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[G.R. No. 194402. April 05, 2016]

NEPTALI S. FRANCO, MELINDA L. OCAMPO, ARTEMIO P. MAGABO, REPRESENTED HEREIN BY SOLEDAD MAGABO, BERNARDA C. LAVISORES, NICOMEDES B. DEYNATA, ALBERTO D. DOSAYLA, REPRESENTED HEREIN BY AILENE JOY BILLONES DOSAYLA AND MARIETTA U. LARRACAS, PETITIONERS, VS. ENERGY REGULATORY COMMISSION, THE HON. ZENAIDA G. CRUZ-DUCUT, IN HER CAPACITY AS CHAIRMAN OF THE ENERGY REGULATORY COMMISSION, DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY FLORENCIO B. ABAD AND RICALINDA N. ADRIATICO, THE DIRECTOR OF THE BUDGET AND MANAGEMENT BUREAU-A, RESPONDENTS.

D E C I S I O N

REYES, J.:

Before this Court on Petition for Review^[1] is the Decision^[2] dated May 13, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 109733, an original action for *mandamus* under Rule 65 of the Rules of Civil Procedure, filed by retired members of the defunct Energy Regulatory Board (ERB), seeking to compel the Energy Regulatory Commission (ERC), Zenaida G. Cruz-Ducut (Ducut), in her capacity as ERC Chairman, Department of Budget and Management (DBM), DBM Secretary Florencio B. Abad, and DBM Bureau-A Director Ricalinda N. Adriatico (Adriatico) to adjust and release their monthly retirement pensions based on the salary levels now being received by the Chairman and Members of the ERC, created by Republic Act (R.A.) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001.

Antecedent Facts

Neptali Franco and Melinda Ocampo (Ocampo), former chairpersons of the ERB, and Artemio Magabo, Bernarda Lavisores, Nicomedes Deynata, Alberto Dosayla and Marietta Larracas, former members of the ERB (collectively referred to as the petitioners), retired

under Executive Order (E.O.) No. 172 which created the said body on May 8, 1987. Their positions and respective dates of retirement from the ERB are as follows:

Name	Position	Retirement Date
Neptali S. Franco	Chairman	07/01/98
Melinda L. Ocampo	Chairperson	08/14/01
Artemio P. Magabo	Member	06/16/98
Marietta U. Larracas	Member	08/14/01
Nicomedes B. Deynata	Member	08/14/01
Bernarda C. Lavisores	Member	08/16/98
Alberto D. Dosayla	Member	08/14/01 ^[3]

Under Section 1 of E.O. No. 172, the Chairman and Members of ERB were entitled to retirement benefits and privileges equal to those received by the Chairman and Members of the Commission on Elections (COMELEC):

Sec. 1. *Energy Regulatory Board.* There is hereby created an independent Energy Regulatory Board, hereinafter referred to as the Board, the nucleus of which shall be the present Board of Energy. The Board shall be composed of a Chairman and four (4) Members to be appointed by the President, with the consent of the Commission on Appointments, x x x.

x x x x

The Chairman of the Board shall receive a compensation equal to that of a Department Undersecretary while the Board Members shall each receive a compensation equal to that of an official next in rank to a Department Undersecretary.

The Chairman and the Members of the Board, upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the Commission on Elections. (Emphasis ours)

Also, Section 2-A of R.A. No. 1568,^[4] as amended by R.A. No. 3595,^[5] provides that in case the salary of the Auditor General or the Chairman or any Member of the COMELEC is increased or decreased, such increased or decreased salary shall, for the purpose of the said Act, be deemed to be the salary or the retirement pension which shall be received by the

retired Auditor General or Chairman or any Member of the COMELEC.

Subsequently, on June 8, 2001, R.A. No. 9136 was passed to reform and restructure the electric power industry and privatize the National Power Corporation (NPC). It abolished the ERB and created the ERC as an independent regulatory body vested with quasi-judicial, quasi-legislative and administrative functions to oversee the electric industry. In addition to ERB's traditional functions to regulate electric rates and services, the ERC focuses on two primary responsibilities: (1) to ensure consumer education and protection; and (2) to promote competitive operations in the electricity market.

Section 39 of R.A. No. 9136 thereof provides for the retirement benefits of the Chairman and Members of the ERC, to wit:

Sec. 39. *Compensation and Other Emoluments for ERC Personnel.* - x x x.

The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively. **The Chairman and the members of the Commission shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively.**
(Emphasis ours)

The petitioners filed a petition for *mandamus* before the CA wherein they sought to compel the ERC and the DBM to adjust their monthly pensions. The petitioners argued that, as retired members of the ERB, they are entitled to the retirement benefits provided in Section 39 of R.A. No. 9136, in relation to Section 2-A of R.A. No. 1568.^[6]

To bolster their claim, they invoked the Decision dated August 29, 2007 of the CA 13th Division in CA-G.R. SP No. 89068, entitled "*Edward C. Castaneda, Arnaldo P. Baldonado and Welma T. Sicangco v. Hon. Eduardo R. Ermita, in his capacity as the Executive Secretary of the Office of the President and the [ERC]*."^[7]

In CA-G.R. SP No. 89068, the petitioners therein, retired Members and Commissioners of the ERB, requested an adjustment in their monthly pensions under R.A. No. 9136. Their request, however, was denied on the ground that ERB has been abolished and that it was a

completely different entity from the ERC. On appeal to the Office of the President (OP), the same was denied which prompted the petitioners therein to file a petition for review with the CA. On August 29, 2007, the CA 13th Division ruled that the petitioners therein were entitled to adjustments in their monthly pensions corresponding to the current levels of salaries and benefits given to the ERC Chairman and Members. There being no appeal, the ruling became final and executory on January 5, 2008.^[8]

In a subsequent case also before the CA, CA-G.R. SP No. 89095, entitled "*Retired Chairmen of the [ERB, et al.] v. The [ERC] and the Department of Justice*," a similar request dated July 16, 2002 for adjustment in their monthly pensions was filed in the ERC by retired ERB Chairmen Ponciano G.A. Mathay (Mathay) and Rex V. Tantiongco (Tantiongco) and retired ERB Members Oscar E. Ala (Ala) and J. Mario Laqui (Laqui). The ERC denied the request in a letter dated August 16, 2002 on the ground that the retirement provisions under E.O. No. 172 were inconsistent with those in R.A. No. 9136. After the ERC denied their motion for reconsideration, the petitioners therein appealed to the OP. The Department of Justice (DOJ), to which the OP endorsed the request, ruled against it, but on motion for reconsideration the DOJ advised the petitioners therein to seek the opinion of the DBM. Instead of heeding the DOJ's advice, the petitioners therein sought the OP's final ruling. In its letter-decision dated February 18, 2005, the OP denied their request, viz:

We have carefully considered the legal arguments you presented in your letter, together with all the documents attached therewith. After a thorough analysis of the existing laws and jurisprudence on the matter, we concur with the legal opinion of the former [DOJ] Simeon A. Datumanong in his 1st Indorsement dated 17 October 2003.

In this regard, we regret to inform you that we cannot accede to your request.^[9]

Meanwhile, on April 16, 2008, herein petitioners together with Mathay, Tantiongco and Ala wrote then ERC Chairman Rodolfo Albano, Jr. asking anew for the upgrading of their monthly pensions. They contended that they were similarly situated with the petitioners in CA-G.R. SP No. 89068.^[10]

Without waiting for the ERC to resolve their request, Mathay, Tantiangco, Ala, and the estate of Laqui filed a petition with the CA, docketed as CA-G.R. SP No. 89095,^[11] assailing the OP letter-decision dated February 18, 2005. On May 9, 2008, the CA 10th Division

declared that the petitioners therein were entitled to the same retirement benefits granted to the Chairman and Members of the COMELEC. However, on motion for partial reconsideration, the CA on October 15, 2008 reversed its decision and declared them entitled to monthly pensions corresponding to the current salary levels of the ERC Chairman and Members, citing the expediency of avoiding conflicting decisions between the different divisions of the appellate court.^[12]

Acting on the letter-request dated April 16, 2008 of the petitioners, former Congresswoman Ducut who took over as Chairman of the ERC referred the matter to Adriatico, Bureau-A Director of the DBM. In her Opinion^[13] dated June 29, 2009, Adriatico denied their request for pension adjustment, stating that R.A. No. 9136 specifically refers only to the retirement benefits due to members of the ERC, and the ruling in CA-G.R. SP No. 89068 cannot serve as a precedent since only decisions of the Supreme Court (SC), interpreting the laws form part of the country's legal system.

After the denial of their letter-request for pension adjustment, the petitioners filed the petition for *mandamus* in the CA to compel the ERC and the DBM to adjust and release their monthly pensions to keep up with the salary levels of the ERC Chairman and Members. On May 13, 2010, the CA Special 2nd Division dismissed the petition for lack of legal basis.^[14]

Hence, this petition interposing the following issues:

I.

WHETHER OR NOT THERE IS NO LAW GRANTING THE PETITIONERS THE RIGHT TO RETIREMENT PENSIONS EQUIVALENT TO THE PRESENT SALARIES OF THE CHAIRMAN AND MEMBERS OF THE ERC.

II.

WHETHER OR NOT *MANDAMUS* IS THE APPROPRIATE REMEDY.^[15]

Ruling of the Court

The petition is bereft of merit.

Mandamus does not lie since the petitioners failed to invoke a law specifically enjoining the performance of the act demanded.

Central to the resolution of the present controversy is Section 29(1) of Article VI of the 1987 Constitution which commands that “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.” The burden of proof thereof, rests upon the petitioners.

Moreover, Section 3, Rule 65 of the 1997 Rules of Civil Procedure provides:

Sec. 3. *Petition for mandamus.* – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Thus, the writ of *mandamus* shall only issue to command a tribunal, corporation, board or person to do an act that is required to be done, when he or it, unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office, to which such other is entitled, there being no other plain, speedy and adequate remedy in the ordinary course of law. The remedy of *mandamus*, then, is available only to compel the performance of a ministerial duty.^[16] In contrast to a discretionary act, a ministerial act is one in which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done.^[17]

Clearly, for *mandamus* to issue, it is essential that the person petitioning for it has a clear

legal right to the claim sought. It will not issue to compel compliance with a duty which is questionable or over which a substantial doubt exists. Unless the right to the relief sought is unclouded, it will be denied.^[18]

Section 1 of E.O. No. 172, the law under which the petitioners retired, specifically provides that the “[t]he Chairman and the Members of the [ERB], upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the [COMELEC].” In contrast, Section 39 of R.A. No. 9136 provides:

Sec. 39. Compensation and Other Emoluments for ERC Personnel. –

xxx.

The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively. The Chairman and the members of the Commission shall, upon completion of their term or **upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively.**

Section 3, Rule 65 of the Rules of Civil Procedure, speaks of a law which specifically enjoins an act to be performed as a duty by a tribunal, corporation, board, officer or person. The petitioners’ request requires an interpretation of Section 39 of R.A. No. 9136 as applicable to ERB retirees under E.O. No. 172; yet, nowhere does R.A. No. 9136 extend the benefits of the new law to them, much less impose a duty upon the ERC and the DBM to adjust the retirement pensions of the petitioners to conform to the retirement benefits of the Chief Justice and Associate Justices of the SC.

R.A. No. 9136 has expressly abolished the ERB. Section 38 provides:

Sec. 38. Creation of the Energy Regulatory Commission. – There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commission (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby

abolished.

X X X X

The ERC assumed the extant duties and functions of the ERB, but in addition, the ERC also performs **new** and **expanded** functions intended to meet the specific needs of a **restructured electric power industry**. In *Kapisanan ng mga Kawani ng ERB v. Commissioner Barin*,^[19] the Court compared the functions of the ERB and the ERC and ruled that the overlap in their powers and functions did not mean that there was no valid abolition of the ERB.^[20]

Moreover, in *National Land Titles and Deeds Registration Administration v. Civil Service Commission*,^[21] the Court discussed:

[I]f the newly created office has substantially new, different or additional functions, duties or powers, so that it may be said in fact to create an office different from the one abolished, even though it embraces all or some of the duties of the old office it will be considered as an abolition of one office and the creation of a new or different one. The same is true if one office is abolished and its duties, for reasons of economy are given to an existing officer or office.^[22]

Incidentally, in *Ocampo v. Commission on Audit*,^[23] where a petition was filed by herein petitioner Ocampo, concerning whether she was twice entitled to retirement benefits on account of having sat in the ERB twice, first as a regular Member, and after her retirement, as Chairman; the Court held among others, that Ocampo was entitled to the retirement benefits under R.A. No. 3595.

The petitioners, retired members of the abolished ERB, cannot demand the retirement benefits granted to members of a new entity, the ERC.

The Office of the Solicitor General (OSG), in its Comment in CA-G.R. SP No. 89068, citing *Freedom from Debt Coalition v. ERC*,^[24] agreed that this Court has recognized the abolition of the ERB by R.A. No. 9136; that, there is no automatic adjustment in the monthly pensions of the ERB retirees since there was no appropriation for such disbursement; that while the

powers of the ERB had been transferred to ERC, new and expanded powers were also granted to the ERC consistent with the revamp and restructuring of the entire system of regulation of the electric power industry. The OSG concluded that concerning their retirement pensions, the petitioners could not equate themselves to the Commissioners of the ERC.^[25]

In contrast, in its Comment in the instant petition citing Section 2-A of R.A. No. 1568, as amended by R.A. No. 3595, the OSG noted that “the new compensation package under R.A. No. 9136 resulted in a great disparity between the retirement benefits being received by officials who retired under E.O. No. 172 and those that would be received upon retirement by the current Chairman and Members of the ERC.”^[26] It now argues that the petitioners retired under E.O. No. 172, which entitled them to an adjustment in their monthly pensions “*in case there would be an increase in the salaries and benefits being received by those presently holding the positions they previously held;*”^[27] and that since R.A. No. 9136 did not expressly repeal the provisions relating to the retirement benefits of the Chairman and Members of the ERB, the benefits of R.A. No. 9136 should be extended to them.^[28] In CA-G.R. SP No. 89095, the appellate court said:

It must be stressed that, while the provision of *R.A. No. 9136* abolishing the ERB was declared as valid by the [SC], nonetheless, **it did not pronounce that the abolition had the effect of depriving and/or hindering retirees under the already-abolished law from seeking the readjustment of their retirement benefits.**

Moreover, while the retirement benefits provided under *E.O. No. 172* may appear to be inconsistent with those provided under *R.A. No. 9136*, emphasis is laid that **the inconsistency relates only to what the retirement benefits shall consist of, and not to the grant or readjustment of the same *per se*.** In other words, while the retirement benefits granted under *R.A. No. 9136* are different from those under *E.O. No. 172*, one undisputable fact remains – ***R.A. No. 9136* contains no provision expressly stating that the abolition of the ERB carries with it the abolition, diminution, or curtailment of the right to seek readjustment of the retirement benefits granted under *E.O. No. 172*.**^[29] (Citation omitted and emphasis in the original)

Yet, the same CA decision clearly ruled that “the [petitioners’ retirement benefits should be

based on the salaries of the current COMELEC Chairman and Members, **and not on the salaries of the current ERC Chairman and members,**“^[30] viz:

Given the above, it is manifestly clear that Section 80 of R.A. No. 9136 stating that, *[T]he applicability provisions of x x x [E.O. No.] 172, as amended, creating the ERB; xxx shall continue to have full force and effect except insofar as they are inconsistent with this Act* x x x [It] should be construed to mean that, **since there is no express provision in RA. No. 9136 pertinent to the retirement benefits granted to retirees under E.O. No. 172, it follows then that E.O. No. 172 continues to be the controlling law on the matter.** Specifically, the controlling provision respecting the retirement benefits of Chairmen and Members of the ERB is, therefore, Section 1(6) of E.O. No. 172, which states that x x x *[t]he Chairman and the Members of the Board, x x x shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the [COMELEC].* Perforce, whether or not Section 2-A of R.A. No. 1568, as amended, is applicable to the Petitioners may already be of no moment because Section 1 (6) of E. O. No. 172 already **clearly and literally states** that they are entitled to the same retirement benefits granted to the Chairman and Members of the COMELEC.

All said, Our position that the Petitioners are entitled to have their retirement benefits readjusted is bolstered by the final and executory decision, August 29, 2007, rendered in CA-GR SP No. 89068 by the Thirteenth Division of this Court over which We take judicial notice of, as the same involved the same issue as the one raised at bench. At this juncture, mention must also be made that, during the pendency of the said case, the ERC issued a Resolution reversing its findings that the Petitioners are not entitled to an automatic readjustment and maintaining that it totally supports their cause, as the same is meritorious.

Stress, however, is laid that the Petitioners' retirement benefits should be based on the salaries of the current COMELEC Chairman and Members, and not on the salaries of the current ERC Chairman and members.

To explicate. Section 1(6) of E.O. No. 172 clearly states that x x x *[t]he Chairman and the Members of the Board, x x x shall be entitled to the same retirement benefits and privileges provided for the Chairman and*

Members of the [COMELEC]. Applying the horn-book doctrine that, *where the words of the statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation*, it is therefore beyond cavil that the retirement benefits of retired ERB Chairmen and Members shall be based on and the same as that granted to Chairman and Members of the COMELEC. In other words, it is the increase in the benefits of the current Chairman and Members of the COMELEC, not those of the ERC, which has the effect of rendering a corresponding increase in the Petitioners' retirement benefits.^[31] (Citations omitted and emphasis, italics and underscoring in the original)

On motion for partial reconsideration, however, the CA reversed its decision and declared the petitioners therein entitled to monthly pensions corresponding to the current salary levels of the ERC Chairman and Members in order to avoid a conflict with the decision of the CA 13th Division in CA-GR. SP No. 89068.^[32]

The OSG further commented that the non-adjustment of the pension of the petitioners violates the equal protection clause of the Constitution after the ERC adjusted the pensions of the petitioners in CA-GR. SP No. 89068 and CA-GR. SP No. 89095.^[33] It also argued that in view of the identity of issues in all the three CA cases, the petitioners may invoke the doctrine of conclusiveness of judgment in the first two cases.^[34] Lastly, the OSG urged that retirement laws being remedial in character must be liberally construed in favor of the retirees.^[35]

The Court disagrees.

The Court has seen that the DBM and the ERC cannot be compelled by *mandamus* to release public funds to the petitioners since the latter failed to establish a clear ministerial duty by the said agencies to recognize their legal entitlement thereto. According to the DBM, the petitioners have been receiving retirement benefits on a level with the salaries of the COMELEC Chairman and Members, pursuant to Section 1 of E.O. No. 172 in relation to Section 2-A of R.A. No. 1568, as amended.

Clearly, nowhere does R.A. No. 9136 extend to the retired ERB Chairman and Members the retirement benefits it grants to the ERC Chairman and Members. Section 39 of R.A. No. 9136 specifically provides only for the retirement benefits of the ERC Chairman and Members.

With regard to the legal significance of the first two CA decisions as precedents, the DBM invoked *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*,^[36] which held that courts are not bound by decisions of the CA since only the SC is the final arbiter of any justiciable controversy.^[37] Indeed, if the SC can disregard even its own previous rulings to correct an earlier error, and thus prevent a repeat of the misapplication of the law, then surely, this Court can also disregard the aforesaid rulings of the CA to correct what is considered to be an erroneous application of the law. Besides, pursuant to *De Leon v. Hon. Judge Cruz*,^[38] the said unappealed CA decisions may bind only the parties thereto.^[39]

Significant changes between E.O.

No. 172 and R.A. No. 9136 clearly express the legislative intent to abolish the ERB and create an entirely new entity, the ERC with vastly expanded functions.

The jurisdiction, powers and functions of the ERB are enumerated in Section 3 of E.O. No. 172, to wit:

Sec. 3. Jurisdiction, Powers and Functions of the Board. When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. Energy resource means any substance or phenomenon which by itself or in combination with others, or after processing or refining or the application to it of technology, emanates, generates or causes the emanation or generation of energy, such as but not limited to, petroleum or petroleum products, coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive minerals, solar energy, tidal power, as well as non-conventional existing and potential sources.

The Board shall, upon proper notice and hearing, exercise the following, among other powers and functions:

- (a) Fix and regulate the prices of petroleum products;

(b) Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;

(c) Fix and regulate the rates of pipeline concessionaries under the provisions of Republic Act No. 387, as amended, otherwise known as the "Petroleum Act of 1949," as amended by Presidential Decree No. 1700;

(d) Regulate the capacities of new refineries or additional capacities of existing refineries and license refineries that may be organized after the issuance of this Executive Order, under such terms and conditions as are consistent with the national interest;

(e) Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which will enable the importer to recover its cost of importation.

In *NPC v. CA*,^[40] this Court noted that "as may be gleaned from [Section 3 of E.O. No. 172], the ERB is basically a price or rate-fixing agency."^[41] But now the need for a "framework for the restructuring of the electric power industry, including the privatization of the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities"^[42] demanded the abolition of the ERB, Section 38 of R.A. No. 9136 provides for the creation of "an independent, quasi-judicial regulatory body to be named the [ERC]," for which purpose, "the existing [ERB] created under [E.O.] No. 172, as amended, is hereby abolished." The expanded functions -of the ERC are intended to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry."^[43]

Section 43 of R.A. No. 9136 enumerates in 22 sub-paragraphs the vast new powers and

functions of the ERC, among which are to:

- (a) enforce the implementing rules and regulations of R.A. No. 9136;
- (b) promulgate and enforce a National Grid Code and a Distribution Code;
- (c) enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;
- (d) establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility;
- (e) review and approve any changes on the terms and conditions of service of the National Transmission Corporation (TRANSCO) or any distribution utility;
- (f) monitor and take remedial measures to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;
- (g) impose fines or penalties for any non-compliance with or breach of R.A. No. 9136, its Implementing Rules and Regulations (IRR) and the rules and regulations which it promulgates or administers;
- (h) monitor the activities of the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers;
- (i) act on applications for or modifications of certificates of public convenience and/or necessity, licenses or permits of franchisee! electric utilities in accordance with law and revoke, review and modify such certificates, licenses or permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution Code and other rules and regulations issued by the ERC in accordance with law;
- (j) act on applications for cost recovery and return on demand side management

projects;

(k) in the exercise of its investigative and quasi-judicial powers, act on any complaint by or against any participant or player in the energy sector for violations of any laws, rules and regulations governing the same, including the rules on cross-ownership, anti-competitive practices and other acts of abuse of market positions by any participant or player in the energy sector, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted in accordance with R.A. No. 9136;

(l) inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;

(m) perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than 15% of their common shares of stocks; and

(n) the ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

In addition, other related functions and powers are given to ERC, *i.e.*: (i) those relating to ensuring competitive and open generation of electric power and compliance with standards set forth in R.A. No. 9136, and health, safety and with environmental clearances from other government agencies (Section 6); (ii) resolve valuation, procedures, ownership participation and other issues relating to subtransmission assets (Section 8, paragraph 5); (iii) ensure compliance by distribution utilities with technical specifications prescribed in the Distribution Code and the performance standards prescribed in the IRR (Section 23,

paragraph 5); (iv) de-monopolize public utilities by ensuring that holdings in a distribution utility shall not exceed 25% of voting shares of stock (Section 28, paragraph 1); (v) issue a license to suppliers of electricity, promulgate rules and regulations on qualifications of electricity suppliers, including technical capability, financial capability, and creditworthiness (Section 29); (vi) oversee the wholesale electricity spot market (Section 30) and the retail competition and open access (Section 31); (vii) verify reasonable amounts of the NPC stranded debt and contract cost recovery (Section 32); (viii) determine the universal charge on all electricity end-users (Section 34); (ix) reduce royalties, returns and tax rates for all indigenous sources of energy (Section 35); (x) approve unbundling of business activities and rates of electric power industry participants (Section 36); (xi) establish training programs for staff to enhance ERC's technical competence in evaluation of technical performance and monitoring of compliance with service and performance standards, performance-based rate-setting reform, and environmental standards (Section 40); (xii) handle consumer complaints and ensure the adequate promotion of consumer interests (Section 41); (xiii) promulgate rules and regulations to promote competition, encourage market development and customer choice and discourage/penalize abuse of market power, cartelization and any anticompetitive or discriminatory behavior, and *motu proprio* monitor and penalize market power abuse or anticompetitive or discriminatory act or behavior (Section 45); (xiv) ensure Power Sector Assets and Liabilities Management Corporation liquidates the NPC stranded contract costs from proceeds of sales and other property contributed to it (Section 51[e]); (xv) ensure reduction in rates of electric cooperatives due to savings from removal of loan amortizations (Section 60); (xvi) require the Department of Energy (DOE), ERC, National Electrification Administration, TRANSCO, generation companies, distribution utilities, suppliers and other electric power industry participants to submit pertinent industry reports and information (Section 62, paragraph 3); and (xvii) review all power purchase and energy conversion agreements between Philippine National Oil Company-Energy Development Corporation and NPC to remove hidden costs or extraordinary mark-ups in the cost of power or steam above their true costs (Section 69).

Section 38 thereof, thus, provides for enhanced qualifications and increased term of office from four (4) to seven (7) years of the Chairman and Members of the ERC, as follows:

Sec. 38. x x x.

The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. The Chairman and the members of

the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least three (3) years actual and distinguished experience in their respective fields of expertise: *Provided*, That out of the four (4) members of the Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, and one (1) shall be a certified public accountant with at least ten (10) years experience in active practice.

x x x x

The Chairman of the Commission, who shall be a member of the Philippine Bar shall act as the Chief Executive Officer of the Commission.

All members of the Commission shall have a term of **seven (7)** years xxx.

x x x x (Emphasis ours)

In contrast, in Section 1 of E.O. No. 172, the Chairman and the Members of the ERB served for only **four (4) years**, and it did not specify that two members of the ERB must be lawyers, and one must be an accountant:

Sec. 1. *Energy Regulatory Board.* There is hereby created an independent Energy Regulatory Board, hereinafter referred to as the Board, the nucleus of which shall be present Board of Energy. The Board shall be composed of a Chairman and four (4) Members to be appointed by the President, with the consent of the Commission on Appointments. The Chairman and the Board Members shall be natural-born citizens and residents of the Philippines. In addition, the Chairman and the Board Members shall be persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in the field of law, economics, finance, banking, commerce, industry, agriculture, engineering, management or labor.

The term of office of the Chairman and the Board Members shall be four (4) years x x x.

The Court noted in *Freedom from Debt Coalition*:^[44]

To achieve its aforesated goal, the law has reconfigured the organization of the regulatory body. It requires the Chairman and four (4) members of the ERC to be equipped with “at least three (3) years of active and distinguished experience” in the fields of energy, law, economics, finance, commerce or engineering, and at least one of them with ten (10) years or more of experience in the active practice of law and another one with similar experience as a certified public accountant. Their terms of office were increased to seven (7) years from the four (4) [years] provided in [E.O. No. 172] and their security of tenure assured. The Chairman and members were given the same salaries, allowances, benefits and retirement pay as the Chief Justice and Associate Justices of the [SC], a lot higher than the salary and benefits accorded the Chairman and members of the ERB which were equivalent only to those of a Department Undersecretary and the official next in rank, and those of the Chairman and members of the [COMELEC], respectively.^[45] (Citations omitted)

In *Kapisanan ng mga Kawani ng ERB*,^[46] the Court traced the gradual narrowing of regulation from that of public services in 1902, to the electricity industry and water resources in 1972, to the electric power industry and oil industry in 1977, and to the electric industry alone in 1998. It noted the expansion of the ERC’s functions and concerns, since while it retains the ERB’s traditional rate and service regulation functions, it now also has to promote competitive operations in the electricity market, and its concerns now encompass both the consumers and the utility investors. The Court recognized that the ERC labors under a new thrust, new policy, legal structure and regulatory framework for the electric power industry. The Court, in *Freedom from Debt Coalition*, said:

One of the landmark pieces of legislation enacted by Congress in recent years is the [Electric Power Industry Reform Act of 2001]. It established a new policy, legal structure and regulatory framework for the electric power industry.

The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of

the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the government power sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings.

Thus, the [Electric Power Industry Reform Act of 2001] provides a framework for the restructuring of the industry, including the privatization of the assets of the [NPC], the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to be privatized and its transmission business spun off and privatized thereafter.

In tandem with the restructuring of the industry is the establishment of “a strong and purely independent regulatory body.” Thus, the law created the ERC in place of the [ERB].

To achieve its aforesaid goal, the law has reconfigured the organization of the regulatory body, x x x.^[47] (Citations omitted)

A quick review of significant legislative developments over several decades will help explain the intent of Congress to abolish the ERB in view of the altered landscape of economic regulation which saw the need both to deregulate the oil industry and to restructure the electric power industry.

On November 7, 1936, Commonwealth Act No. 146, known as the Public Service Law, created the Public Service Commission to exercise jurisdiction, supervision, and control over all public services, including the electric power service.

On April 30, 1971, R.A. No. 6173, known as the Oil Industry Commission Act, created the Oil Industry Commission (OIC) to regulate “the act and business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing, and selling crude oil, gasoline, kerosene, gas and other refined petroleum products as well as

the operations and activities of natural and juridical persons, firms and entities engaged in the petroleum industry”^[48] in a manner consistent with the public interest.

On October 6, 1977, Presidential Decree (P.D.) No. 1206 created the DOE,^[49] the Board of Energy (BOE)^[50] and the Bureau of Energy Utilization^[51] (BEU) to take over all the powers and functions of the OIC. Among the powers of the BOE were: (a) to regulate the prices of piped gas charged by gas companies; (b) regulate the power rates charged by electric companies, except electric cooperatives and the NPC; and (c) perform related powers and functions such as licensing and regulation of refineries, reviewing- the importation costs of oil and providing remedies for unreasonable shipping costs, and taking measures to insure that gains in the prices of petroleum redound to the public interest.

On May 8, 1987, E.O. No. 172 created the ERB to assume the powers and functions of the BOE under R.A. No. 6173, as amended by P.D. No. 1206, and the regulatory and adjudicatory powers and functions exercised by the BEU.^[52] The rationale of E.O. No. 172 was “to achieve a more coherent and effective policy formulation, coordination, implementation and monitoring within the energy sector” by consolidating and entrusting in one body all the regulatory and adjudicatory functions covering the energy sector. The BOE assumed the powers and functions of the Board of Power and Waterworks over the electric power industry.^[53]

On December 9, 1992, R.A. No. 7638 transferred to the ERB the power to fix the rates of the NPC and the rural electric cooperatives, while the non-pricing functions of the ERB with respect to the petroleum industry were transferred to the DOE, including regulating the capacities of new refineries.^[54]

On February 10, 1998, R.A. No. 8479, known as the Downstream Oil Industry Deregulation Act of 1998, was enacted to liberalize and deregulate the downstream oil industry by promoting and encouraging the entry of new participants in the said industry and prohibiting government interference with any market aspect of the oil industry, including pricing, import and export processes and facilities and the establishment of retailers and refineries.

On June 8, 2001, R.A. No. 9136 was enacted for the purpose of reforming and restructuring the electric power industry, and is considered one of the landmark laws passed by Congress in recent years.

Lastly, the clear policy of the

Constitution is that no elective or appointive public officer or employee shall receive additional, double or indirect compensation not specifically authorized by law.

Section 8 of Article IX(B) of the 1987 Constitution provides:

Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Section 8, Article XVI of the 1987 Constitution also provides that “[t]he State shall, from time to time, review to upgrade the pensions and other benefits due to retirees of both the government and private sectors.” R.A. No. 9257, known as the Expanded Senior Citizens’ Act of 2003, also provides that “retirement benefits of retirees from both the government and private sector shall be regularly reviewed to ensure their continuing responsiveness and sustainability, and to the extent practicable and feasible, shall be upgraded to be at par with the current scale enjoyed by those in actual service.”^[55] In *Santiago v. Commission on Audit*,^[56] the Court also held that “[R]etirement laws should be interpreted liberally in favor of the retiree because their intention is to provide for his sustenance, and hopefully even comfort, when he no longer has the stamina to continue earning his livelihood.”^[57]

Be that as it may, the above-cited provisions are not self-executing, and the rule remains that all pensions or gratuities must be paid only pursuant to an appropriation made by law, which is the very issue now before the Court. Indeed, it had been held that in the absence of express statutory provisions to the contrary, gratuity laws must be construed against the grant of additional or double compensation,^[58] a rule which is a constitutional curb on the spending power of the government.^[59]

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Jardeleza, and Caguioa, JJ., concur.

Perlas-Bernabe, J., on official leave.

Leonen, J., see separate concurring opinion.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on April 5, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on June 15, 2016 at 2:52 p.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

^[1] *Rollo*, pp. 3-32.

^[2] Penned by Associate Justice Portia Alino-Hormachuelos, with Associate Justices Japar B. Dimaampao and Danton Q. Bueser concurring; *id.* at 34-44.

^[3] *Id.* at 35-36.

^[4] AN ACT TO PROVIDE LIFE PENSION TO THE AUDITOR GENERAL AND THE CHAIRMAN OR ANY MEMBER OF THE COMMISSION ON ELECTIONS. Approved on June 16 1956.

^[5] AN ACT TO AMEND REPUBLIC ACT NUMBERED FIFTEEN HUNDRED SIXTY-EIGHT (RE: GRANT OF LIFE PENSION TO THE AUDITOR-GENERAL AND THE CHAIRMAN AND MEMBERS OF THE COMMISSION ON ELECTIONS). Approved on June 22, 1963.

^[6] *Rollo*, pp. 35-37.

^[7] *Id.* at 37.

^[8] *Id.* at 93-94.

^[9] CA Decision in *Retired Chairmen of the ERB, et al, v. The ERC and the DOJ*, CA-G.R. SP No 89095, May 9, 2008, p. 5.

^[10] *Rollo*, pp. 49-50.

^[11] *Id.* at 95.

^[12] *Id.* at 11-12, 95.

^[13] *Id.* at 52-53.

^[14] *Id.* at 34-44.

^[15] *Id.* at 13.

^[16] *Torregoza v. Civil Service Commission*, G.R. No. 101526, July 3, 1992, 211 SCRA 230, 234, citing *Marcelo v. Tantuico, Jr.*, 226 Phil. 360, 366 (1986).

^[17] *Henares, Jr. v. Land Transportation Franchising Regulatory Board*, 535 Phil. 835, 841 (2006).

^[18] *Araos, et al. v. Hon. Regala, et al.*, 627 Phil. 13, 20 (2010).

^[19] 553 Phil. 1 (2007).

^[20] *Id.* at 21.

^[21] G.R. No. 84301, April 7, 1993, 221 SCRA 145.

^[22] *Id.* at 150.

^[23] 710 Phil. 706(2013).

^[24] G.R. No. 161113, June 15, 2004, 432 SCRA 157.

^[25] CA Decision in *Castañeda, et al. v. Ermita*, CA-G.R. SP No. 89068, August 29 2007 pp 6-7.

^[26] *Rollo*, p. 93.

^[27] *Id.* at 97.

^[28] *Id.* at 97-98.

^[29] CA Decision in *Retired Chairmen of the ERB, et al. v. The ERC and the DOJ*, CA-G.R. SP No. 89095, May 9, 2008, p. 12.

^[30] *Id.* at 14.

^[31] *Id.* at 12-14.

^[32] *Rollo*. pp. 125-126.

^[33] *Id.* at 99.

^[34] *Id.* at 100-103.

^[35] *Id.* at 103-104.

^[36] 453 Phil. 1043 (2003).

^[37] *Id.* at 1059.

^[38] 154 Phil. 270(1974).

^[39] *Id.* at 277.

^[40] 345 Phil. 9 (1997).

^[41] *Id.* at 30.

^[42] R.A. No. 9136, Section 3.

^[43] R.A. No. 9136, Section 43.

^[44] *Supra* note 24.

^[45] *Id.* at 172.

^[46] *Supra* note 19.

^[47] *Freedom from Debt Coalition v. ERC*, supra note 24, at 171-172.

^[48] R.A. No. 6173, Section 2.

^[49] P.D. No. 1206, Section 2.

^[50] P.D. No. 1206, Section 9.

^[51] P.D. No. 1206, Section 7.

^[52] E.O. No. 172, Sections

^[53] P.D. No. 1206, Section 11(e).

^[54] R.A. No. 7638, Section 18.

^[55] R.A. No. 9257, Section 2. amending R.A. No. 7432, Section 4(k).

^[56] 276 Phil. 127(1991).

^[57] *Id.* at 136.

^[58] *Nunal v. Commission on Audit*, 251 Phil. 339, 344 (1989).

^[59] *Herrera, et al. v. NPC, et al*, 623 Phil. 383, 398 (2009).

CONCURRING OPINION

LEONEN, J.:

Petitioners, who are retired members of the defunct Energy Regulatory Board, filed for mandamus “to compel . . . public respondents to adjust and release their monthly retirement pensions based on the salary levels ... of the Energy Regulatory Commission, created [under] Republic Act No. 9136[.]”^[1] Specifically, Section 39 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), provides:

Sec. 39. *Compensation and Other Emoluments for ERC Personnel.* - The compensation and other emoluments for the Chairman and members of the

Commission and the ERC personnel shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the “Salary Standardization Act.” For this purpose, the schedule of compensation of the ERC personnel, except for the initial salaries and compensation of the Chairman and members of the Commission, shall be submitted for approval by the President of the Philippines. The new schedule of compensation shall be implemented within six (6) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: *Provided*, That in no case shall the rate be upgraded more than once a year.

The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively. The Chairman and the members of the Commission shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively. (Emphasis supplied)

I concur in denying the Petition.

As discussed in the ponencia, petitioners retired under Executive Order No. 172, which created the now defunct^[2] Energy Regulatory Board in 1987.^[3] Section 1 provides, in part, that “[t]he Chairman and the Members of the Board, upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled to *the same retirement benefits and privileges provided for the Chairman and Members of the Commission on Elections.*”^[4]

Republic Act No. 1568,^[5] as amended,^[6] provides for the life pension of the Chairman and Members of the Commission on Elections. Section 2-A provides:

Sec. 2-A. In case the salary of the Auditor General or the Chairman or any Member of the Commission on Elections is increased or decreased, such increased or decreased salary shall, for the purpose of this Act, be deemed to be the salary or the retirement pension which shall be received by the retired

Auditor General or Chairman or “any Member of the Commission on Elections:
Provided That any benefits that have already accrued prior to such increase or decrease shall not be affected thereby.

The Department of Budget and Management noted that petitioners have been receiving retirement benefits on the same level as the salaries of the Chairman and Members of the Commission on Elections.^[8]

Still, petitioners insist that their retirement benefits should be based on those of the Energy Regulatory Commission, which, in turn, is pegged on the retirement benefits and privileges of Supreme Court Justices.^[9]

Nowhere in the EPIRA were the retirement benefits of the Energy Regulatory Commission extended to the now defunct Energy Regulatory Board.^[10] These are two different entities. The Board was abolished while the Commission was given expanded functions aligned with the restructuring of the electric power industry.^[11] These two also differ as regards the Chairman and Members’ required qualifications and terms of office.^[12] The ponencia found that petitioners failed to establish a clear ministerial duty on the part of public respondents to adjust their pension and release public funds.^[13]

In any event, the mirroring made in Section 39 on retirement benefits and privileges granted to Supreme Court Justices is of doubtful validity. It affects the autonomy and independence of the judiciary. Mirroring the compensation of other offices in other departments weighs heavily on any adjustment for judicial compensation.

Retirement laws aim to ensure the welfare and security of those who have devoted their prime years in employment and would have limited opportunities for gainful employment as they approach their twilight years.^[14] “In government, lucrative retirement benefits act as incentive to encourage competent [and able] individuals”^[15] to join public employment, to remain in service, and to render efficient work.^[16]

Congress enacted a special law providing for benefits and privileges specifically for retiring Justices and Judges in order to preserve and guarantee the judiciary’s independence.^[17] Survivorship benefits strengthen the judiciary’s independence by giving Justices peace of mind in knowing that, even beyond their death, their families will be provided for.^[18] This reason also supports the grant of longevity pay for Justices and Judges who comply with the requirements of the law.^[19]

Republic Act No. 910^[20] was passed in 1953 to provide for the retirement of Supreme Court and Court of Appeals Justices, and was later amended to also cover Justices of the Sandiganbayan and Court of Tax Appeals, Judges of the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari'a District Courts, Shari'a Circuit Courts, and other courts hereafter established.^[21] Republic Act No. 9946^[22] was passed on January 13, 2010 amending Republic Act No. 910 by granting members of the judiciary additional retirement, survivorship, and other benefits.

Our Constitution reflects the fundamental principle of separation of powers.^[23] The distinct spheres of power and functions that divide the three branches of government safeguard against influences and inappropriate interferences among one another, both in courtesy and caution, while maintaining "interdependence"^[25] through checks and balances. *Angara v. Electoral Commission*^[26] discussed the judiciary's role as the only constitutional body with authority to determine proper allocation of powers among governmental bodies:

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.

....

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great, landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. ***In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units***

thereof.^[27] (Emphasis supplied)

Preserving the judiciary's independence is both imperative and central in fulfilling this Court's constitutional mandate as final arbiter in upholding the rule of law. Thus, the principle of separation of powers gives the branches of government supreme authority in their respective spheres of vested powers and functions.^[28] Thus, the Constitution provides for fiscal autonomy of the judiciary.^[29] Thus, special laws provide for competitive retirement benefits and privileges for Justices and Judges.^[30]

The Energy Regulatory Commission is "an independent quasi-judicial regulatory body"^[31] created by law. It does not primarily exercise judicial power or settle actual controversies between adversarial parties. Its scope of authority is limited to a specific industry. Its key functions relate to the restructured electric power industry under the EPIRA.^[32] Yet, for any adjustment in the compensation schedules for the judiciary, the EPIRA unconstitutionally requires" that similar adjustments be automatically considered for the Energy Regulatory Commission. This violates the independence of the judiciary and its fiscal autonomy.

ACCORDINGLY, I vote to **DENY** the Petition.

^[1] Ponencia, p. 2.

^[2] Rep. Act No. 9136 (2001), sec. 38 provides:

Section 38. Creation of the Energy Regulatory Commission. – There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commission (ERC). For this purpose, the existing ***Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.*** (Emphasis supplied)

^[3] Ponencia, p. 2.

^[4] Exec. Order No. 172 (1987), sec. 1.

^[5] Rep. Act No. 1568 (1956), An Act to Provide Life Pension to the Auditor General and The Chairman or any Member of the Commission on Elections.

^[6] Rep. Act No. 3595 (1963), An Act to Amend Republic Act Numbered Fifteen Hundred

Sixty-Eight (Re-grant of Life Pension to the Auditor-General and the Chairman and Members of the Commission on Elections).

^[7] Rep. Act No. 3595 (1963), sec, 2-A.

^[8] Ponencia, p. 12.

^[9] Rep. Act No. 9136 (2001).

^[10] Ponencia, p. 12.

^[11] Id. at 13-16.

^[12] Id. at 16-18.

^[13] Id. at 12.

^[14] *Re: Application for Survivorship Pension Benefits Under Republic Act No. 9946 of Mrs. Pacita A. Gruba, Surviving Spouse of the late Manuel K. Gruba, former CTA Associate Judge*, A.M. No. 14155- Ret, November 19, 2013
<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2013/november2013/14155-Ret.pdf> 4 [Per J. Leonen, En Banc].

^[15] Id.

^[16] Id., citing *Profeta v. Drilon*, G.R. No. 104139, December 22, 1992, 216 SCRA 777, 782-783 [Per J. Padilla, En Banc].

^[17] Id. at 4-5, citing *Bengzon v. Drilon*, G.R. No. 103254, April 15, 1992, 208 SCRA 133, 153 [Per J. Gutierrez, Jr., En Banc].

^[18] Id. at 5.

^[19] Batas Blg. 129, sec. 42 provides:

SEC. 42. *Longevity Pay*. – A monthly longevity pay equivalent to five percent (5%) of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created to each five years of continuous, efficient, and meritorious service rendered in the judiciary: Provided, That in no case shall the total salary of each Justice or Judge concerned, after this longevity pay is added, exceed the salary of the Justice or Judge next in rank.

See also Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for His Services as Commission Member HI of the National Labor Relations Commission, A.M. Nos. 12-8-07-CA, June 16, 2015

<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/12-8-07-CA.pdf> [Per J.Brion, En Banc]. Chief Justice Sereno, Associate Justices Villarama, Jr., Mendoza, Reyes, and Perlas-Bernabe concurred. Senior Associate Justice Carpio, Associate Justices Velasco, Bersamin, Del Castillo, and Perez joined the Concurring and Dissenting Opinion of Associate Justice Leonardo-De Castro. Associate Justice Velasco wrote a Separate Opinion. Associate Justices Peralta and Leonen were on official leave. Associate Jardeleza took no part.

^[20] Rep. Act No. 910 (1953), An Act to Provide for the Retirement of Justices of the Supreme Court and of the Court of Appeals, for the Enforcement of the Provisions Hereof by the Government Service Insurance System, and to Repeal Commonwealth Act Numbered Five Hundred and Thirty-Six.

^[21] Rep. Act No. 9946 (2001), sec. 1.

^[22] Rep. Act No. 9946 (2010), An Act Granting Additional Retirement, Survivorship, and Other Benefits to Members of the Judiciary, Amending for the Purpose Republic Act No. 910, as amended, Providing Funds Therefor and For Other Purposes.

^[23] CONST., art. VI, sec. (1) provides:

SECTION 1. The legislative power shall be vested in the Congress of the Philippines....

CONST., art. VII, sec (1) provides:

SECTION 1. The executive power shall be vested in the President of the Philippines.

CONST., art. VIII sec (1) provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

^[24] *See* J. Leonen, Concurring Opinion in *Belgica v. Ochoa*, G.R. Nos. 208566, November 19, 2013, 710 SCRA 1, 290 [Per J. Perlas-Bemabe, En Banc]. *See also* J. Velasco, Dissenting Opinion in *Province of North Cotabato v. Government of the Republic of the Philippines*, 589 Phil. 387, 707 (2008) [Per J. Carpio Morales, En Banc].

^[25] *See Planas v. Gil*, 67 Phil. 62, 74 (1939) [Per J. Laurel, En Banc].

^[26] 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

^[27] *Id.* at 156-157.

^[28] *Id.* at 156.

^[29] CONST., art, VIII, sec. 3.

^[30] See Rep. Act No. 9946 (2010).

^[31] Rep. Act No. 9136 (2001), sec. 38.

^[32] Rep. Act No. 9136 (2001), sec. 43.

Date created: March 06, 2018