EN BANC

G.R. No. 230818 – EFRAIM C. GENUINO, Petitioner **v. COMMISSION ON AUDIT, et al.,** Respondents; **and**

G.R. No. 244540 – RENE C. FIGUEROA, Petitioner, **v. COMMISSION ON AUDIT,** Respondent.

Promulgated:
February 14, 2023

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia's* ruling that all funds of the Philippine Amusement and Gaming Corporation (PAGCOR), regardless of source, are subject to the audit jurisdiction of the Commission on Audit.

Section 15 of Presidential Decree No 1869, which expressly limits the audit of PAGCOR funds to the 5% franchise tax and 50% government's share of gross earnings, is no longer operative with the subsequent adoption of the 1987 Constitution. Article IX-D, Sections 2 and 3 of the Constitution provides for an extensive scope of audit by the Commission on Audit, covering all funds of the government and its agencies or instrumentalities.

I further concur with the *ponencia's* affirmance of the disallowance by the Commission on Audit of the PHP 2,000,000.00 financial assistance granted by PAGCOR for Pleasant Village Homeowners Association's flood control and drainage system project. Petitioners PAGCOR officers failed to discharge the burden of proof to show that the flood control project had beneficial effect to the public.

I

PAGCOR was created and organized in 1977 under Presidential Decree No. 1067-A[1] to *centralize and integrate all games of chance.*[2] It was authorized to establish and operate gambling casinos to generate additional revenues for the government;[3] and was conferred corporate powers.[4]

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1 Presidential Decree No. 1067-A (1977), Creating the Philippine Amusements and Gaming Corporation, Defining its Powers and Functions, Providing Funds Therefor, and for Other Purposes.

2 Presidential Decree No. 1067-A (1977), sec. 1.

3 Presidential Decree No. 1067-A (1977), sec. 1.

4 Presidential Decree No. 1067-A (1977), sec. 3 provides:

PAGCOR was 60% owned by the government and 40% by entities acceptable to its Board of Directors.[5] The Board of Directors was composed of five *ex officio* members,[6] two of whom were to be appointed by the president.

In line with State policy, PAGCOR was granted a franchise to operate and maintain gambling casinos and other recreation or amusement places, through Presidential Decree No. 1067-B.[7] The franchise was for a period of 25 years, renewable for another 25 years.[8] PAGCOR was also authorized to enter into operator and/or management contracts[9] and to do other acts related to the operation of gambling casinos.[10]

The franchise was subject to a special condition pertaining to the allocation of 60% of PAGCOR's revenues to fund priority infrastructure and socio-civic projects within Metropolitan Manila.[11] PAGCOR was also

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SECTION 3. *Corporate Powers.* — The Corporation shall have the power:
(a) to prescribe its by-laws;
(b) to adopt, alter and use a corporate seal;
(c) to make contracts and to sue and be sued:
(d) to own real or personal property and to sell, mortgage or otherwise dispose of the same;
(e) to employ such officers and personnel as may be necessary to carry on its business;
(f) to acquire, lease or maintain, whether on land, water, or air, personal property and such other equipment and facilities as may be necessary to carry out its purposes;
(g) to import, buy, sell, or otherwise trade or deal in merchandise, goods, wares and objects of all kinds and descriptions that may be necessary to carry out the purposes for which it has been created;
(h) to enter into, make, perform, and carry out contracts tracts of every kind and for any lawful purpose pertaining to the business of the corporation, or in any manner incident thereto, as principal agent or otherwise, with any person, firm, association, or corporation;
(i) to do anything and everything necessary, desirable, convenient, appropriate, suitable or proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers herein stated, either alone, or in association with other corporations, firms or individuals, and to do every other act or thing incidental or pertaining to, or growing out of, or connected with the aforesaid purposes, objects, or powers, or any part thereof;
(j) to borrow money from local, or foreign sources as may be necessary for its operation;
(k) to invest its funds as the corporation may deem proper and necessary in any activity related to its principal operations, including in any bonds or securities issued and guaranteed by the Government of the Philippines;
(l) to establish and maintain clubs, casinos, branches agencies or subsidiaries, or other units anywhere in the Philippines as may be needed by the Corporation and reorganize or abolish the same as it may deem proper;
(m) to perform such other functions as may be provided by law.

5 Presidential Decree No. 1067-A (1977), sec. 4.

6 Presidential Decree No. 1067-A (1977), sec. 5 provides:
SECTION 5. *Board of Directors.* — The Corporation shall be governed and its activities be directed, controlled and managed by a Board of Directors that shall be composed of five (5) *ex-officio* members, namely: (1) The Chairman of the National Development Corporation, who shall act as Chairman; (2) The Secretary of Public Works; (3) The Secretary of the Department of Social Welfare; and two other members to be appointed by the President of the Philippines.
The two appointive directors shall each serve for a term of two (2) years or until their successors shall have been appointed and qualified.

7 Presidential Decree No. 1067-B (1977), Granting the Philippine Amusements and Gaming Corporation a Franchise to Establish, Operate, and Maintain Gambling Casinos on Land or Water Within the Territorial Jurisdiction of the Republic of the Philippines.

8 Presidential Decree No. 1067-B (1977), sec. 1.

9 Presidential Decree No. 1067-B (1977), sec. 2(1).

10 Presidential Decree No. 1067-B (1977), sec. 2(5).

11 Presidential Decree No. 1067-B (1977), sec. 3 provides:
SECTION 3. *Special Condition of Franchise.* — Sixty (60%) percent of the aggregated gross earnings derived by the franchise holder from this Franchise shall be immediately set aside and allocated to fund the following infrastructure and socio-civic projects within the Metropolitan Manila Area:
(a) Flood Control.

granted tax exemptions in lieu of a franchise tax of 5% of the gross revenue or earnings derived by PAGCOR from its casino operation.[12] However, all of PAGCOR's income was subject to audit by the Commission on Audit.[13]

Presidential Decree Nos. 1067–C,[14] 1399,[15] and 1632,[16] further amended PAGCOR's charter and franchise. Then in 1983, Presidential Decree No. 1869[17] was enacted to consolidate all the foregoing Presidential Decrees; increase the private sector's ownership in PAGCOR from 40% to 45%,[18] and lower the government's share in gross earnings to 50%.[19]

To purportedly provide PAGCOR with "greater flexibility in [its] operation[,]"[20] governmental audit was expressly limited to the determination of the 50% government share and the 5% franchise tax. Section 15 of Presidential Decree No. 1869 states:

> **TITLE V**
> *Government Audit*
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> SECTION 15. *Auditor.* — The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. **The funds of the Corporation to be covered by the audit shall be limited to the 5%**

(b) Sewerage and Sewage.
(c) Nutritional Programs.
(d) Population Control.
(e) "Tulungan ng Bayan" Centers.
(f) Beautification.

12 Presidential Decree No. 1067-B (1977), sec. 4.

13 Presidential Decree No. 1067-B (1977), sec. 5 provides:
SECTION 5. *Other Conditions.* —

. . . .

(4) *Audit of income.* — The books of accounts of the franchise holder, as well as all financial records and other supporting documents, shall be subject to audit by the Commission on Audit or his duly authorized representative.

14 Presidential Decree No. 1067–C (1977), Amending the Franchise of the Philippine Amusement and Gaming Corporation. Section 1 adds the following provision:
This franchise shall become exclusive in character, subject only to the exception of existing franchises and games of chance heretofore permitted by law, upon the generation by the Franchise Holder of gross revenues amounting to P1.2 Billion and its contribution therefrom of the amount of P720 Million as the government's share. (Emphasis in the original)

15 Presidential Decree No. 1399 (1978), Amending Certain Sections of Presidential Decree No. 1067-A dated January 1, 1977 and Presidential Decree No. 1067-B dated January 1, 1977.

16 Presidential Decree No. 1632 (1979), Amending Sections Three and Four of Presidential Decree No. 1067-B dated January 1, 1977, as amended by Presidential Decree No. 1399 dated June 2, 1978.

17 Presidential Decree No. 1869 (1983), Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR).

18 Presidential Decree No. 1869 (1983), sec. 4.

19 Presidential Decree No. 1869 (1983), sec. 12.

20 Presidential Decree No. 1869 (1983), 5th Whereas Clause.

franchise tax and the 50% of the gross earnings pertaining to the Government as its share. (Emphasis supplied)

II

This limitation on audit under Section 15 of Presidential Decree No. 1869 **is repugnant to, hence, impliedly repealed by the Constitution.**[21]

Article IX-D, Sections 2 and 3 of the Constitution provides:

> SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle **all** accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, **including government-owned or controlled corporations with original charters**, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
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> (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.
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> SECTION 3. **No law shall be passed exempting** any entity of the Government or its subsidiary in any guise whatever, or **any investment of public funds**, from the jurisdiction of the Commission on Audit. (Emphasis supplied)

The Commission on Audit's power under the Constitution is broader and more extensive.[22] It covers *all* revenue and receipts of, and expenditures or uses of funds and property, owned, or held in trust by the government,

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[21] *See* Article XVIII, Section 3 of the Constitution, which provides:
Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances **not inconsistent** with this Constitution shall remain operative until amended, repealed, or revoked.

[22] *Orocio v. Commission on Audit,* 287 Phil. 1045 [Per J. Davide, Jr., Third Division].

including government-owned or controlled corporations with original charters.

A government-owned or controlled corporation is defined under the Administrative Code as:

> . . . any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.[23]

In *Oriondo v. Commission on Audit*,[24] "an entity is considered a government-owned or controlled corporation if all three (3) attributes are present: (1) the entity is organized as a stock or non-stock corporation; (2) its functions are public in character; and (3) it is owned or, at the very least, controlled by the government."[25]

PAGCOR is a government-owned or controlled corporation. Hence, all its funds must be subject to the jurisdiction of the Commission on Audit without limitation.

In *Feliciano v. Commission on Audit*,[26] it was held that "[t]he determining factor of COA's audit jurisdiction is *government ownership or control* of the corporation".[27]

> [T]he constitutional criterion on the exercise of COA's audit jurisdiction depends on the government's ownership or control of a corporation. The nature of the corporation, whether it is private, quasi-public, or public is immaterial.
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> The Constitution vests in the COA audit jurisdiction over "government-owned and controlled corporations with original charters," as well as "government-owned or controlled corporations" without original charters. GOCCs with original charters are subject to COA pre-audit, while GOCCs without original charters are subject to COA post-audit. GOCCs without original charters refer to corporations created under the Corporation Code but are owned or controlled by the government. The nature or purpose of the corporation is not material in determining COA's audit jurisdiction.

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23 ADM. CODE, sec. 2(13), Executive Order No. 292 (1987).
24 G.R. No. 211293, June 4, 2019 [Per J. Leonen, *En Banc*].
25 *Id.*
26 464 Phil. 439 (2004) [Per J. Carpio, *En Banc*].
27 *Id.* at 462.

> Neither is the manner of creation of a corporation, whether under a general or special law.[28]

Further, the revenues derived by PAGCOR from its operations of gambling casinos are public in nature or at the very least affected with public interest. PAGCOR was granted a franchise to operate casinos principally to raise funds to finance the government's infrastructure and socio-civic projects. Moreover, its operations involve gambling activity, which is so affected with public interest as to be within the police power of the State.[29]

In *Republic v. COCOFED*,[30] this Court held that the coconut levy funds are not only affected with public interest; they are, in fact, *prima facie* public funds. They are exacted pursuant to law not only to raise revenues for the support of the government, but also to advance the State policy of protecting the coconut industry and its farmers. This Court has also previously held special funds like the sugar levy fund and the oil price stabilization fund[31] to be public in character and subject to audit by the Commission on Audit.

In his Concurring Opinion in *Kilosbayan, Inc. v. Guingona, Jr.*,[32] Justice Florentino P. Feliciano explained that the funds raised by the On-line Lottery System were also public in nature. In his words:

> In the case presently before the Court, the funds involved are clearly public in nature. The funds to be generated by the proposed lottery are to be raised from the population at large. Should the proposed operation be as successful as its proponents project, those funds will come from well-nigh every town and barrio of Luzon. The funds here involved are public in another very real sense: they will belong to the PCSO, a government owned or controlled corporation and an instrumentality of the government and are destined for utilization in social development projects which, at least in principle, are designed to benefit the general public.... The interest of a private citizen in seeing to it that public funds, from whatever source they may have been derived, go only to the uses directed and permitted by law is as real and personal and substantial as the interest of a private taxpayer in seeing to it that tax monies are not intercepted on their way to the public treasury or otherwise diverted from uses prescribed or allowed by law. It is also pertinent to note that the more successful the government is in raising revenues by non-traditional methods such as PAGCOR operations and privatization measures, the lesser will be the pressure upon the traditional sources of public revenues, i.e., the pocket books of individual taxpayers and importers.[33]

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28 *Id.* at 461–462.

29 *Basco v. Philippine Amusements and Gaming Corp.*, 274 Phil. 323, 336 (1991) [Per J. Paras, *En Banc*].

30 *Republic v. COCOFED*, 423 Phil. 735 (2001) [Per J. Panganiban, *En Banc*].

31 *Caltex Philippines, Inc. v. Commission on Audit*, 284-A Phil. 233 (1992) [Per J. Davide, Jr., *En Banc*].

32 302 Phil. 107 (1994) [Per J. Davide, Jr., *En Banc*].

33 J. Feliciano, Separate Concurring Opinion in *Kilosbayan, Inc. v. Guingona, Jr.*, 302 Phil. 107, 116–117 (1994) [Per J. Davide, Jr., *En Banc*].

In *Fernando v. Commission on Audit*,[34] this Court held that the funds of the Executive Committee of the Metro Manila Film Festival that were sourced from non-tax revenues are considered public funds, and are subject to the Commission on Audit's jurisdiction. Thus:

> As to the committee's funds coming from non-tax revenues, the fact that such funds come from purported private sources, do not convert the same to private funds. Such funds must be viewed with the public purpose for which it was solicited, which is the management of the MMFF. In *Confederation of Coconut Farmers Organizations of the Philippines, Inc. (CCFOP) v. His Excellency President Benigno Simeon C. Aquino III, et al.*, reiterating this Court's ruling in *Republic of the Philippines v. COCOFED*:
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> > Even if the money is allocated for a special purpose and raised by special means, it is still public in character. In the case before us, the funds were even used to organize and finance State offices. In *Cocofed v. PCGG*, the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of laws of the late dictatorship . . . with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly. The Court continued: ". . . It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population, but also of export earnings the sustained growth of which is one of the imperatives of economic stability.["]
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> In *The Veterans Federation of the Phils., represented by Esmeraldo R. Acordo v. Hon. Reyes,* this Court also declared as public funds contributions from affiliate organizations of the VFP:
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> > . . . . In the case at bar, some of the funds were raised by even more special means, as the contributions from affiliate organizations of the VFP can hardly be regarded as enforced contributions as to be considered taxes. They are more in the nature of donations which have always been recognized as a source of public funding.[35] (Citations omitted)

Being public funds, PAGCOR's revenues are subject to audit by the Commission on Audit.

Notably, PAGCOR's books of accounts and all financial records and supporting documents were initially subject to the Commission on Audit's jurisdiction.[36] It was only under Section 15 of Presidential Decree No. 1869

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34 844 Phil. 644 (2018) [Per J. Tijam, *En Banc*].

35 *Id.* at 694–695.

36 Presidential Decree No. 1067-B (1977), sec. 5.

that a limitation on audit was introduced. **However, with the effectivity of the 1987 Constitution, this limiting clause is clearly no longer operative.**

Article XVIII, Section 3 of the Constitution, provides:

> Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances **not inconsistent** with this Constitution shall remain operative until amended, repealed, or revoked. (Emphasis supplied)

To bolster the Commission on Audit's extensive jurisdiction, Section 3 of Article IX-D of the Constitution categorically proscribes any law exempting any governmental entity or any investment of public funds from audit.

In *Feliciano,* the second sentence of Section 20 of Presidential Decree No. 198, which stated: "*Auditing shall be performed by a certified public accountant not in the government service*[,]"[37] was nullified for being violative of Section 3, Article IX-D of the Constitution. This Court explained:

> PD 198 cannot prevail over the Constitution. No amount of clever legislation can exclude GOCCs like LWDs from COA's audit jurisdiction. **Section 3, Article [IX-D] of the Constitution outlaws any scheme or devise to escape COA's audit jurisdiction, thus:**
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> . . . .
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> The framers of the Constitution added Section 3, Article IX-D of the Constitution precisely to annul provisions of Presidential Decrees, like that of Section 20 of PD 198, that exempt GOCCs from COA audit. The following exchange in the deliberations of the Constitutional Commission elucidates this intent of the framers:
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> > MR. OPLE:
> >
> > I propose to add a new section on line 9, page, 2 of the amended committee report which reads: NO LAW SHALL BE PASSED EXEMPTING ANY ENTITY OF THE GOVERNMENT OR ITS SUBSIDIARY IN ANY GUISE WHATEVER, OR ANY INVESTMENTS OF PUBLIC FUNDS, FROM THE JURISDICTION OF THE COMMISSION ON AUDIT.
> >
> > May I explain my reasons on record.
> >
> > *We know that a number of entities of the government took advantage of the absence of a legislature in the past to obtain presidential decrees exempting themselves from the jurisdiction of the Commission on Audit*, one notable

[37] *Feliciano v. Commission on Audit*, 464 Phil. 439, 465 (2004) [Per J. Carpio, *En Banc*].

> example of which is the Philippine National Oil Company which is really an empty shell. It is a holding corporation by itself, and strictly on its own account. Its funds were not very impressive in quantity but underneath that shell there were billions of pesos in a multiplicity of companies. The PNOC — the empty shell — under a presidential decree was covered by the jurisdiction of the Commission on Audit, but the billions of pesos invested in different corporations underneath it were exempted from the coverage of the Commission on Audit.
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> Another example is the United Coconut Planters Bank. The Commission on Audit has determined that the coconut levy is a form of taxation; and that, therefore, these funds attributed to the shares of 1,400,000 coconut farmers are, in effect, public funds. And that was, I think, the basis of the PCGG in undertaking that last major sequestration of up to 94 percent of all the shares in the United Coconut Planters Bank. The charter of the UCPB, through a presidential decree, exempted it from the jurisdiction of the Commission on Audit, it being a private organization.
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> So these are the fetuses of future abuse that we are slaying right here with this additional section.
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> . . . .
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> MR. MONSOD:
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> I think the Commissioner is trying to avoid the situation that happened in the past, because the same provision was in the 1973 Constitution and yet somehow a law or a decree was passed where certain institutions were exempted from audit. We are just reaffirming, emphasizing, the role of the Commission on Audit so that this problem will never arise in the future.
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> **There is an irreconcilable conflict between the second sentence of Section 20 of PD 198 prohibiting COA auditors from auditing LWDs and Sections 2(1) and 3, Article IX-D of the Constitution vesting in COA the power to audit all GOCCs. We rule that the second sentence of Section 20 of PD 198 is unconstitutional since it violates Sections 2(1) and 3, Article IX-D of the Constitution.**[38] (Emphasis supplied, citation omitted)

The limitation on audit in Section 15 of Presidential Decree No. 1869 is a curtailment of the Commission on Audit's power, which is inconsistent with Article IX-D, Sections 2(1) and 3, of the Constitution. Said "limitation on audit" in Section 15 of Presidential Decree No. 1869 has been abrogated by the 1987 Constitution.

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[38] *Id.* at 465–468.

III

In addition, heightened audit should be done on PAGCOR because of the constitutionally irregular provisions in its Charter that amounts to regulatory capture.

Other than its corporate powers,[39] PAGCOR was also given regulatory powers under Sections 8 and 9 of Presidential Decree No. 1869, thus:

> **TITLE III**
> *Affiliation Provisions*
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> SECTION 8. *Registration.* — All persons primarily engaged in gambling, together with their allied business, with contract or franchise from the Corporation, shall register and affiliate their businesses with the Corporation. The Corporation shall issue the corresponding certificates of affiliation upon compliance by the registering entity with the promulgated rules and regulations thereon.
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> SECTION 9. *Regulatory Power.* — The Corporation shall maintain a Registry of the affiliated entities, and shall exercise all the powers, authority and the responsibilities vested in the Securities and Exchange Commission over such affiliated entities mentioned under the preceding section, including but not limited to amendments of Articles of Incorporation and By-Laws, changes in corporate term, structure, capitalization and other matters concerning the operation of the affiliating entities, the provisions of the Corporation Code of the Philippines to the contrary notwithstanding, except only with respect to original incorporation.

In 2007, PAGCOR's regulatory powers were expanded by granting it the authority to license gambling casinos.[40]

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39 Presidential Decree No. 1869 (1983), sec. 3.

40 Republic Act No. 9487 (2007), sec. 1 provides:
SECTION 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869, otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:
(1) Section 10, Nature and Term of Franchise, is hereby amended to read as follows:
"SEC. 10. *Nature and Term of Franchise.* —
Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five years, the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e. basketball, football, bingo, etc. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: *Provided*, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations.
"The operation of slot machines and other gambling paraphernalia and equipment, shall not be allowed in establishments open or accessible to the general public unless the site of these operations are three-star hotels and resorts accredited by the Department of Tourism authorized by the corporation and by the local government unit concerned.
"The authority and power of the PAGCOR to authorize, license and regulate games of chance, games of cards and games of numbers shall not extend to: (1) games of chance authorized, licensed and regulated by, in, and under existing franchises or other regulatory bodies; (2) games of chance, games of cards and games of numbers authorized, licensed, regulated by, in, and under special laws such as Republic Act No. 7922; and (3) games of chance, games of cards and games of numbers like cockfighting, authorized, licensed and regulated by local government units. The conduct of such games of chance, games of cards and games of numbers covered by existing franchises, regulatory bodies or special laws, to the extent of

I reiterate my view that PAGCOR's dual roles of a gambling regulator and operator is unconstitutional. It presents a direct conflict of interest and ultimately results in PAGCOR being considerably influenced by the interests it regulates and not by the public interest.

PAGCOR's mandate of protecting and promoting public interest directly clashes with its revenue objectives as a franchise holder. Due to its conflicting roles, PAGCOR is hampered in its function of regulating gambling activity in a transparent, effective, accountable, and consistent manner. Being a primary regulator and regulated entity at the same time, PAGCOR's regulations and processes are prone to abuses and may come to be directed towards benefiting the regulated industry or activity rather than the public. PAGCOR ends up becoming the agent of the industry it is regulating.

IV

As regards the propriety of the disallowance, I concur with the *ponencia* in affirming the Commission on Audit's disallowance of the PHP 2,000,000.00 financial assistance granted by PAGCOR to the Pleasant Village Homeowners Association of Los Baños, Laguna for their flood control and drainage system project.

Section 4(2) of Presidential Decree No. 1445[41] enunciates the basic principle that every disbursement of public funds must be for a public purpose.

The *ponencia* applies the doctrine in the 1960 case of *Pascual v. Sec. of Public Works*[42] to determine "public purpose." In *Pascual,* this Court nullified the appropriation of PHP 85,000.00 for a projected feeder road under Republic Act No. 920, which ran through a private subdivision and on land owned by respondent Zulueta. This Court held that "[i]nasmuch as the land on which the projected feeder roads were to be constructed belonged then to respondent Zulueta, the result is that said appropriation sought a private purpose, and, hence, was null and void."[43] It cited the ruling case law that:

> It is a general rule that the legislature is without power to appropriate public revenue for anything but a public purpose. . . . **It is the essential character of the direct object of the expenditure which must determine its validity** as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. ***Incidental***

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the jurisdiction and powers granted under such franchises and special laws, shall be outside the licensing authority and regulatory powers of the PAGCOR."

41 Presidential Decree No. 1445 (1978), Government Auditing Code of the Philippines.

42 110 Phil. 331 (1960) [Per J. Concepcion, *En Banc*].

43 *Id.* at 341–342.

> **advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does *not* justify their aid by the use of public money.**[44] (Emphasis supplied)

In other words, in *Pascual*, there is no public purpose without direct benefit to the public.

However, the concept of "public purpose" or "public use" has evolved into a broader notion of indirect public benefit or advantage.

> There can be no doubt that expropriation for such traditional purposes as the construction of roads, bridges, ports, waterworks, schools, electric and telecommunications systems, hydroelectric power plants, markets and slaughterhouses, parks, hospitals, government office buildings, and flood control or irrigation systems is valid. However, the concept of public use is not limited to traditional purposes. Here as elsewhere the idea that "public use" is strictly limited to clear cases of "use by the public" has been discarded.
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> . . . .
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> In the Philippines, Chief Justice Enrique M. Fernando has aptly summarized the statutory and judicial trend as follows:
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> > "The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not any more. As long as the purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be subdivided into small lots for resale at cost to individuals. The other is in the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use."
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> The petitioners' contention that the promotion of tourism is not "public use" because private concessioners would be allowed to maintain various facilities such as restaurants, hotels, stores, etc. inside the tourist complex is impressed with even less merit. Private bus firms, taxicab fleets, roadside restaurants, and other private businesses using public streets and highways do not diminish in the least bit the public character of expropriations for roads and streets. The lease of store spaces in underpasses of streets built on expropriated land does not make the taking for a private purpose. Airports and piers catering exclusively to private airlines and shipping companies are still for public use. The expropriation

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[44] *Id.* at 340.

> of private land for slum clearance and urban development is for a public purpose even if the developed area is later sold to private homeowners, commercial firms, entertainment and service companies, and other private concerns.[45]

In *Sumulong v. Hon. Guerrero*,[46] low-cost housing is considered a public purpose even if it will benefit certain private individuals, explaining thus:

> Housing is a basic human need. Shortage in housing is a matter of state concern since it directly and significantly affects public health, safety, the environment and in sum, the general welfare. **The public character of housing measures does not change because units in housing projects cannot be occupied by all but only by those who satisfy prescribed qualifications.** A beginning has to be made, for it is not possible to provide housing for all who need it, all at once.[47]

Also, in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[48] appropriations for the implementation of the agrarian reform program, even if directly they benefit mainly private individuals, is considered to be for a public purpose. As held by this Court:

> The expropriation before us affects *all* private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or of a small segment of the population but of the entire Filipino nation, from all levels of our society, from the impoverished farmer to the land-glutted owner. Its purpose does not cover only the whole territory of this country but goes beyond in time to the foreseeable future, which it hopes to secure and edify with the vision and the sacrifice of the present generation of Filipinos. Generations yet to come are as involved in this program as we are today, although hopefully only as beneficiaries of a richer and more fulfilling life we will guarantee to them tomorrow through our thoughtfulness today. And, finally, let it not be forgotten that it is no less than the Constitution itself that has ordained this revolution in the farms, calling for "a just distribution" among the farmers of lands that have heretofore been the prison of their dreams but can now become the key at least to their deliverance.[49] (Emphasis in the original)

In *Binay v. Domingo*,[50] the Commission on Audit disallowed the disbursement of public funds for the implementation of the burial assistance program on the grounds that it benefits only a few individuals, hence, not for a public purpose. This Court, in reversing the Commission on Audit, held that

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45 *Heirs of Juancho Ardona v. Hon. Reyes*, 210 Phil. 187, 198, 200–201 (1983) [Per J. Gutierrez, Jr., *En Banc*].

46 238 Phil. 462 (1987) [Per J. Cortes, *En Banc*].

47 *Id.* at 467–468.

48 256 Phil. 777 (1989) [Per J. Cruz, *En Banc*].

49 *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777 (1989) [Per J. Cruz, *En Banc*].

50 278 Phil. 515 (1991) [Per J. Paras, *En Banc*].

the expenditure "is not unconstitutional merely because it incidentally benefits a limited number of persons . . . 'the drift is towards social welfare legislation geared towards state policies to provide adequate social services . . . , the promotion of the general welfare . . . social justice . . . as well as human dignity and respect for human rights.'"[51]

Thus, *Pascual* is not controlling. Public expenditures benefitting private persons with beneficial effect to the public, i.e. "which tends to contribute to the general welfare and the prosperity of the whole community,"[52] serve a "public purpose."

However, the burden of proof rests on the government agency to prove the legality of its disbursement of public funds. Mere assertion that the expenditure serves a public purpose would be insufficient. Owing to the public purpose requirement, it is imperative for PAGCOR to prove that the flood control project within the private subdivision has beneficial effect to the public.

"Efficiency is achieved when tasks, which necessarily entail costs, are allocated on those who could best bear them."[53] The party that has resources—in this case PAGCOR—must carry the burden of proof.

Unfortunately, this burden of proof, petitioners PAGCOR officers failed to discharge.

ACCORDINGLY, I vote to **GRANT** the Commission on Audit's Motion for Reconsideration in G.R. No. 230818, and to **DISMISS** the Petition in G.R. No. 244540.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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51 *Binay v. Domingo,* 278 Phil. 515 (1991) [Per J. Paras, *En Banc*].

52 *Province of Camarines Sur v. Court of Appeals,* 294 Phil. 196, 202 (1993) [Per J. Quiason, First Division].

53 *See* J. Leonen's Opinion in *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue,* 752 Phil. 375, 410 (2015) [Per J. Mendoza, Second Division].