



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

JOSE M. ROY III,
Petitioner,

G.R. No. 207246

- versus -

Present:

**CHAIRPERSON TERESITA
HERBOSA, THE SECURITIES AND
EXCHANGE COMMISSION, and
PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY,**
Respondents.

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
MENDOZA,
REYES,
PERLAS-BERNABE,*
LEONEN,
JARDELEZA,*
CAGUIOA,
MARTIRES, and
TIJAM, JJ.

X-----X
**WILSON C. GAMBOA, JR.,
DANIEL V. CARTAGENA, JOHN
WARREN P. GABINETE,
ANTONIO V. PESINA, JR.,
MODESTO MARTIN Y. MAMON
III, and GERARDO C. EREBAREN,**
Petitioners-in-Intervention,

X-----X
**PHILIPPINE STOCK
EXCHANGE, INC.,**
Respondent-in-Intervention,

X-----X
**SHAREHOLDERS'
ASSOCIATION OF THE
PHILIPPINES, INC.,**
Respondent-in-Intervention.

Promulgated:

April 18, 2017

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X-----X

RESOLUTION

CAGUIOA, J.:

Before the Court is the Motion for Reconsideration dated January 19, 2017¹ (the Motion) filed by petitioner Jose M. Roy III (movant) seeking the reversal and setting aside of the Decision dated November 22, 2016² (the

* No Part.
¹ Rollo (Vol. II), pp. 1262-1277.
² Decision, id. at 1154-1189.

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Decision) which denied the movant's petition, and declared that the Securities and Exchange Commission (SEC) did not commit grave abuse of discretion in issuing Memorandum Circular No. 8, Series of 2013 (SEC-MC No. 8) as the same was in compliance with, and in fealty to, the decision of the Court in *Gamboa v. Finance Secretary Teves*,³ (*Gamboa Decision*) and the resolution⁴ denying the Motion for Reconsideration therein (*Gamboa Resolution*).

The Motion presents no compelling and new arguments to justify the reconsideration of the Decision.

The grounds raised by movant are: (1) He has the requisite standing because this case is one of transcendental importance; (2) The Court has the constitutional duty to exercise judicial review over any grave abuse of discretion by any instrumentality of government; (3) He did not rely on an *obiter dictum*; and (4) The Court should have treated the petition as the appropriate device to explain the *Gamboa Decision*.

The Decision has already exhaustively discussed and directly passed upon these grounds. Movant's petition was dismissed based on both procedural and substantive grounds.

Regarding the procedural grounds, the Court ruled that petitioners (movant and petitioners-in-intervention) failed to sufficiently allege and establish the existence of a case or controversy and *locus standi* on their part to warrant the Court's exercise of judicial review; the rule on the hierarchy of courts was violated; and petitioners failed to implead indispensable parties such as the Philippine Stock Exchange, Inc. and Shareholders' Association of the Philippines, Inc.⁵

In connection with the failure to implead indispensable parties, the Court's Decision held:

Under Section 3, Rule 7 of the Rules of Court, an indispensable party is a party-in-interest without whom there can be no final determination of an action. Indispensable parties are those with such a material and direct interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed without their presence. The interests of such indispensable parties in the subject matter of the suit and the relief are so bound with those of the other parties that their legal presence as parties to the proceeding is an absolute necessity and a complete and efficient determination of the equities and rights of the parties is not possible if they are not joined.

Other than PLDT, the petitions failed to join or implead other public utility corporations subject to the same restriction imposed by Section 11, Article XII of the Constitution. These corporations are in

³ 668 Phil. 1 (2011).

⁴ *Heirs of Wilson P. Gamboa v. Finance Sec. Teves*, 696 Phil. 276 (2012).

⁵ Decision, *rollo* (Vol. II), pp. 1160-1166.

danger of losing their franchise and property if they are found not compliant with the restrictive interpretation of the constitutional provision under review which is being espoused by petitioners. They should be afforded due notice and opportunity to be heard, lest they be deprived of their property without due process.

Not only are public utility corporations other than PLDT directly and materially affected by the outcome of the petitions, their shareholders also stand to suffer in case they will be forced to divest their shareholdings to ensure compliance with the said restrictive interpretation of the term "capital". As explained by SHAREPHIL, in five corporations alone, more than Php158 Billion worth of shares must be divested by foreign shareholders and absorbed by Filipino investors if petitioners' position is upheld.

Petitioners' disregard of the rights of these other corporations and numerous shareholders constitutes another fatal procedural flaw, justifying the dismissal of their petitions. **Without giving all of them their day in court, they will definitely be deprived of their property without due process of law.**⁶

This is highlighted to clear any misimpression that the *Gamboa* Decision and *Gamboa* Resolution made a categorical ruling on the meaning of the word "capital" under Section 11, Article XII of the Constitution only in respect of, or only confined to, respondent Philippine Long Distance Telephone Company (PLDT). Nothing is further from the truth. Indeed, a fair reading of the *Gamboa* Decision and *Gamboa* Resolution shows that the Court's pronouncements therein would affect all public utilities, and not just respondent PLDT.

On the substantive grounds, the Court disposed of the issue on whether the SEC gravely abused its discretion in ruling that respondent PLDT is compliant with the limitation on foreign ownership under the Constitution and other relevant laws as without merit. The Court reasoned that "in the absence of a definitive ruling by the SEC on PLDT's compliance with the capital requirement pursuant to the *Gamboa* Decision and Resolution, any question relative to the inexistent ruling is premature."⁷

In resolving the other substantive issue raised by petitioners, the Court held that:

[E]ven if the resolution of the procedural issues were conceded in favor of petitioners, the petitions, being anchored on Rule 65, must nonetheless fail because the SEC did **not** commit grave abuse of discretion amounting to lack or excess of jurisdiction when it issued SEC-MC No. 8. **To the contrary**, the Court finds SEC-MC No. 8 to have been issued in fealty to the *Gamboa* Decision and Resolution.⁸

⁶ Decision, id. at 1165; citations omitted.

⁷ Decision, id. at 1159.

⁸ Decision, id. at 1166.

To belabor the point, movant's petition is not a continuation of the *Gamboa* case as the *Gamboa* Decision attained finality on October 18, 2012, and thereafter Entry of Judgment was issued on December 11, 2012.⁹

As regards movant's repeated invocation of the transcendental importance of the *Gamboa* case, this does not *ipso facto* accord *locus standi* to movant. Being a new petition, movant had the burden to justify his *locus standi* in his own petition. The Court, however, was not persuaded by his justification.

Pursuant to the Court's constitutional duty to exercise judicial review, the Court has conclusively found no grave abuse of discretion on the part of SEC in issuing SEC-MC No. 8.

The Decision has painstakingly explained why it considered as *obiter dictum* that pronouncement in the *Gamboa* Resolution that the constitutional requirement on Filipino ownership should "apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation."^{9-a} The Court stated that:

[T]he *fallo* or decretal/dispositive portions of both the *Gamboa* Decision and Resolution are definite, clear and unequivocal. While there is a passage in the body of the *Gamboa* Resolution that might have appeared contrary to the *fallo* of the *Gamboa* Decision x x x the definiteness and clarity of the *fallo* of the *Gamboa* Decision must control over the *obiter dictum* in the *Gamboa* Resolution regarding the application of the 60-40 Filipino-foreign ownership requirement to "each class of shares, regardless of differences in voting rights, privileges and restrictions."¹⁰

To the Court's mind and, as exhaustively demonstrated in the Decision, the dispositive portion of the *Gamboa* Decision was in no way modified by the *Gamboa* Resolution.

The heart of the controversy is the interpretation of Section 11, Article XII of the Constitution, which provides: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens x x x."

The *Gamboa* Decision already held, in no uncertain terms, that what the Constitution requires is "[f]ull [and legal] beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights x x x must rest in the hands of Filipino nationals x x x."¹¹ **And, precisely that is what SEC-MC No. 8 provides**, viz.: "x x x For purposes of determining compliance [with the constitutional or statutory ownership],

⁹ Id. at 605-609.

^{9-a} Supra note 4, at 339.

¹⁰ Id. at 1185.

¹¹ Supra note 3, at 57.

the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote x x x.”¹²

In construing “full beneficial ownership,” the Implementing Rules and Regulations of the Foreign Investments Act of 1991 (FIA-IRR) provides:

For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.¹³

In turn, “beneficial owner” or “beneficial ownership” is defined in the Implementing Rules and Regulations of the Securities Regulation Code (SRC-IRR) as:

[A]ny person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security) x x x.¹⁴

Thus, the definition of “beneficial owner or beneficial ownership” in the SRC-IRR, which is in consonance with the concept of “full beneficial ownership” in the FIA-IRR, is, as stressed in the Decision, relevant in resolving only the question of who is the beneficial owner or has beneficial ownership of each “specific stock” of the public utility company whose stocks are under review. **If** the Filipino has the **voting power** of the “specific stock”, *i.e.*, he can **vote** the stock or direct another to vote for him, or the Filipino has the **investment power** over the “specific stock”, *i.e.*, he can **dispose** of the stock or direct another to dispose of it for him, or both, *i.e.*, he can **vote and dispose** of that “specific stock” or direct another to vote or dispose it for him, **then** such Filipino is the “beneficial owner” of that “specific stock.” Being considered Filipino, that “specific stock” is then to be counted as part of the 60% Filipino ownership requirement under the Constitution. The right to the dividends, *jus fruendi* – a right emanating from ownership of that “specific stock” necessarily accrues to its Filipino “beneficial owner.”

Once more, this is emphasized anew to disabuse any notion that the dividends accruing to any particular stock are determinative of that stock’s “beneficial ownership.” Dividend declaration is dictated by the corporation’s unrestricted retained earnings. On the other hand, the corporation’s need of capital for expansion programs and special reserve for probable contingencies may limit retained earnings available for dividend

¹² SEC-MC No. 8, Sec. 2.

¹³ Implementing Rules and Regulations of Republic Act No. 7042 (Foreign Investment Act of 1991) as amended by Republic Act No. 8179, Sec. 1, b.

¹⁴ 2015 Implementing Rules and Regulations of the Securities Regulation Code, Sec. 3.1.2.

declaration.¹⁵ It bears repeating here that the Court in the *Gamboa* Decision adopted the foregoing definition of the term “capital” in Section 11, Article XII of the 1987 Constitution in express recognition of the sensitive and vital position of public utilities both in the national economy and for national security, so that the evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest.¹⁶ This purpose prescind from the “benefits”/dividends that are derived from or accorded to the particular stocks held by Filipinos vis-à-vis the stocks held by aliens. So long as Filipinos have controlling interest of a public utility corporation, their decision to declare more dividends for a particular stock over other kinds of stock is their sole prerogative — an act of ownership that would presumably be for the benefit of the public utility corporation itself. Thus, as explained in the Decision:

In this regard, it would be *apropos* to state that since Filipinos own at least 60% of the outstanding shares of stock entitled to vote directors, which is what the Constitution precisely requires, then the Filipino stockholders **control** the corporation, *i.e.*, they dictate corporate actions and decisions, and they have all the rights of ownership including, but not limited to, offering certain preferred shares that may have greater economic interest to foreign investors — as the need for capital for corporate pursuits (such as expansion), may be good for the corporation that they own. Surely, these “true owners” will not allow any dilution of their ownership and control if such move will not be beneficial to them.¹⁷

Finally, as to how the SEC will classify or treat certain stocks with voting rights held by a trust fund that is created by the public entity whose compliance with the limitation on foreign ownership under the Constitution is under scrutiny, and how the SEC will determine if such public utility does, in fact, control how the said stocks will be voted, and whether, resultantly, the trust fund would be considered as Philippine national or not — lengthily discussed in the dissenting opinion of Justice Carpio — is speculative at this juncture. The Court cannot engage in guesswork. Thus, there is need of an actual case or controversy before the Court may exercise its power of judicial review. The movant’s petition is **not** that actual case or controversy.

Thus, the discussion of Justice Carpio’s dissenting opinion as to the voting preferred shares created by respondent PLDT, their acquisition by BTF Holdings, Inc., which appears to be a wholly-owned company of the PLDT Beneficial Trust Fund (BTF), and whether or not it is respondent PLDT’s management that controls BTF and BTF Holdings, Inc. — all these are factual matters that are outside the ambit of this Court’s review which, as stated in the beginning, is confined to determining whether or not the SEC committed grave abuse of discretion in issuing SEC-MC No. 8; that is, whether or not SEC-MC No. 8 violated the ruling of the Court in *Gamboa v.*

¹⁵ SEC Memorandum Circular No. 11, Series of 2008.

¹⁶ *Supra* note 3, at 44.

¹⁷ Decision, *rollo* (Vol. II), p. 1168.

Finance Secretary Teves,¹⁸ and the resolution in *Heirs of Wilson P. Gamboa v. Finance Sec. Teves*¹⁹ denying the Motion for Reconsideration therein as to the proper understanding of “capital”.

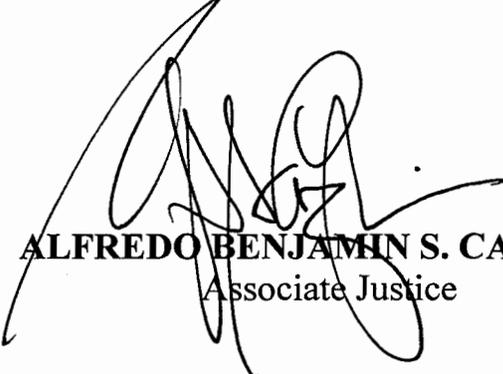
To be sure, it would be more prudent and advisable for the Court to await the SEC’s prior determination of the citizenship of specific shares of stock held in trust — ***based on proven facts*** — before the Court proceeds to pass upon the legality of such determination.

As to whether respondent PLDT is currently in compliance with the Constitutional provision regarding public utility entities, the Court must likewise await the SEC’s determination thereof applying SEC-MC No. 8. After all, as stated in the Decision, it is the SEC which is the government agency with the competent expertise and the mandate of law to make such determination.

In conclusion, the basic issues raised in the Motion having been duly considered and passed upon by the Court in the Decision and no substantial argument having been adduced to warrant the reconsideration sought, the Court resolves to **DENY** the Motion with **FINALITY**.

WHEREFORE, the subject Motion for Reconsideration is hereby **DENIED WITH FINALITY**. No further pleadings or motions shall be entertained in this case. Let entry of final judgment be issued immediately.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

Dis. Dissenting Opinion
Antonio T. Carpio
ANTONIO T. CARPIO
Associate Justice

Pls. see Concurring Opinion
PRESBITERO J. VELASCO, JR.
Associate Justice

¹⁸ Supra note 3.

¹⁹ Supra note 4.

*I join the dissent of Justice Carpio:
Perrita Leonardo de Castro*
TERESITA J. LEONARDO-DE CASTRO
 Associate Justice

[Signature]
DIOSDADO M. PERALTA
 Associate Justice

[Signature]
LUCAS P. BERSAMIN
 Associate Justice

[Signature]
MARIANO C. DEL CASTILLO
 Associate Justice

I join the dissent of J. Carpio
JOSE CATRAL MENDOZA
 Associate Justice

[Signature]
BIENVENIDO L. REYES
 Associate Justice

I dissent. So separate opinion

(No Part)
ESTELA M. PERLAS-BERNABE
 Associate Justice

[Signature]
MARVIC M.V.F. LEONEN
 Associate Justice

(No Part)
FRANCIS H. JARDELEZA
 Associate Justice

I join the dissent of J. Carpio
[Signature]
SAMUEL R. MARTIRES
 Associate Justice

[Signature]
NOEL G. TNAM
 Associate Justice

[Signature]

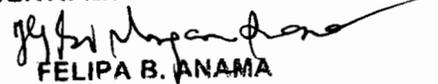
CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

