EN BANC

G.R. No. 182734 ***(Bayan Muna Party List Representatives Satur C. Ocampo and Teodoro A. Casiño, Anakpawis Representative Crispin B. Beltran, Gabriela Women's Party Representatives Liza L. Maza and Luzviminda C. Ilagan, Rep. Lorenzo R. Tañada III, and Rep. Teofisto L. Guingona III,*** *petitioners* ***vs. President Gloria Macapagal-Arroyo, Executive Secretary Eduardo R. Ermita, Secretary of the Department of Foreign Affairs, Secretary of the Department of Energy, Philippine National Oil Company, and Philippine National Oil Company Exploration Corporation,*** *respondents).*

Promulgated: January 10, 2023

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SEPARATE CONCURRING OPINION

GESMUNDO, *C.J.*:

This case involves the constitutionality of the Tripartite Agreement for Joint Marine Seismic Undertaking (*JMSU*) in the Agreement Area.

The JMSU was executed in 2005 by China National Offshore Oil Corporation (*CNOOC*), Vietnam Oil and Gas Corporation (*VOGC*), and the Philippine National Oil Company (*PNOC*) (collectively referred to as *Parties*), with the authorization of their respective governments.[1] Article 4(1) of the JMSU authorizes the Parties to conduct seismic work in the covered area:

> 4.1. It is agreed that certain amount of 2D and/or 3D seismic lines shall be collected and processed and certain amount of existing 2D seismic lines shall be reprocessed within the Agreement Term. The seismic work shall be conducted in accordance with the seismic program unanimously approved by the Parties taking into account the safety and protection of the environment in the Agreement Area.

On the substantive aspect, petitioners argue that the large-scale exploration of petroleum and mineral oils by wholly-owned foreign corporations in the Agreement Area violates Article XII, Section 2(1) of the 1987 Constitution. Petitioners claim that a seismic survey is an exploration method. Respondents counter that the JMSU involves only pre-exploration activities, which are outside of the scope of the exploration, development, and utilization (*EDU*) of natural resources under the Constitution. They maintain

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[1] *See* Article VII, Section 21 of the Constitution: "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

that seismic surveying, as a method of data acquisition, does not by itself amount to exploration. They add that seismic surveys are not only conducted for purposes of exploration of mineral oils but may be conducted for other purposes sanctioned by international law.

The *ponencia* declares the JMSU unconstitutional, holding that seismic survey constitutes exploration as contemplated under the Constitution. It stresses the constitutional requirement that the EDU "shall be under the full control and supervision of the State," and rules that the PNOC and/or the government illegally compromised the required control and supervision when it agreed that the information over the natural resources would jointly be owned with CNOOC and VOGC. It concludes that the PNOC bargained away the State's supposed full control over all information acquired from the seismic survey. The *ponencia* stresses that the fact that the JMSU was entered into by PNOC with foreign government corporations (not by the State) further highlights the unconstitutionality of the JMSU, because PNOC has no power to enter into contracts involving the exploration of the country's petroleum resources with foreign-owned corporations. The *ponencia* notes that the government approved the JMSU even though the President is not a signatory to it. Government approval was supposedly given through a permit issued by the Department of Energy (*DOE*) Secretary in 2005.

I concur with the *ponencia* insofar as it holds unconstitutional the JMSU because it was not entered into by the President as required under Article XII, Section 2 of the Constitution. The relevant portions of said provision state thus:

> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. x x x
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> The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.
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> x x x x

> **The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils** according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.
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> The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

Verily, all mineral resources are owned by the State. Their exploration, development, and utilization must always be subject to the full control and supervision of the State.[2] While large-scale exploration may be conducted with the assistance of foreign-owned corporations to augment the country's capacity, the State must maintain its right of full control over the EDU.

The *ponencia* correctly holds that the seismic survey under the JMSU involves an exploration under the 1987 Constitution, in this wise:

> Ordinarily, "exploration" means "the activity of searching and finding out about something." x x x Additionally, under R.A. No. 387 or the Petroleum Act of 1949, "[e]xploration means all work that have for their object the discovery of petroleum, including, but not restricted to, surveying and mapping, aerial photography, surface geology, geophysical investigations, testing of subsurface conditions by means of borings or structural drillings, and all such auxiliary work as are useful in connection with such operations." Thus, exploration, whether used in the ordinary or technical sense pertains to a search or discovery of something.
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> Applying the foregoing definitions, We rule that the JMSU involves the exploration of the country's natural resources, particularly petroleum. The text of the fifth whereas clause of the JMSU is clear as to the objective of the agreement:
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> > WHEREAS, the Parties expressed desire to engage in a **joint research of petroleum resource potential** of a certain area of the South China Sea as a pre-exploration activity[.] (Emphasis supplied)

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[2] *See La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 486 Phil. 754, 772 (2004) [Per J. Panganiban, *En Banc*].

> The JMSU was executed for the purpose of determining if petroleum exists in the Agreement Area. That the Parties designated the joint research as a "pre-exploration activity" is of no moment. Such designation does not detract from the fact that the intent and aim of the agreement is to discover petroleum which is tantamount to "exploration."[3]

Considering that the JMSU involves exploration of natural resources, compliance with the requirements under Article XII, Section 2 of the Constitution is necessary. Undeniably, the JMSU involves an agreement with foreign-owned corporations, specifically VOGC and CNOOC, for large scale exploration. In the JMSU's words, the parties will "engage in a joint research of petroleum resource potential."

A reading of **Article XII, Section 2 of the Constitution highlights the integral role of the President as the one who should enter into such agreements**. In *Akbayan Citizens Action Party v. Aquino*,[4] the Court underscored the President's role as the chief architect of the country's foreign policy. Citing Article VII, Section 28(2) of the Constitution, the Court emphasized the general principle that the power to enter into treaties or international agreements is vested by the Constitution on the President, subject only to the concurrence of at least two thirds of all members of the Senate.[5] In *Pimentel v. Executive Secretary*,[6] the Court expounded thus:

> In our system of government, the President, being the head of state, is regarded as the sole organ and authority in external relations and is the country's sole representative with foreign nations. As the chief architect of foreign policy, the President acts as the country's mouthpiece with respect to international affairs. Hence, the President is vested with the authority to deal with foreign states and governments, extend or withhold recognition, maintain diplomatic relations, enter into treaties, and otherwise transact the business of foreign relations. In the realm of treaty-making, the President has the sole authority to negotiate with other states.[7]

The President's key role finds greater significance in matters relating to international agreements with foreign-owned corporations as regards the exploration of marine resources in the country's exclusive economic zone. Article XII, Section 2 of the Constitution specifically **vests upon the President alone** the power to enter into such agreements, *viz.*:

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3 *Ponencia*, pp. 20-21.
4 580 Phil. 422 (2008) [Per J. Carpio Morales, *En Banc*].
5 Id. at 487-488.
6 501 Phil. 303 (2005) [Per J. Puno, *En Banc*].
7 Id. at 313.

> **The President** may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. (Emphasis supplied)

In *Resident Marine Mammals of the Protected Seascape Tañon Stait v. Reyes*[8] (*Resident Marine*), the Court held that the President must be the signatory to the agreement named SC-46, for the joint exploration, development, and production of petroleum resources in a block covering approximately 2,850 square kilometers offshore the Tañon Strait. The agreement was entered into between the DOE and Japan Petroleum Exploration Co., Ltd. (*JAPEX*), a foreign-owned corporation. In said case, however, President Gloria Macapagal-Arroyo did not show any concurrence to such SC-46 project, rendering the agreement null and void for being violative of Section 2, Article XII of the Constitution.

There, the Court found no merit in therein respondents' invocation of the *alter ego* principle to justify the failure of the President to sign the contract. It explained that "the multifarious executive and administrative functions of the Chief Executive" may be performed by executive departments "except in cases where the Chief Executive is required by the Constitution or law to act in person,"[9] as in this case. Finding the service contract unconstitutional because the President was not a signatory to it, the Court harped on the rationale behind the requirement thus:

> While the requirements in executing service contracts in paragraph 4, Section 2 of Article XII of the 1987 Constitution seem like mere formalities, they, in reality, take on a much bigger role. As we have explained in *La Bugal*, they are the safeguards put in place by the framers of the Constitution to "eliminate or minimize the abuses prevalent during the martial law regime." Thus, they are not just mere formalities, which will only render a contract unenforceable but not void, if not complied with. They are requirements placed, not just in an ordinary statute, but in the fundamental law, the non-observance of which will nullify the contract.[10]

In *La Bugal-B'laan Tribal Association, Inc. v. Ramos*[11] (*La Bugal-B'laan*), the Court made the same pronouncement thus:

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[8] 758 Phil. 724 (2015) [Per J. Leonardo-De Castro, *En Banc*].
[9] Id. at 766, citing *Joson v. Torres*, 352 Phil. 888, 915 (1998) [Per J. Puno, Second Division].
[10] Id. at 766-767.
[11] See supra note 2.

> Who or what organ of government actually exercises this power of control on behalf of the State? The Constitution is crystal clear: the President. Indeed, the Chief Executive is the official constitutionally mandated to "enter into agreements with foreign owned corporations."[12]

In the present case, the signatory to the JMSU is not the President of the Philippines but the PNOC, through its President and Chief Executive Officer. The involvement of the government is only through the permit issued by the DOE in 2005. Hence, it is clear that the constitutionally required involvement of the President in the agreement was not complied with. Consistent with the constitutional requirement, neither the PNOC nor the DOE is authorized to enter into agreements pertaining to large-scale exploration of natural resources in the exclusive economic zone. To reiterate, only the President is given such authority. As stated in *Resident Marine* and *La Bugal-B'laan*, the Constitution requires that the President himself be the signatory of service agreements with foreign-owned corporations involving the exploration, development, and utilization of our minerals, petroleum, and other mineral oils. Otherwise, the said joint exploration, development, and utilization with foreign-owned corporations is void. For this reason alone, the JMSU should be held unconstitutional.

Hence, I join the *ponencia* in granting the petition and in rendering the JMSU unconstitutional.

ALEXANDER G. GESMUNDO
Chief Justice

[12] Id. at 773.