

Title: Roy III v. Herbosa et al.

Facts:

This case involves a challenge to the validity of Memorandum Circular No. 8, Series of 2013 (“SEC-MC No. 8”), as issued by the Securities and Exchange Commission (“SEC”) in the Philippines. The SEC issued this circular following the precedent-setting 2011 Supreme Court decision in “Gamboa v. Finance Secretary Teves” (G.R. No. 176579), which defined the term “capital” as used in Section 11, Article XII of the 1987 Philippine Constitution concerning the foreign ownership restriction in public utilities.

Gamboa v. Teves ruled that the term “capital” refers only to shares of stock entitled to vote in the election of directors (common shares) and not to the total outstanding capital stock (including both common and non-voting preferred shares). As instructed by the Supreme Court, the SEC should apply this definition when determining allowable foreign ownership in any public utility.

The SEC subsequently solicited comments from the public and convened a dialogue to draft guidelines for compliance with foreign ownership requirements in the Constitution. Later, on May 20, 2013, the SEC issued SEC-MC No. 8 requiring that the percentage of Filipino ownership should be applied to both (a) the total number of outstanding shares of stock entitled to vote in the election of directors and (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors. Petitioner Jose M. Roy III, a lawyer and taxpayer, asserts that SEC-MC No. 8 does not conform to the Supreme Court’s decision and resolution in Gamboa. He initiated a petition asking the Supreme Court to rule SEC-MC No. 8 as unconstitutional.

The petitioner’s arguments went through every possible forum before they eventually reached the Philippine Supreme Court. Throughout the proceedings, the SEC and the Philippine Stock Exchange (PSE) argued that SEC-MC No. 8 duly implemented the Court’s direction in Gamboa regarding foreign ownership measurement.

Issues:

1. Whether or not the SEC committed grave abuse of discretion in issuing SEC-MC No. 8 in light of the Gamboa decision and resolution.
2. Whether or not SEC-MC No. 8 violates the Court’s ruling on the definition of “capital” under Section 11, Article XII of the 1987 Constitution.

Court’s Decision:

The Supreme Court dismissed the petition for failing to show grave abuse of discretion on the part of the SEC in issuing SEC-MC No. 8. The Court concluded that SEC-MC No. 8 was issued according to the Court's ruling in the Gamboa case. Furthermore, it does not contradict the Constitution, as it ensures that the foreign ownership restriction applies to both types of shares - those with voting rights and those without.

Doctrine:

The doctrine established in this case is the definition of "capital" concerning foreign ownership restrictions in public utilities as enunciated in the Gamboa decision. It refers only to shares of stock with voting rights, and thus, in the context of public utilities only to common shares. Additionally, the Court clarified that SEC-MC No. 8, which requires applying the Filipino ownership requirement to both voting and non-voting shares, is consonant with the rulings of the Gamboa decision.

Class Notes:

- The term "capital" in the context of limitations on foreign ownership in public utilities refers only to shares that have voting rights, particularly, common shares.
- For corporations engaged in nationalized activities, compliance with the constitutional Filipino-foreign ownership requirement must consider both voting and non-voting shares.

Historical Background:

The case stems from a landmark decision in Philippine jurisprudence pertaining to the foreign ownership restriction of public utilities. It reflects the continuous effort of the Philippine judiciary and regulatory bodies to define and implement constitutional provisions that aim to maintain control over strategic industries such as public utilities by Filipino nationals. The SEC's issuance of SEC-MC No. 8 post-Gamboa serves as an example of efforts to operationalize constitutional mandates following judicial interpretation, demonstrating the interplay between legal interpretation and policy implementation in the context of the Philippines' constitutional framework.