



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 February 2022** which reads as follows:*

**“G.R. No. 225373 (Nielsen C. Custodio, et al. v. Department of Public Works and Highways and The Secretary of the Department of Public Works and Highways).** – In this Petition for Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Injunction,<sup>1</sup> filed under Rule 65 of the Rules of Court, petitioners Nielsen C. Custodio, Mark Darwin A. Camara, and Charles Michael T. Puno (collectively, petitioners), suing as taxpayers, seek to permanently enjoin respondents Department of Public Works and Highways (DPWH) and the Secretary of the DPWH (DPWH Secretary) from proceeding with the construction of the North Luzon Expressway-South Luzon Expressway Toll Connector Road Project (NLEX-SLEX Connector Project) which was awarded to the Metro Pacific Tollways Development Corporation (MPTDC).

**Antecedents**

On April 29, 2010, the Manila North Tollways Corporation (MNTC) submitted to the DPWH an unsolicited proposal<sup>2</sup> under Republic Act No. 6957 or the Build-Operate-Transfer (BOT) Law, for the design, financing, construction, operation, and maintenance of the NLEX-SLEX Connector Project that aims to connect the NLEX and the SLEX. An amendment<sup>3</sup> to said unsolicited proposal was submitted by MPTDC, jointly and in conformity with MNTC, on May 6, 2010.<sup>4</sup>

In a letter<sup>5</sup> dated April 4, 2011, the DPWH Secretary formally recognized MPTDC as the “original proponent” of the NLEX-SLEX Connector Project. Thereafter, on January 18, 2013, the Investment Coordination Committee-Technical Board of the National Economic and

---

<sup>1</sup> *Rollo*, pp. 3-23.

<sup>2</sup> *Id.* at 589.

<sup>3</sup> *Id.* at 537.

<sup>4</sup> *Id.* at 513-514.

<sup>5</sup> *Id.* at 538-540.

Development Authority (NEDA) approved the NLEX-SLEX Connector Project.<sup>6</sup>

On September 11, 2013, the NEDA Board issued an amended approval providing for a new condition, to wit: that the implementation of the NLEX-SLEX Connector Project must be made through a Joint Venture (JV) between MPTDC and the Philippine National Construction Corporation (PNCC).<sup>7</sup> MPTDC expressed its acquiescence to NEDA's condition, thereby deferring its own pursuit of the project. Nevertheless, it reserved its right as original proponent to seek the implementation of the NLEX-SLEX Connector Project in accordance with its original unsolicited proposal should the JV fail to do so.<sup>8</sup>

However, on July 7, 2014, the Department of Justice (DOJ), through Opinion No. LML-07G14-912,<sup>9</sup> declared, *inter alia*, that (1) the NEDA Board did not have any authority to impose a change in the implementation of the NLEX-SLEX Connector Project from an unsolicited proposal to a JV, "much less the authority or regulatory power to impose upon a private entity, the unsolicited proponent MPTDC, to enter into a partnership with PNCC and vice versa;"<sup>10</sup> and (2) the DPWH is the agency that has the power and authority to pursue the unsolicited proposal, unless MPTDC withdraws the same.<sup>11</sup>

Pursuant to the foregoing DOJ Opinion, the suggestion of a JV between MPTDC and PNCC was abandoned. Consequently, in a Memorandum for the President<sup>12</sup> dated August 15, 2014, the DPWH requested that the NLEX-SLEX Connector Project be reapproved under the same terms and conditions of the original January 18, 2013 approval with MPTDC as original proponent. Per Memorandum<sup>13</sup> dated February 16, 2015, the NEDA granted the said request for reapproval, subject to Swiss challenge. Thus, the DPWH started formal negotiations with MPTDC.<sup>14</sup>

The DPWH likewise issued an Invitation to Submit Comparative Proposals<sup>15</sup> for the NLEX-SLEX Connector Project. Out of the seven parties that purchased bidding/tender documents from the DPWH, not one submitted a comparative proposal to countermand MPTDC's unsolicited proposal.<sup>16</sup>

---

<sup>6</sup> Id. at 514.

<sup>7</sup> Id. at 602.

<sup>8</sup> Id. at 603-604.

<sup>9</sup> Id. at 607-643.

<sup>10</sup> Id. at 628.

<sup>11</sup> Id. at 629.

<sup>12</sup> Id. at 544-545.

<sup>13</sup> Id. at 546.

<sup>14</sup> Id. at 547-548.

<sup>15</sup> Id. at 553-554.

<sup>16</sup> Id. at 556.

16/11

On July 19, 2016, petitioners, as taxpayers, filed with this Court the instant petition<sup>17</sup> questioning the propriety of the DPWH proceeding with the NLEX-SLEX Connector Project as an unsolicited mode of proposal. Petitioners argue that MPTDC<sup>18</sup> lost its status as an original proponent when it entered into a JV with PNCC;<sup>19</sup> and that the proposed Concession Agreement<sup>20</sup> thereto is grossly disadvantageous to the government.<sup>21</sup>

Opposing the petition, the Office of the Solicitor General (OSG) contended in its Comment,<sup>22</sup> filed on June 30, 2017, that petitioners have no legal standing to institute the instant case; that under the BOT Law, the NLEX-SLEX Connector Project meets all of the requirements for an unsolicited proposal that may be considered by the DPWH; and that the NLEX-SLEX Connector Project does not involve the disbursement of governments funds, much less the grant of government guarantees, subsidies, or equities.

In their Compliance with Manifestation<sup>23</sup> dated September 23, 2018, petitioners waived the filing of a reply to the OSG's comment.

Meanwhile, the NLEX-SLEX Connector Project was formally awarded to MPTDC on September 16, 2016.<sup>24</sup>

### Issue

The Court is tasked to determine the propriety of preventing the DPWH and the DPWH Secretary from proceeding with the acceptance and evaluation of proposals for the NLEX-SLEX Connector Project.

### Ruling of the Court

The petition must be dismissed.

*Petitioners do not have the legal standing to institute the present petition*

*Locus standi* or legal standing refers to “a right of appearance in a court of justice on a given question.”<sup>25</sup> It has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain

---

<sup>17</sup> Id. at 3-31.

<sup>18</sup> Id. at 12.

<sup>19</sup> Id.

<sup>20</sup> Id. at 188-320.

<sup>21</sup> Id. at 16.

<sup>22</sup> Id. at 590-621.

<sup>23</sup> Id. at 705-710.

<sup>24</sup> Id. at 557-559.

<sup>25</sup> *Intellectual Property Association of the Philippines v. Ochoa*, 790 Phil. 276, 293 (2016).

direct injury as a result of the governmental act that is being challenged.<sup>26</sup> The term “interest” means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.<sup>27</sup>

For a citizen to have standing to challenge a governmental act, it must appear that he or she has been or is about to be denied some right or privilege to which he or she is lawfully entitled or that he or she is about to be subjected to some burdens or penalties by reason of the statute or act complained of.<sup>28</sup> In other words, he or she must establish that he or she has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.<sup>29</sup> Nothing of that sort was ever adduced by petitioners.

A perusal of the petition reveals that petitioners merely invoked that they are taxpayers. When their *locus standi* to institute the present petition was questioned by the OSG, they opted not to reply.

A party’s bare invocation that he or she is a taxpayer does not automatically bestow upon him or her the *locus standi* to challenge any and all governmental acts without any justification. One cannot just assert that a governmental act will make him or her suffer in an indefinite manner. Rather, it must be shown that he or she will sustain direct injury as a result of the enforcement of the acts complained of.<sup>30</sup>

In fine, petitioners have failed to establish their legal standing to file the instant suit.

*The petition runs afoul of the doctrine  
of hierarchy of courts*

Prohibition is an extraordinary remedy available to compel any tribunal, corporation, board, or person exercising judicial or ministerial functions, to desist from further proceeding in an action or matter when the proceedings in such tribunal, corporation, board, or person are without or in excess of jurisdiction or with grave abuse of discretion, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.<sup>31</sup>

<sup>26</sup> *Anak Mindanao Party-List Group v. Executive Secretary Ermita*, 558 Phil. 338, 350 (2007).

<sup>27</sup> *Jumamil v. Cafe*, 507 Phil. 455, 465 (2005).

<sup>28</sup> *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, 450 Phil. 744, 802 (2003).

<sup>29</sup> *Automotive Industry Workers Alliance v. Romulo*, 489 Phil. 710, 718 (2005).

<sup>30</sup> *Bayan v. Zamora*, 396 Phil. 623, 647 (2000), citing *Bugnay Construction and Development Corp. v. Laron*, 257 Phil. 245, 256-257 (1989).

<sup>31</sup> *Cojuangco, Jr. v. Sandiganbayan*, G.R. No. 247982, April 27, 2021.

Being a preventive remedy,<sup>32</sup> the writ of prohibition may be granted in favor of a party if the following requisites are established: (a) it must be directed against a tribunal, corporation, board, or person exercising functions, judicial or ministerial; (b) the tribunal, corporation, board, or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.<sup>33</sup>

Although this Court, the Court of Appeals, and the Regional Trial Courts have concurrent jurisdiction to issue writs of prohibition – along with the writs of *certiorari*, *mandamus*, *quo warranto*, *habeas corpus*, and injunction – such concurrence does not give petitioners the unrestricted freedom of choice of court forum.<sup>34</sup> The doctrine of judicial hierarchy of courts determines the appropriate forum for these petitions.<sup>35</sup> Such appropriate forum is the court lowest in the judicial hierarchy.<sup>36</sup>

Nowhere in the present petition did petitioners justify their direct recourse to this Court. Worse, the petition calls for an examination of records and, ultimately, a determination of facts.

We are not a trier of facts.<sup>37</sup> Direct recourse to this Court is allowed only to resolve questions of law.<sup>38</sup> We cannot simply take the allegations in the petition and accept these as facts, more so in this case where these allegations are contested.<sup>39</sup>

In *Gios-Samar, Inc. v. Department of Transportation and Communications*,<sup>40</sup> We declared that **“when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case.”** We find no compelling reason to stray from this precept.

Indeed, direct resort to the Court in violation of the doctrine of hierarchy of courts is a sufficient cause for dismissal of the instant petition.<sup>41</sup> This Court is a court of last resort, and must so remain if it is to satisfactorily

<sup>32</sup> *Montes v. Court of Appeals*, 523 Phil. 98, 109 (2006).

<sup>33</sup> *Longino v. General*, 491 Phil. 600, 616 (2005).

<sup>34</sup> *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform*, 635 Phil. 283, 300 (2010).

<sup>35</sup> *Commissioner of Internal Revenue v. Leal*, 440 Phil. 477, 484 (2002).

<sup>36</sup> *Tanog v. Balindong*, 773 Phil. 542, 553 (2015).

<sup>37</sup> *KLM Royal Dutch Airlines v. Tiongco*, G.R. No. 212136, October 4, 2021.

<sup>38</sup> *Salas v. Bunyi-Medina*, G.R. No. 251693, September 28, 2020.

<sup>39</sup> *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 543, 543 (2017).

<sup>40</sup> G.R. No. 217158, March 12, 2019.

<sup>41</sup> *Ramos v. National Commission on Indigenous Peoples*, G.R. No. 192112, August 19, 2020.

perform the functions assigned to it by the Constitution and immemorial tradition.<sup>42</sup>

*At any rate, prohibition cannot enjoin acts that have already been accomplished*

Prohibition is a preventive and not a corrective remedy.<sup>43</sup> Its objective is to obtain a judgment directing a defendant to desist from continuing with the commission of an act perceived to be illegal.<sup>44</sup> It will not lie for acts already executed or accomplished.<sup>45</sup>

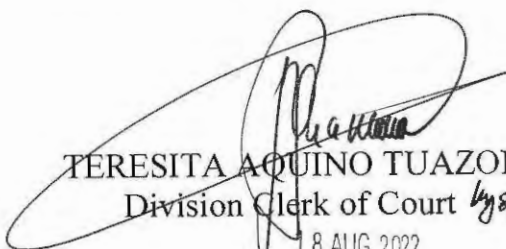
It is worth reiterating that petitioners seek to prevent the DPWH from “accepting and evaluating comparative proposals”<sup>46</sup> for the NLEX-SLEX Connector Project. However, on September 16, 2016, the same had already been awarded to MPTDC. Thus, nothing is left for this Court to prohibit or prevent. The writ of prohibition cannot undo an accomplished act.<sup>47</sup>

Since the acts sought to be enjoined in the present petition have already been accomplished, the same should be dismissed.<sup>48</sup>

**WHEREFORE**, the petition for prohibition with prayer for the issuance of a temporary restraining order and/or injunction, is hereby **DISMISSED**.

**SO ORDERED.”**

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court *by s/18*  
8 AUG 2022

<sup>42</sup> *Ouano v. PGGT International Investment Corp.*, 434 Phil. 28, 34 (2002).

<sup>43</sup> *Cajefe v. Fernandez*, 109 Phil. 743, 749 (1960).

<sup>44</sup> *Belmonte v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*, 778 Phil. 221, 234 (2016).

<sup>45</sup> *Dynamic Builders & Construction Co. (Phil.), Inc. v. Presbitero, Jr.*, 757 Phil. 454, 470 (2015).

<sup>46</sup> *Rollo*, p. 26.

<sup>47</sup> *Agustin v. De la Fuente*, 84 Phil. 515, 517 (1949).

<sup>48</sup> *Spouses Guerrero v. Navarro-Domingo*, 661 Phil. 528, 535 (2011).

ATTYS. NIERSEN C. CUSTODIO,  
CHARLES MICHAEL T. PUNO and  
MARK DARWIN CAMARA (reg)  
Petitioners  
Custodio Cruz Puno & Camara Law Offices  
Unit 1102, The Centerpoint Building  
Julia Vargas Avenue corner Garnet Road  
1605 Ortigas Center, Pasig City

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

THE HON. SECRETARY (reg)  
Department of Public Works and Highways  
Bonifacio Drive, Port Area  
Manila

LEGAL DIVISION (reg)  
Department of Public Works and Highways  
DPWH Compound, Bonifacio Drive  
Port Area, Manila

JUDGMENT DIVISION (x)  
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)  
OFFICE OF THE REPORTER (x)  
PHILIPPINE JUDICIAL ACADEMY (x)  
Supreme Court, Manila

*Please notify the Court of any change in your address.*  
GR225373. 02/16/2022(50)URES *1/11*