.*, unpaginated.

<sup>37</sup> *Id.*, unpaginated.

<sup>38</sup> *Id.*, unpaginated.

<sup>39</sup> *Id.*, unpaginated.

<sup>40</sup> *Id.*, unpaginated.

<sup>41</sup> *Id.*, unpaginated.

<sup>42</sup> *Id.*, unpaginated.

for the referral of the case to the Court *En Banc* and the reversal of the assailed April 27, 2022 Resolution.

As a preliminary matter, We emphasize that the Court *En Banc* is not an appellate court to which decisions or resolutions of the divisions may be appealed.<sup>43</sup> Nonetheless, under exceptional circumstances, a case may be elevated to the *En Banc*, such as when a case raises novel questions of law or is of sufficient importance.<sup>44</sup>

We find these considerations present here. There is a dearth of jurisprudence on the nature and scope of immunities enjoyed by international organizations and their personnel. Moreover, the distinction among state, diplomatic, organizational, and functional immunities has not been clearly articulated in previous cases, thus lending confusion on the permissible actions that courts may take when immunity is invoked.

Nonetheless, the motion to set the case for oral arguments is denied for lack of merit. As will be shown, the records are sufficient to finally resolve the issue presented in the case at bar. Thus, We find no need to conduct oral arguments.

*Officials and personnel of international organizations generally enjoy functional immunity. However, they may invoke immunities accorded to diplomatic agents if there is a treaty covenant or binding agreement to such effect*

Going to the main issue, Locsin et al. urge the Court to rule on the merits, arguing that there is no question of fact.<sup>45</sup> Meanwhile, Westfall submits that the existence of contradicting versions as regards the selection process, and ultimately, the need to determine whether the acts complained of are covered by functional immunity, mean that there are questions of fact that need to be threshed out.<sup>46</sup>

We agree with Westfall. Whether an act was made in an official capacity, and thus covered by functional immunity, is a question of fact.

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<sup>43</sup> Supreme Court Circular No. 2-89.

<sup>44</sup> Internal Rules of the Supreme Court, Rule 2, sec. 3.

<sup>45</sup> *Rollo*, p. 1183.

<sup>46</sup> *Id.*, unpaginated.

To finally delineate the extent of factual review in a suit involving functional immunity, We deem it proper to reiterate and further expound on the different kinds of immunities and, specifically, the scope of immunities enjoyed by international organizations and their personnel.

The nature and degree of immunities vary depending on who the recipient is.<sup>47</sup> As aptly pointed out by Chief Justice Alexander G. Gesmundo, the immunities granted from one entity to another, and those granted between an entity and its personnel, may vary in terms of source, breadth, and coverage.<sup>48</sup>

The most widely recognized immunity is state immunity, or that enjoyed by states themselves.<sup>49</sup> This immunity is derived from a recognition of another state's sovereignty.<sup>50</sup> A practical reason for the enforcement of the doctrine is to avoid undue vexation of the peace of nations.<sup>51</sup> As observed by the Chief Justice, the doctrine is both a generally accepted principle of international law and a matter of customary law.<sup>52</sup>

The effect of state immunity can trickle down to a state's officials and agents. While the doctrine generally pertains to the prohibition of suits against a state without its consent, it is also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties.<sup>53</sup> This was illustrated in the case of *Minucher v. Court of Appeals*,<sup>54</sup> where the Court ruled that an agent of the United States Drug Enforcement Agency, whose diplomatic status was not adequately proven, was still entitled to the defense of state immunity from suit. This is because he acted within his official functions and duties; thus, his actions were imputable to the state. The Court held, thus:

But while the diplomatic immunity of Scalzo might thus remain contentious, it was sufficiently established that, indeed, he worked for the United States Drug Enforcement Agency and was tasked to conduct surveillance of suspected drug activities within the country on the dates pertinent to this case. *If it should be ascertained that Arthur Scalzo was acting well within his assigned functions when he committed the acts alleged in the complaint, the present controversy could then be resolved under the related doctrine of State Immunity from Suit.*

The precept that a State cannot be sued in the courts of a foreign state is a long-standing rule of customary international law then closely

<sup>47</sup> J. Puno. Concurring Opinion in *Liang v. People*, 407 Phil. 414, 425 (2001) [Per J. Ynares-Santiago, First Division].

<sup>48</sup> Reflections of C.J. Gesmundo, p. 4.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *See United States of America v. Guinto*, 261 Phil. 777, 791 (1990) [Per J. Cruz, *En Banc*].

<sup>52</sup> Reflections of C.J. Gesmundo, p. 4.

<sup>53</sup> *United States of America v. Guinto*, 261 Phil. 777, 791 (1990) [Per J. Cruz, *En Banc*].

<sup>54</sup> 445 Phil. 250 (2003) [Per J. Vitug, First Division].



identified with the personal immunity of a foreign sovereign from suit and, with the emergence of democratic states, made to attach not just to the person of the head of state, or his representative, but also distinctly to the state itself in its sovereign capacity. **If the acts giving rise to a suit are those of a foreign government done by its foreign agent, although not necessarily a diplomatic personage, but acting in his official capacity, the complaint could be barred by the immunity of the foreign sovereign from suit without its consent. Suing a representative of a state is believed to be, in effect, suing the state itself.** The proscription is not accorded for the benefit of an individual but for the State, in whose service he is, under the maxim — *par in parem, non habet imperium* — that all states are sovereign equals and cannot assert jurisdiction over one another....

....

**A foreign agent, operating within a territory, can be cloaked with immunity from suit but only as long as it can be established that he is acting within the directives of the sending state. . . .** The job description of Scalzo has tasked him to conduct surveillance on suspected drug suppliers and, after having ascertained the target, to inform local law enforcers who would then be expected to make the arrest. In conducting surveillance activities on Minucher, later acting as the poseur-buyer during the buy-bust operation, and then becoming a principal witness in the criminal case against Minucher, Scalzo hardly can be said to have acted beyond the scope of his official function or duties.

All told, this Court is constrained to rule that respondent Arthur Scalzo, an agent of the United States Drug Enforcement Agency allowed by the Philippine government to conduct activities in the country to help contain the problem on the drug traffic, is entitled to the defense of state immunity from suit.<sup>55</sup>

International organizations, like states, also enjoy immunity. Under international law, “such organizations are endowed with some degree of international legal personality such that they are capable of exercising specific rights, duties and powers.”<sup>56</sup> They are set up by agreement between two or more states and organized as a means for conducting general international business.<sup>57</sup>

As pointed out by the Chief Justice during the deliberations of this case, the immunity granted to international organizations is not derived from a claim of sovereignty, but from a need to protect and pursue the organization’s functions.<sup>58</sup> The *raison d’etre* for such grant of immunity to international organizations is “to shield the affairs of international

<sup>55</sup> *Id.* at 268–272. Emphasis supplied; emphasis in the original.

<sup>56</sup> J. Puno, Concurring Opinion in *Liang v. People*, 407 Phil. 414, 423–424 (2001) [Per J. Ynares-Santiago, First Division].

<sup>57</sup> *Id.*

<sup>58</sup> Reflections of C.J. Gesmundo, p. 4.

organizations, in accordance with international practice, from political pressure or control by the host country to the prejudice of member States of the organization, and to ensure the unhampered performance of their functions.”<sup>59</sup>

In his separate opinion in *Liang v. People*,<sup>60</sup> Justice Reynato Puno further expounded on the rationale for the grant of immunity to international organizations, thus:

*The generally accepted principles which are now regarded as the foundation of international immunities are contained in the ILO Memorandum, which reduced them in three basic propositions, namely: (1) that international institutions should have a status which protects them against control or interference by any one government in the performance of functions for the effective discharge of which they are responsible to democratically constituted international bodies in which all the nations concerned are represented; (2) that no country should derive any financial advantage by levying fiscal charges on common international funds; and (3) that the international organization should, as a collectivity of States Members, be accorded the facilities for the conduct of its official business customarily extended to each other by its individual member States. The thinking underlying these propositions is essentially institutional in character. It is not concerned with the status, dignity or privileges of individuals, but with the elements of functional independence necessary to free international institutions from national control and to enable them to discharge their responsibilities impartially on behalf of all their members.*<sup>61</sup>

There is a critical difference between the organizational immunity enjoyed by international organizations and the functional immunity of its personnel. As a rule, the immunity enjoyed by the organization is broader. Its scope is similar to the diplomatic prerogatives granted to diplomatic envoys.<sup>62</sup>

For instance, ADB’s organizational immunity includes every form of legal process and only excludes very limited banking activities. These exceptions, in turn, are clearly spelled out.<sup>63</sup> As pointed out by Senior Associate Justice Marvic M.V.F. Leonen, the exclusion of specific banking transactions was incorporated to provide a means of enforcement for ADB’s offered securities and services.<sup>64</sup> Thus, save for these services where enforcement may be necessary, the organizational immunity of ADB is

<sup>59</sup> *International Catholic Migration Commission v. Calleja*, 268 Phil. 134, 153 (1990) [Per J. Melencio-Hererra, First Division].

<sup>60</sup> 407 Phil. 414 (2001) [Per J. Ynares-Santiago, First Division].

<sup>61</sup> J. Puno, Concurring Opinion in *Liang v. People*, 407 Phil. 414, 430–431 (2001) [Per J. Ynares-Santiago, First Division]. Emphasis in the original.

<sup>62</sup> *Id.* at 436.

<sup>63</sup> See *Weinstock v. Asian Development Bank*, 2005 U.S. Dist. LEXIS 16870.

<sup>64</sup> SAJ Leonen, Separate Concurring Opinion, p. 5.

nearly absolute.<sup>65</sup>

Notably, many of the cases discussing immunity in the context of international organizations, i.e., *International Catholic Migration Commission v. Calleja*,<sup>66</sup> *Holy See v. Rosario, Jr.*,<sup>67</sup> *Lasco v. United Nations*,<sup>68</sup> and *Department of Foreign Affairs v. National Labor Relations Commission*,<sup>69</sup> pertain to immunity enjoyed by the international organizations themselves.<sup>70</sup> Thus, the doctrines on these cases should be understood to refer to organizational immunity.

Meanwhile, the immunity enjoyed by personnel of international organizations is different from that granted to the organization itself. They are entitled to immunity only with respect to acts performed in their official capacity, unlike international organizations which enjoy almost absolute, if not absolute, immunity.<sup>71</sup> Officials of international organizations enjoy functional immunity, that is, only that necessary for the exercise of the functions of the organization and the fulfillment of its purposes.<sup>72</sup> These officials are subject to the jurisdiction of local courts for their private acts, notwithstanding the absence of a waiver of immunity by the organization.<sup>73</sup>

For instance, the immunity granted to ADB officials and personnel extends only to acts done in their official capacities.<sup>74</sup> When ADB officials act in their official capacities, their immunity is not only sourced from their positions as such, but from the international organization itself, as their actions are imputable to the organization.<sup>75</sup> This is similar to the principle observed in determining claims of state immunity.<sup>76</sup> As accurately observed by Senior Associate Justice Leonen, ADB's organizational immunity is operationally exercised by its officers, representatives, and employees whose official actions enjoy functional immunity as a derivative of their organization's own immunity.<sup>77</sup>

On this point, Associate Justice Amy C. Lazaro-Javier aptly observed that the terms diplomatic immunity and functional immunity are often used

<sup>65</sup> J. Puno, Concurring Opinion in *Liang v. People*, 407 Phil. 414, 442 (2001) [Per J. Ynares-Santiago, First Division].

<sup>66</sup> *Id.* at 442.

<sup>67</sup> 308 Phil. 547 (1994) [Per J. Quiason, *En Banc*].

<sup>68</sup> 311 Phil. 795 (1995) [Per J. Quiason, First Division].

<sup>69</sup> 330 Phil. 573 (1996) [Per J. Vitug, First Division].

<sup>70</sup> J. Puno, Concurring Opinion in *Liang v. People*, 407 Phil. 414, 423 (2001) [Per J. Ynares-Santiago, First Division].

<sup>71</sup> *Id.* at 437.

<sup>72</sup> *See id.* at 441-442.

<sup>73</sup> *Id.* at 442.

<sup>74</sup> *Rollo*, pp. 1111.

<sup>75</sup> Reflections of C.J. Gesmundo, p. 8; J. Puno, Concurring Opinion in *Liang v. People*, 407 Phil. 414, (2001) [Per J. Ynares-Santiago, First Division].

<sup>76</sup> Reflections of C.J. Gesmundo, p. 9.

<sup>77</sup> SAJ Leonen, Separate Concurring Opinion, p. 6.

interchangeably.<sup>78</sup> Thus, the Court deems it proper to differentiate the two kinds of immunities.

Diplomatic immunity refers to the immunity granted to diplomatic agents, such as heads of diplomatic missions and members of the diplomatic staff.<sup>79</sup> The Vienna Convention on Diplomatic Relations spells out the scope of diplomatic immunity depending on one's rank and functions. In *Minucher*, the Court emphasized that diplomatic immunity must be restrictively construed, and should be understood to refer to the immunity enjoyed by diplomatic agents, thus:

The Convention lists the classes of heads of diplomatic missions to include (a) ambassadors or *nuncios* accredited to the heads of state, (b) envoys, ministers or *internuncios* accredited to the heads of states; and (c) *charges d' affaires* accredited to the ministers of foreign affairs. Comprising the "staff of the (diplomatic) mission" are the diplomatic staff, the administrative staff and the technical and service staff. Only the heads of missions, as well as members of the diplomatic staff, excluding the members of the administrative, technical and service staff of the mission, are accorded diplomatic rank. *Even while the Vienna Convention on Diplomatic Relations provides for immunity to the members of diplomatic missions, it does so, nevertheless, with an understanding that the same be restrictively applied. Only "diplomatic agents," under the terms of the Convention, are vested with blanket diplomatic immunity from civil and criminal suits. The Convention defines "diplomatic agents" as the heads of missions or members of the diplomatic staff, thus impliedly withholding the same privileges from all others.* It might bear stressing that even consuls, who represent their respective states in concerns of commerce and navigation and perform certain administrative and notarial duties, such as the issuance of passports and visas, authentication of documents, and administration of oaths, do not ordinarily enjoy the traditional diplomatic immunities and privileges accorded diplomats, mainly for the reason that they are not charged with the duty of representing their states in political matters. *Indeed, the main yardstick in ascertaining whether a person is a diplomat entitled to immunity is the determination of whether or not he performs duties of diplomatic nature.*<sup>80</sup>

Under Article 31 of the Vienna Convention on Diplomatic Relations, a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state. He or she shall also enjoy immunity from the receiving state's civil and administrative jurisdiction subject to very limited exceptions.<sup>81</sup> In contrast, personnel of international organizations enjoy only

<sup>78</sup> Reflections of J. Lazaro-Javier, p. 1.

<sup>79</sup> Reflections of J. Lazaro-Javier, p. 4; *Minucher v. Court of Appeals*, 445 Phil. 250, 265 (2003) [Per J. Vitug, Second Division].

<sup>80</sup> *Minucher v. Court of Appeals*, 445 Phil. 250, 264-265 (2003) [Per J. Vitug, First Division]. Emphasis supplied; emphasis in the original.

<sup>81</sup> Article 31 of the Vienna Convention on Diplomatic Relations reads:

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

such immunity as is necessary for the exercise of the organization and the fulfillment of its purposes.<sup>82</sup>

Thus, the privileges and immunities of diplomats and those of international officials are based on different legal foundations.<sup>83</sup> Immunities awarded to diplomatic agents are based on customary international law, while those granted to officials of international organizations are based on treaty or conventional law.<sup>84</sup> As succinctly put by Justice Reynato Puno, “[c]ustomary international law places no obligation on a state to recognize a special status of an international official or to grant [their] jurisdictional immunities. Such an obligation can only result from specific treaty provisions.”<sup>85</sup>

As held by the Court in *Department of Foreign Affairs v. National Labor Relations Commission*,<sup>86</sup> immunity-granting agreements “are treaty covenants and commitments voluntarily assumed by the Philippine government which must be respected.”<sup>87</sup> As such, their provisions are the primary criteria to be applied in suits where immunity is invoked. Thus, in ascertaining the scope of immunity invoked, courts must determine if the immunity is invoked by the organization itself or by specific personnel, then refer to the applicable treaty or agreement.

In his separate opinion in *Liang*, Justice Puno also emphasized that a bank official of the ADB is not entitled to diplomatic immunity.<sup>88</sup> Indeed, bank officials may not be considered diplomats under the Vienna Convention on Diplomatic Relations. The immunity enjoyed by bank officials must be traced to the organization’s constituent instrument, multilateral treaties, or headquarters agreements.<sup>89</sup>

Thus, We clarify that officials and personnel of international organizations generally enjoy functional, not diplomatic, immunity. However, as pointed out by Associate Justice Amy C. Lazaro-Javier, in some

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(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

<sup>82</sup> J. Puno, Concurring Opinion in *Liang v. People*, 407 Phil. 414, 441-442 (2001) [Per J. Ynares-Santiago, First Division].

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 432.

<sup>86</sup> 330 Phil. 573 (1996).

<sup>87</sup> *Id.* at 582-583.

<sup>88</sup> J. Puno, Concurring Opinion in *Liang v. People*, 407 Phil. 414, 441 (2001) [Per J. Ynares-Santiago, First Division].

<sup>89</sup> Reflections of J. Lazaro-Javier, p. 4.

instances, diplomatic immunity may be invoked by such officials and personnel if such immunity is conferred by a treaty or agreement.<sup>90</sup>

This was the case in *World Health Organization v. Aquino*<sup>91</sup> where the Court held that petitioner therein, the Acting Assistant Director of Health Services of the World Health Organization (WHO), is entitled to diplomatic immunity. This is because under Section 24 of the Host Agreement between the Philippine Government and the WHO, petitioner is entitled to “the privileges and immunities, exemptions and facilities *accorded to diplomatic envoys* in accordance with international law.” Thus, any invocation of diplomatic immunity by an officer or personnel of an international organization must find basis in a treaty or similar covenant.

*The applicability of functional immunity requires an inquiry into the capacity in which the bank officer or personnel was acting*

Going to the specific treaty covenants applicable to ADB, ADB is governed by the Agreement Establishing the Asian Development Bank (ADB Charter) and the Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank (Headquarters Agreement).

Article 50 of the ADB Charter lays down the scope of ADB’s immunity as an organization, or its so-called organizational immunity, thus:

Article 50

IMMUNITY FROM JUDICIAL PROCEEDINGS

1. *The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. (Emphasis supplied.)*

Meanwhile, Article 55 of the ADB Charter specifies the scope of immunity of bank personnel:

<sup>90</sup> *Id.* at 7.

<sup>91</sup> 150-C Phil. 471 (1972) [Per J. Teehankeel].

## Article 55

## IMMUNITIES AND PRIVILEGES OF BANK PERSONNEL

All Governors, Directors, alternates, officers and employees of the Bank, including experts performing missions for the Bank:

(i) *shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity*[.] (Emphasis supplied.)

The same provisions are replicated in Articles III and XII of the Headquarters Agreement. Sections 44 and 45, Article XII of the Headquarters Agreement only further distinguish between the immunity enjoyed by certain ADB officers and other bank officers and staff. Governors, other representatives of member-states, Directors, the President, Vice-President and other executive officers agreed upon are immune “from legal process of every kind in respect of words spoken or written and all acts done by them in their official capacity.”<sup>92</sup> Meanwhile, officers and staff of ADB are immune “from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity.”<sup>93</sup>

Based on Article 55 of the ADB Charter, liability for an official act can only come after a waiver by ADB. Even then, Section 44, Article XII of the Headquarters Agreement does not have a waiver *provisio* with respect to certain high-ranking officials of ADB, *i.e.*, “Governors, other representatives of Members, Directors, the President, Vice-President and executive officers as may be agreed upon between the Government and the Bank.” For this group of people, immunity applies so long as the acts were done in an official capacity. Meanwhile, for other ADB officers and staff whose immunity may be waived by the Bank, Section 49, Article XIII of the Headquarters Agreement provides that ADB “shall waive the immunity accorded to any person if, in its opinion, such immunity would impede the course of justice and the waiver would not prejudice the purposes for which the immunities are accorded.”

The difference in scope between the two kinds of immunities dictates the nature of proceedings where such protections are invoked. When the immunity of ADB as an organization is raised, there is little or no need to delve into the factual nuances of the case as the immunity is almost unqualified and extends to legal process of every form.<sup>94</sup> Thus, courts need only determine whether the case arises out of or is in connection with the exercise of ADB’s banking functions for which immunity is waived. This determination can be done through a cursory reading of the complaint and its

<sup>92</sup> Headquarters Agreement, Art. XII, Sec. 44.

<sup>93</sup> Headquarters Agreement, Art. XII, Sec. 45.

<sup>94</sup> *Department of Foreign Affairs v. National Labor Relations*, 330 Phil. 573 (1996).

attachments or, at most, after exchange of pleadings.

Meanwhile, in a proceeding where functional immunity of a bank personnel is invoked, it is necessary to ascertain in what capacity the official was acting.<sup>95</sup> Such issue requires for its resolution evidentiary basis, specifically on the nature of the official's functions and the acts complained of. Courts cannot blindly adhere and take on its face a certification from the Department of Foreign Affairs (DFA) that a certain person is covered by functional immunity.<sup>96</sup> "The DFA's determination that a certain person is covered by immunity is only preliminary which has no binding effect in courts."<sup>97</sup> Mere invocation of the immunity clause does not *ipso facto* result in the dismissal of the case.<sup>98</sup>

In *Liang*<sup>99</sup> and *United States of America v. Guinto (Guinto)*,<sup>100</sup> the Court required further factual review before sustaining the invocation of immunity. As held in *Guinto*, "[o]nly after it shall have determined in what capacity the petitioners were acting at the time of the incident in question will this Court determine, if still necessary, if the doctrine of state immunity is applicable."<sup>101</sup> Thus, courts have the power and duty to inquire into the factual basis of the invoked immunity, especially since the protection extends to limited acts.

Instructive is the disquisition of Justice Reynato Puno in his separate opinion in *Liang*, thus:

## VI

*Who is competent to determine whether a given act is private or official?*

This is an entirely different question. In connection with this question, the current *tendency to narrow* the scope of privileges and immunities of international officials and representatives is most apparent. Prior to the regime of the United Nations, the determination of this question rested with the organization and its decision was final. *By the new formula, the state itself tends to assume this competence.* If the organization is dissatisfied with the decision, under the provisions of the General Convention of the United States, or the Special Convention for Specialized Agencies, the Swiss Arrangement, and other current dominant instruments, it may appeal to an international tribunal by procedures outlined in those instruments. Thus, the state assumes this competence in the first instance. It means that, if a local court assumes jurisdiction over an act without the necessity of waiver from the organization, the

<sup>95</sup> *Liang v. People*, 380 Phil. 673, 676 (2000) [Per J. Ynares-Santiago, First Division].

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> 407 Phil. 414 (2001) [Per J. Ynares-Santiago, First Division].

<sup>100</sup> 261 Phil. 777 (1990) [Per J. Cruz, *En Banc*].

<sup>101</sup> *Id.* at 799.



determination of the nature of the act is made at the national level.

*It appears that the inclination is to place the competence to determine the nature of an act as private or official in the courts of the state concerned. . .*

....

*Second*, considering that bank officials and employees are covered by immunity only for their official acts, the necessary inference is that *the authority of the Department of Affairs, or even of the ADB for that matter, to certify that they are entitled to immunity is limited only to acts done in their official capacity*. Stated otherwise, it is not within the power of the DFA, as the agency in charge of the executive department's foreign relations, nor the ADB, as the international organization vested with the right to waive immunity, to invoke immunity for private acts of bank officials and employees, since no such prerogative exists in the first place. If the immunity does not exist, there is nothing to certify.

....

*Third*, I choose to adopt the view that it is the local courts which have jurisdiction to determine whether or not a given act is official or private. While there is a dearth of cases on the matter under Philippine jurisprudence, the issue is not entirely novel.

....

. . . Considering that the immunity accorded to petitioner is limited only to acts performed in his official capacity, it becomes necessary to make a factual determination of whether or not the defamatory utterances were made pursuant and in relation to his official functions as a senior economist.<sup>102</sup> (Emphasis supplied)

Immunity bars the exercise of jurisdiction by local courts.<sup>103</sup> Thus, before a court could conduct further proceedings on a case, its jurisdiction must be established. Allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation.<sup>104</sup> It follows, then, that the complainant has the burden of establishing the jurisdiction of the court by proving the suability of the respondent and the *ultra vires* character of the latter's actions. If the complainant fails to discharge this burden at the very onset of the proceedings, respondent's immunity must be upheld and the complaint dismissed.

Moreover, in inquiring into the suability or non-suability of the parties

<sup>102</sup> *Id.* at 438-444.

<sup>103</sup> See *Arigo v. Swift*, 743 Phil. 8, 44-45 (2014) [Per J. Villarama, Jr., *En Banc*].

<sup>104</sup> *Bulanon v. Mendco Development Corp.*, G.R. No. 219637, April 26, 2023 [Per J. Hernando, First Division] at 7. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

involved, courts may conduct such proceedings as may be warranted by the complexity of the facts. If the facts of the case are simple, the court can rule on the issue of immunity based simply on the contents of the complaint and its attachments. If further clarification is required, the court may require exchange of pleadings, or even set a summary hearing where the complainant and bank personnel involved can thresh out their positions. It is important, however, that the court judiciously exercise its discretion and limit the proceedings to the minimum necessary. Otherwise, the immunity conferred would be rendered nugatory.

*The Court shall rule on the merits of the case in the interest of judicial economy*

Circling back to this case, as detailed in the assailed Resolution, the parties have conflicting submissions on the nature of the contested acts. Locsin et al. claim that their acts squarely fall within their official functions. Meanwhile, Westfall claims that the statements are malicious and defamatory; thus, they cannot be considered official.<sup>105</sup> Given this conflict, the CA and the RTC should have looked at the facts more closely to ascertain whether the statements are defamatory and, thus, *ultra vires*.<sup>106</sup>

Notably, in their Comment on the petition, Locsin et al. conceded that the petition raises questions of fact pertaining to the following issues: (a) whether Lacson et al.'s acts and conduct were done in their official capacity and not *ultra vires*; and (b) whether the statements in the VP Panel Notes and Interview Report are not abusive and defamatory.<sup>107</sup>

In the interest of judicial economy and efficiency, We reconsider Our directive to remand the case to the trial court for further proceedings. Instead, the Court shall proceed to resolve the factual issue and determine the applicability of functional immunity based on the facts on record.

Judicial economy refers to “efficiency in the operation of the courts and the judicial system; especially the efficient management of litigation so as to minimize duplication of effort and to avoid wasting the judiciary’s time and resources.”<sup>108</sup> The norm of judicial economy aims to prevent duplicating the efforts of the parties and the courts.<sup>109</sup> The Court has refused to remand

<sup>105</sup> *Rollo*, pp. 1111–1113.

<sup>106</sup> *Id.* at 1113–1114.

<sup>107</sup> *Id.* at 832.

<sup>108</sup> *Ren Transport Corp. v. National Labor Relations Commission*, 788 Phil. 234, 244 (2016) [Per C.J. Sereno, First Division].

<sup>109</sup> *See Reburiano v. De Vera*, 877 Phil. 880, 899 (2020) [Per J. Carandang, First Division].

cases for further proceedings when the parties have been given ample opportunities to argue their positions.<sup>110</sup> Besides, it is highly probable that, upon remand, the case would eventually reach this Court again.

For instance, in *Holy See v. Rosario, Jr.*,<sup>111</sup> the Court ruled that the issue of non-suability may be resolved without going to trial in light of the pleadings and admissions on record.<sup>112</sup> Thus, while the ordinary procedure would be to remand the case and order the trial court to conduct a hearing to establish certain facts, the Court found that such procedure would be unduly circuitous given the pleadings and documents on record.<sup>113</sup>

Hence, to put an end to the controversy, We shall proceed to rule on the propriety of applying functional immunity. Upon a thorough review of the records, it is apparent that the parties have been given several opportunities to argue and substantiate their respective positions. They have attached numerous documents to their various pleadings. In fact, the parties refer to and rely on several common documents. Consequently, the dispute can be resolved by examining and considering these, as well as the uncontested facts. Further proceedings may only duplicate the parties' efforts and unduly strain the judiciary's resources.

We acknowledge that, in the assailed Resolution, the Court emphasized the lack of attention on Westfall's allegations, particularly those opposing the statements in the VP Panel Notes and Interview Report.<sup>114</sup> We stressed that the CA should have examined Westfall's allegations to determine if the statements were indeed false, malicious, and defamatory.<sup>115</sup> Only then can We fully dispel questions on the character of respondents' actions, i.e., whether these were made in an official or personal capacity.<sup>116</sup>

Upon further review, however, We find that these questions may be answered by a more thorough examination of the records. As will be shown, the Court need not pass upon the veracity of Westfall's claims on his professional background to resolve the main issue. Other factual circumstances, which are already pleaded and substantiated, reveal a clear picture of the capacity in which respondents Locsin, et al. acted. Thus, contrary to the assertions of Westfall, We find the records sufficient for the purpose of applying the prevailing doctrines on functional immunity.

<sup>110</sup> See *Banco De Oro Unibank, Inc. v. International Copra Export Corp.*, 901 Phil. 88 (2021) [Per J. Leonen, Third Division].

<sup>111</sup> 308 Phil. 547 (1994) [Per J. Quiason, *En Banc*].

<sup>112</sup> *Id.* at 559.

<sup>113</sup> *Id.* at 560.

<sup>114</sup> *Rollo*, p. 1113.

<sup>115</sup> *Id.* at 1114.

<sup>116</sup> *Id.*

*Functional immunity does not extend to ultra vires acts, such as defamation or slander of another*

Jurisprudence has recognized limited exceptions to the immunity enjoyed by officials of international organizations, particularly, *ultra vires* acts, as these are not part of their official functions. On this matter, the ruling of the Court in the cases of *Liang*<sup>117</sup> and *Wylie v. Rarang*<sup>118</sup> provide guidance. While *Wylie* did not involve officials of an international organization, its ruling is still instructive because the invoked immunity is also limited to official acts.

*Liang* involved an economist working with the ADB, who allegedly uttered defamatory words, i.e., imputation of theft, against a fellow ADB personnel.<sup>119</sup> Accordingly, the accused was charged with grave oral defamation.<sup>120</sup> However, the lower court subsequently dismissed the case on the ground that accused is covered by immunity from legal process. When it reached the Court, it was explained that trial should proceed because there must be a determination of what capacity accused was acting at the time the alleged utterances were made. The Court ruled that immunity is not absolute, as this is subject to the condition that the acts were done in an official capacity.<sup>121</sup> It explained that the imputation of theft is *ultra vires* and cannot be part of official functions, to wit:

[S]landering a person could not possibly be covered by the immunity agreement because our laws do not allow the commission of a crime, such as defamation, in the name of official duty. The imputation of theft is *ultra vires* and cannot be part of official functions. It is well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice or in bad faith or beyond the scope of his authority or jurisdiction.<sup>122</sup>

Meanwhile, *Wylie* centered on an alleged defamatory publication of officials of the US Navy, which imputed theft to complainant.<sup>123</sup> When they were sued for damages, the officers argued that they were immune from suit as the publication was made in their official capacities.<sup>124</sup> Notably, the Court agreed with the lower courts and found the officers liable.<sup>125</sup> Granted, the

<sup>117</sup> *Liang v. People*, 380 Phil. 673, 676 (2000) [Per J. Ynares-Santiago, First Division].

<sup>118</sup> 284-A Phil. 842 (1992) [Per J. Gutierrez, Jr., Third Division].

<sup>119</sup> *Liang v. People*, 380 Phil. 673 (2000) [Per J. Ynares-Santiago, First Division].

<sup>120</sup> *Id.* at 676.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 677.

<sup>123</sup> 284-A Phil. 842 (1992) [Per J. Gutierrez, Jr., Third Division].

<sup>124</sup> *Id.* at 850.

<sup>125</sup> *Id.* at 859.

officers' act of screening the publication is part of their official functions.<sup>126</sup> However, the imputation of theft to complainant is a defamation against her character and reputation.<sup>127</sup> The Court found that such is a tortious act, which is *ultra vires*, and cannot be considered as part of official duty. Thus, the Court ruled that the officers were liable in their personal capacities.<sup>128</sup>

Following these cases, it is apparent that, for the *ultra vires* exception to apply, there must be a determination that the acts committed were done beyond the scope of official capacity, such as a crime or an act contrary to law.

Here, We find that the general rule of immunity, and not the limited exception, applies. The acts were performed in Locsin et al.'s official capacities. The statements were also not defamatory and malicious so as to fall under the limited exceptions.

*The alleged acts were performed by respondents Locsin et al. in their official capacities*

A perusal of the records would show that the alleged acts were performed by Locsin et al. in their official capacities as members of the SC.

The SC was created for an official purpose, which is to review the applications for vacant positions within the ADB.<sup>129</sup> Verily, Locsin et al. were appointed to the SC because of their respective positions in the ADB.<sup>130</sup> In an email dated 20 January 2015 sent by the Budget, Personnel, and Management Systems Department (BPMSD) of ADB for the review of the applications for Technical Advisors (Sector and Thematic Groups), the members of the SC were specifically instructed to comment on the applications for the positions, to wit:<sup>131</sup>

The Screening Committee will review applications, generate a shortlist of candidates for each position (recommended is a shortlist of 3 to 5 or whatever number you feel is appropriate) and conduct preliminary interviews. Attached please find the recruitment process and timetable for the Technical Advisor positions:

.....

<sup>126</sup> *Id.* at 855.

<sup>127</sup> *Id.* at 859.

<sup>128</sup> *Id.*

<sup>129</sup> *Rollo*, p. 953.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

Next Steps:

*Each screening committee member (DG or designated representative) will review the applicant list and will create their own shortlist. On the form provided, please rank and comment on your selections.*<sup>132</sup>(Emphasis supplied.)

Likewise, in the VP Panel Notes, it was stated that the members of the SC met and agreed on key criteria to be applied in their evaluation:

A Screening Committee was established to review the applications, comprising of Directors General (DG) representing the Operations departments (DGs from CWRD, SARD, EARD, SERD, PARD, and PSOD); DG and Deputy DG BPMSD; DG RSDD; Director BPHP; and HR Business Partner. *The Screening Committee met on 23 January 2015 and agreed on key criteria to be applied in evaluating applicants.* During the week of 26 January 2015, each member of the Screening Committee submitted his/her recommended shortlist which were consolidated by BPMSD. On 30 January 2015, the Screening Committee met and agreed on a final shortlist, which was submitted to the Vice Presidents on 4 February 2015. Preliminary interviews by the Screening Committee were held from 9 to 13 February 2015.<sup>133</sup>(Emphasis supplied.)

From this, it is clear that, based on the key criteria agreed upon, Locsin et al. were given the discretion to comment on the qualifications of the applicants.<sup>134</sup> Therefore, there is no doubt that Locsin et al. were acting in their official capacities when they committed the acts imputed to them. The statements complained of by Westfall were made by Locsin et al. in the course of their deliberations on his application for the position.

With the foregoing, We now resolve whether the imputed acts fall within the limited jurisprudential exception for *ultra vires* acts similar to those in *Liang* and *Wylie*, i.e., whether the statements were so malicious and defamatory so as to exceed Locsin et al.'s mandate as SC members.

*The acts complained of do not fall under the jurisprudential exception for defamatory statements*

After a re-examination of the pleadings and documents submitted by the parties, We find that the statements of Locsin et al. are not defamatory and *ultra vires*. There are differences between the factual circumstances in this case and those in the *Liang* and *Wylie* cases.

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 192.

<sup>134</sup> *Id.* at 953.

An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance which tends to dishonor, discredit or put another in contempt, or which tends to blacken the memory of one who is dead.<sup>135</sup> In determining whether certain utterances are defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by persons hearing (or reading, as in libel) them, unless it appears that they were used and understood in another sense.<sup>136</sup>

We emphasize that a consequent personal embarrassment from insulting words does not automatically qualify said statement as defamation. The Court must still be satisfied that, from the entirety of the impugned writing, it is defamatory.<sup>137</sup> That the language is offensive to the plaintiff does not make it actionable by itself.<sup>138</sup> Even in civil cases, it must be shown that the defamatory imputation was published and that it was attended with malice.<sup>139</sup> Malice connotes ill will or spite and an intention to do ulterior and unjustifiable harm.<sup>140</sup>

Here, a plain reading of the entire VP Panel Notes and Interview Report reveals that the words used by respondents Locsin, et al. are but objective assessments of Westfall's accomplishments and experiences. To recall, the assailed statements described Westfall as follows:

“is not familiar with knowledge areas”;  
“has no recent participation in knowledge sharing activities nor has he kept up with his reading”;  
“has not used [media skills] on any key Bank projects in many years”;  
“reputation of not being able to deliver or follow through on projects”;  
“has been away from the urban sector for quite some time and has not kept his knowledge current.”<sup>141</sup>

To negate the false and defamatory nature of the statements, Locsin et al. point out that the comments even included observations that boost Westfall's application.<sup>142</sup> On the other hand, Westfall avers that respondents

<sup>135</sup> *Manila Bulletin Publishing Corp. v. Domingo*, 813 Phil. 37, 56 (2017) [Per J. Martires, Second Division].

<sup>136</sup> *Madrona v. Rosal*, 281 Phil. 1, 10 (1991) [Per J. Davide, Third Division].

<sup>137</sup> *Tulfo v. People*, G.R. Nos. 187113 & 187230, January 11, 2021 [Per J. Leonen, Third Division].

<sup>138</sup> *MVRS Publications v. Islamic Da'wah Council of the Philippines*, 444 Phil. 230, 241 (2003) [Per J. Bellosillo, *En Banc*].

<sup>139</sup> *See Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 726-272 (2009) [Per J. Chico-Nazario, Third Division].

<sup>140</sup> *Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 726 (2009) [Per J. Chico-Nazario, Third Division].

<sup>141</sup> *Rollo*, pp. 14-15.

<sup>142</sup> *Id.* at 1191.

fail to read the VP Panel Notes and Interview Report in their entirety.<sup>143</sup> Westfall argues that a cursory reading of the so-called “positive and encouraging opinions” alongside the comments which discredit him show that the statements were made to defame him.<sup>144</sup>

We find merit in Locsin et al.’s argument. The inclusion of positive remarks about Westfall’s work and accomplishments<sup>145</sup> supports the conclusion that they were merely deliberating on the strengths and weaknesses of petitioner. We find that, taken as a whole, the statements only scrutinize Westfall’s experience to assess his qualification, in view of Locsin et al.’s task to evaluate petitioner. The remarks consisted of views, opinions, impressions, and recommendations submitted by Locsin et al. as part of ADB’s screening, selection, and appointment process. Were it not for Locsin et al.’s appointments to the SC, they would not have any reason to comment on Westfall’s qualifications. In contrast, the *Wylie* and *Liang* cases both involved the imputation of a crime, which is more easily construed as malicious.

Moreover, it does not appear that there was publication within the meaning of the law on defamation. The *Wylie* case involved an actual publication of a defamatory statement in an article distributed to military personnel.<sup>146</sup>

In this case, however, the VP Panel Notes and Interview Report are internal documents which are confidential in nature. Upon exhaustive review of the records, We note that there is an undertaking that the panelists will maintain the confidentiality of the proceedings.<sup>147</sup> It also appears that the Interview Report is a confidential document since per Westfall himself, an Interview Report is usually prepared *during* deliberation based on the conduct of said interview.<sup>148</sup>

Indeed, based on the Appeals Committee Report being cited by Westfall:

The Appeals Committee . . . [r]eviewed on 14 October 2015 *in camera* the following *confidential materials* made available by BPMSSD (a) *interview reports* on the three candidates who were shortlisted, (b) e-mail confirmation of interview reports by Screening Committee members, (c) *VP Review Panel notes*, and (d) briefing notes to the VP Review Panel;<sup>149</sup> (Emphasis supplied.)

<sup>143</sup> *Id.*, unpaginated.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 201.

<sup>146</sup> *Liang v. People*, 380 Phil. 673, 676 (2000) [Per J. Ynares-Santiago, First Division].

<sup>147</sup> *Rollo*, p. 192.

<sup>148</sup> *Id.* at 405–406.

<sup>149</sup> *Id.* at 550–551.



Verily, said documents are confidential in nature and were intended to be used by the SC, the VP Panel, and the approving authorities for the selection process. As such, there is no publication to speak of. Applicable by analogy is the rule on statements made by public officers in the discharge of their official duties. It is settled that “a communication made by a public officer in the discharge of his official duties to another or to a body of officers having a duty to perform with respect to the subject matter of the communication does not amount to a publication within the meaning of the law on defamation.”<sup>150</sup>

Notably, Westfall claims that the VP Panel Notes were “circulated among Locsin et al., as well as various departments in ADB.”<sup>151</sup> Significantly, however, the allegation is not supported by any proof. Basic is the rule that one who alleges a fact has the burden of proving it by means other than mere allegations.<sup>152</sup> Based on the submissions in this case, the Court cannot conclude that said confidential documents were indeed disseminated outside of those privy to the screening process.

In any event, the documents were not meant to be circulated to other ADB personnel who had no participation in the selection process. Thus, there is no intention to tarnish the reputation of petitioner as the discussions regarding his qualifications were intended to be kept among respondents themselves and within the screening process.

While not binding on this Court, the discussion of the ADB Administrative Tribunal on this matter bears noting, viz.:

In the present case, the statements (the “crime” according to the Applicant) were all made in the framework of the selection process. In this context, *the Tribunal also recalls the Appeals Committee’s decision to uphold the Appeal was based on the shortcomings in the procedures and not on the contents of the statements made by the officials in the selection process. The statements were made in the process of the selection procedure and therefore, it was in an official capacity for which the persons are protected by the immunities that the Bank enjoys. These immunities are essential to the functioning of international organisations such as the ADB and well recognized by international law. It is for the Bank to decide whether or not it will waive these immunities in specific circumstances.*<sup>153</sup> (Emphasis supplied.)

We find these conclusions sound based on the Court’s own review of

<sup>150</sup> *Alonzo v. Court of Appeals*, 311 Phil. 60, 78 (1995) [Per J. Davide, Jr., First Division].

<sup>151</sup> *Rollo*, p. 13.

<sup>152</sup> *Social Security System v. Commission on Audit*, 888 Phil. 892, 903 (2020) [Per J. Caguioa, *En Banc*].

<sup>153</sup> *Rollo*, p. 538.

the records. Indeed, in the assailed Resolution,<sup>154</sup> We emphasized that there are doubts on the official nature of respondents' acts, considering the Report of the ADB Appeals Committee that "not all of ADB's relevant policies and procedures were correctly applied in this case."<sup>155</sup> This finding impresses a possibility that some of Locsin et al.'s acts may be *ultra vires*.

However, a closer study of such Report reveals that, insofar as the VP Panel Notes and Interview Report are concerned, the findings of the ADB Appeals Committee primarily pertained to the poor quality and inaccuracy of the reports, thus:

Failure to adequately present and review qualifications: The Screening Committee notes, interview reports, and Summary Profile of Applicants were of generally poor quality and do not provide an entirely accurate summary of the Appellant's or the additional candidate's qualifications and experience. The interview notes in particular consisted of one-line summaries of major competencies and lacked the ratings that are normally provided. Also absent was the fact that the Appellant served as a Director of the Urban Services Division in CWRD, and that his performance reviews were exemplary. In contrast the assessments of the additional candidate's qualifications and experience were consistently generous, and in some cases inaccurate, despite less extensive documentation. Given that only a few members of the Screening Committee have had direct working relationships with the Appellant or the additional candidate to form a complete view of their performance or potential, the disparity of formal materials available to the Screening Committee, and the absence of minutes of the Screening Committee's meetings, more accurate documentation should have been required.<sup>156</sup>

The incompleteness and inaccuracy of the VP Panel Notes and Interview Report are insufficient to overcome functional immunity. That some statements may not be completely accurate as petitioner asserts does not render them defamatory and malicious. Inaccuracy *per se* does not establish ill intent. We share the conclusion of the ADB Appeals Committee that "[t]here is no evidence of willful intent" in this case.<sup>157</sup> At most, the errors are mere administrative infractions that the ADB may rectify through its own internal processes.

Thus, similar to the observation of the ADB, We find that respondents acted within the scope of their official capacities and did not act with malice or bad faith. It follows, therefore, that *ultra vires* exception to immunity does not apply.

With the official character of their acts, respondents Amy Leung,

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<sup>154</sup> *Id.* at 1114.

<sup>155</sup> *Id.* at 548.

<sup>156</sup> *Id.* at 557.

<sup>157</sup> *Id.* at 558.

Noriko Ogawa, Gil-Hong Kim, Diwesh Sharan, Ramit Kumar Nagpal, Ken L. Chee, Makoto Kubota, and Bibiana Victoria G. Francisco may only be sued if ADB waives their immunity, following Section 45 of the Headquarters Agreement.<sup>158</sup> No such waiver was made here. Moreover, by virtue of Locsin's position as Director General, she enjoys immunity from legal process of any kind and is not subject to the waiver *provisio*, as provided in Section 44 of the Headquarters Agreement.<sup>159</sup>

In this regard, We clarify that Our ruling here does not necessarily apply to every utterance in the course of official duty within the ADB, some of which may not be covered by immunity. This Resolution is specifically premised on the facts of this case and the nature of screening proceedings. The evaluation, assessment, selection, and appointment of staff members or external candidates to an ADB staff position must necessarily include the candid evaluation of the applicant's qualifications, performance, and suitability. Pursuant to their official duty to evaluate the applicants, Locsin et al. were expected to utter remarks consisting of their subjective views, opinions, impressions, and recommendations. As they emphasized, Westfall applied for the promotion and thus freely subjected himself to ADB's selection and review process.<sup>160</sup> Ultimately, the application of immunity should be assessed by the courts on a case-to-case basis.

*Westfall is not without recourse; ADB has an internal grievance and appeal system*

The Court underlines that ADB's immunity from local jurisdiction by no means deprives labor, as well as Westfall, of their basic rights.<sup>161</sup> For ADB employees are not without recourse whenever there are disputes to be settled. As stressed by Locsin et al., Article XIII, Sections 50 and 51 of the Agreement between Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank (Headquarters Agreement) set safeguards against potential abuse of ADB's functional immunity by its employees, officers, and staff members:

Section 50

The Bank recognizes that not all privileges, immunities, exemptions and facilities enjoyed by members of diplomatic missions are

<sup>158</sup> *Rollo*, pp. 225–226.

<sup>159</sup> *Id.* at 224.

<sup>160</sup> *Id.* at 823–824; 1111–1113.

<sup>161</sup> *International Catholic Migration Commission v. Calleja*, 268 Phil. 134, 153 (1990) [Per J. Melencio-Herrera, Second Division].

necessary for the effective performance of the functions and duties of the officials mentioned in Section 44 hereof.

Accordingly, the Bank and the Government shall, at the request of either, consult with each other with a view to determining in specific cases what particular privilege, immunity, exemption or facility is not necessary for the effective performance of the duties and functions of such officials and the Bank agrees to waive in such case such particular privilege, immunity, exemption or facility.

#### Section 51

The Bank shall take every measure to ensure that the privileges, immunities, exemption and facilities conferred by this Agreement are not abused and for this purpose shall establish the rules and regulations as it may deem necessary and expedient. There shall be consultation between the Government and the Bank, should the Government consider that an abuse has occurred.<sup>162</sup>

Verily, these provisions state that ADB and the Philippine Government, at the request of either party, may consult with each other to delimit the privileges, immunities, exemptions, and facilities enjoyed by ADB's employees, officers, and staff members. Further, ADB is mandated to take every measure and establish rules and regulations to ensure that such abuse is avoided. Should the Philippine Government consider that an abuse has occurred, the ADB is mandated to undergo consultation with the Philippine Government.<sup>163</sup>

To be sure, the Headquarters Agreement, together with ADB's internal review and appeal processes – which include recourse to independent panels,<sup>164</sup> outlines extensive legal remedies for individuals for the redress of their grievances.

Notably, Westfall did avail of ADB's internal appeals process. He exhausted the administrative review process in accordance with Sections 3 and 5 of Administrative Order 2.06.<sup>165</sup> Upon failure of the compulsory conciliation and administrative review to result in a settlement, he proceeded to initiate an appeal with the Appeals Committee. The latter ruled in Westfall's favor and recommended that his appeal be upheld. This was adopted by the ADB President. The same confirms that Westfall had an effective remedy within the ADB's internal justice system for any alleged irregularities in the screening process.<sup>166</sup>

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<sup>162</sup> *Rollo*, p. 907

<sup>163</sup> *Id.* at 1117.

<sup>164</sup> *Id.* at 445-456.


<sup>165</sup> *Id.* at 456.

<sup>166</sup> *Id.* at 25-26, 445-456, 519-559, 851-852.

In fine, if Westfall felt that Locsin et al. committed mistakes in the screening process, his remedy is not with the courts, in violation of the functional immunity of ADB's personnel, but through ADB's internal review process, which he availed of. Significantly, additional recourse and protection can be obtained through the Philippine Government or the Executive Department, as provided in the Headquarters Agreement.<sup>167</sup>

**ACCORDINGLY**, the Motion for Partial Reconsideration *Ad Cautelam* with Motion to Refer the Case to the Court *En Banc* and Set the Case for Oral Arguments is **PARTLY GRANTED**. The Resolution dated April 27, 2022 of this Court is **REVERSED** and **SET ASIDE** insofar as it partially granted the Petition by directing the reinstatement of petitioner Matthew Westfall's complaint and the conduct of further proceedings in Civil Case No. R-MKT-17-01365-CV. The dismissal of the complaint as against all respondents Maria Carmela D. Locsin, et al. is **AFFIRMED**. Accordingly, the Order dated August 17, 2017 of Branch 138, Regional Trial Court of Makati City, as affirmed in the Decision dated 22 April 2019 and Resolution dated November 26, 2019 of the Court of Appeals in CA-G.R. SP No. 154420, is **REINSTATED**.

**SO ORDERED.**

  
**RODIL V. ZALAMEDA**  
Associate Justice

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<sup>167</sup> *Id.* at 21.

**WE CONCUR:**

*Alex G. Gesmundo*  
**ALEXANDER G. GESMUNDO**  
 Chief Justice

*See separate concurring opinion*

*M. V. F. Leonen*  
**MARVIC M. V. F. LEONEN**  
 Associate Justice

*Alfredo Benjamin S. Caguioa*  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

*Ramon Paul L. Hernando*  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

*Amy C. Lazaro-Javier*  
**AMY C. LAZARO-JAVIER**  
 Associate Justice

*Henri Jean Paul B. Inting*  
**HENRI JEAN PAUL B. INTING**  
 Associate Justice

*Mario V. Lopez*  
**MARIO V. LOPEZ**  
 Associate Justice

*Samuel H. Gaerlan*  
**SAMUEL H. GAERLAN**  
 Associate Justice

(No Part)  
**RICARDO R. ROSARIO**  
 Associate Justice

*Jhosep Y. Lopez*  
**JHOSEP Y. LOPEZ**  
 Associate Justice

*Japar B. Dimaampao*  
**JAPAR B. DIMAAMPAO**  
 Associate Justice

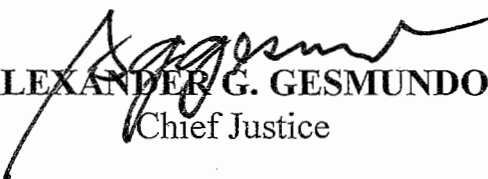
*Jose Midas P. Marquez*  
**JOSE MIDAS P. MARQUEZ**  
 Associate Justice

*Antonio T. Kho, Jr.*  
**ANTONIO T. KHO, JR.**  
 Associate Justice

*Maria Filomena D. Singh*  
**MARIA FILOMENA D. SINGH**  
 Associate Justice

**CERTIFICATION**

Pursuant to the 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