

KILOBAYAN, INCORPORATED, JOVITO R. SALONGA, CIRILO A. RIGOS, ERME CAMBA, EMILIO C. CAPULONG, JR., JOSE T. APOLO, EPHRAIM TENDERO, FERNANDO SANTIAGO, JOSE ABCEDE, CHRISTINE TAN,...

G.R. No. 113375. May 05, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a special civil action for prohibition and injunction, with a prayer for a temporary restraining order and preliminary injunction, which seeks to prohibit and restrain the implementation of the "Contract of Lease" executed by the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Gaming Management Corporation (PGMC) in connection with the on-line lottery system, also known as "lotto."

Petitioner Kilobayan, Incorporated (KILOBAYAN) avers that it is a non-stock domestic corporation composed of civic-spirited citizens, pastors, priests, nuns, and lay leaders who are committed to the cause of truth, justice, and national renewal. The rest of the petitioners, except Senators Freddie Webb and Wigberto Tañada and Representative Joker P. Arroyo, are suing in their capacities as members of the Board of Trustees of KILOBAYAN and as taxpayers and concerned citizens. Senators Webb and Tañada and Representative Arroyo are suing in their capacities as members of Congress and as taxpayers and concerned citizens of the Philippines.

The pleadings of the parties disclose the factual antecedents which triggered off the filing of this petition.

Pursuant to Section 1 of the charter of the PCSO (R.A. No. 1169, as amended by B.P. Blg. 42) which grants it the authority to hold and conduct "charity sweepstakes races, lotteries and other similar activities," the PCSO decided to establish an on-line lottery system for the purpose of increasing its revenue base and diversifying its sources of funds. Sometime before March 1993, after learning that the PCSO was interested in operating an on-line lottery system, the Berjaya Group Berhad, "a multinational company and one of the ten largest public companies in Malaysia," long "engaged in, among others, successful lottery operations in Asia, running both Lotto and Digit games, thru its subsidiary, Sports Toto Malaysia," with its "affiliate, the International Totalizator Systems, Inc., ... an American public company engaged in the international sale or provision of computer systems, softwares, terminals, training and other technical services to the gaming industry," "became interested to offer its services and resources to PCSO." As an initial step, Berjaya Group Berhad (through its individual nominees) organized with some Filipino investors in March 1993 a Philippine corporation known as the Philippine Gaming Management Corporation (PGMC), which "was intended to be the medium through which the technical and management services required for the project would be offered and delivered to PCSO." [1]

Before August 1993, the PCSO formally issued a Request for Proposal (RFP) for the Lease Contract of an on-line lottery system for the PCSO.[2] Relevant provisions of the RFP are the following:

"1. EXECUTIVE SUMMARY

x x x

1.2. PCSO is seeking a suitable contractor which shall build, at its own expense, all the facilities ('Facilities') needed to operate and maintain a nationwide on-line lottery system. PCSO shall lease the Facilities for a fixed percentage of quarterly gross receipts. All receipts from ticket sales shall be turned over directly to PCSO. All capital, operating expenses and expansion expenses and risks shall be for the exclusive account of the Lessor.

x x x

1.4. The lease shall be for a period not exceeding fifteen (15) years.

1.5. The Lessor is expected to submit a comprehensive nationwide lottery development plan ('Development Plan') which will include the game, the marketing of the games, and the logistics to introduce the games to all the cities and municipalities of the country within five (5) years.

x x x

1.7. The Lessor shall be selected based on its technical expertise, hardware and software capability, maintenance support, and financial resources. The Development Plan shall have a substantial bearing on the choice of the Lessor. The Lessor shall be a domestic corporation, with at least sixty percent (60%) of its shares owned by Filipino shareholders. x x x

The Office of the President, the National Disaster Control Coordinating Council, the Philippine National Police, and the National Bureau of Investigation shall be authorized to use the nationwide telecommunications system of the Facilities Free of Charge.

1.8. Upon expiration of the lease, the Facilities shall be owned by PCSO without any additional consideration.[3]

x x x

2.2. OBJECTIVES

The objectives of PCSO in leasing the Facilities from a private entity are as follows:

x x x

2.2.2. Enable PCSO to operate a nationwide on-line lottery system at no expense or risk to the government.

x x x

2.4. DUTIES AND RESPONSIBILITIES OF THE LESSOR

x x x

2.4.2. THE LESSOR

The Proponent is expected to furnish and maintain the Facilities, including the personnel needed to operate the computers, the communications network and sales offices under a build-lease basis. The printing of tickets shall be undertaken under the supervision and control of PCSO. The Facilities shall enable PCSO to computerize the entire gaming system.

The Proponent is expected to formulate and design consumer-oriented Master Games Plan suited to the marketplace, especially geared to Filipino gaming habits and preferences. In addition, the Master Games Plan is expected to include a Product Plan for each game and explain how each will be introduced into the market. This will be an integral part of the Development Plan which PCSO will require from the Proponent.

x x x

The Proponent is expected to provide upgrades to modernize the entire gaming system over the life of the lease contract.

The Proponent is expected to provide technology transfer to PCSO technical personnel.[4]

x x x

7. GENERAL GUIDELINES FOR PROPONENTS

x x x

Finally, the Proponent must be able to stand the acid test of proving that it is an entity able to take on the role of responsible maintainer of the on-line lottery system, and able to achieve PCSO's goal of formalizing an on-line lottery system to achieve its mandated objective.[5]

x x x

16. DEFINITION OF TERMS

Facilities: All capital equipment, computers, terminals, software, nationwide telecommunication network, ticket sales offices, furnishings, and fixtures; printing costs; cost of salaries and wages; advertising and promotion expenses; maintenance costs; expansion and replacement costs; security and insurance, and all other related expenses needed to operate nationwide on-line lottery system."[6]

Considering the above citizenship requirement, the PGMC claims that the Berjaya Group "undertook to reduce its equity stakes in PGMC to 40%," by selling 35% out of the original 75% foreign stockholdings to local investors.

On 15 August 1993, PGMC submitted its bid to the PCSO.[7]

The bids were evaluated by the Special Pre-Qualification Bids and Awards Committee (SPBAC) for the on-line lottery and its Bid Report was thereafter submitted to the Office of the President.[8] The submission was preceded by complaints by the Committee's Chairperson, Dr. Mita Pardo de Tavera.[9]

On 21 October 1993, the Office of the President announced that it had given the respondent PGMC the go-signal to operate the country's on-line lottery system and that the corresponding implementing contract would be submitted not later than 8 November 1993 "for final clearance and approval by the Chief Executive." [10] This announcement was published in the Manila Standard, Philippine Daily Inquirer, and the Manila Times on 29 October 1993.[11]

On 4 November 1993, KILOBAYAN sent an open letter to President Fidel V. Ramos strongly opposing the setting up of the on-line lottery system on the basis of serious moral and ethical considerations.[12]

At the meeting of the Committee on Games and Amusements of the Senate on 12 November 1993, KILOBAYAN reiterated its vigorous opposition to the on-line lottery on account of its immorality and illegality.[13]

On 19 November 1993, the media reported that despite the opposition, "Malacañang will push through with the operation of an on-line lottery system nationwide and that it is actually the respondent PCSO which will operate the lottery while the winning corporate bidders are merely "lessors." [14]

On 1 December 1993, KILOBAYAN requested copies of all documents pertaining to the lottery award from Executive Secretary Teofisto Guingona, Jr. In his answer of 17 December 1993, the Executive Secretary informed KILOBAYAN that the requested documents would be duly transmitted before the end of the month.[15]

However, on that same date, an agreement denominated as "Contract of Lease" was finally executed by respondent PCSO and respondent PGM.[16] The President, per the press statement issued by the Office of the President, approved it on 20 December 1993.[17]

In view of their materiality and relevance, we quote the following salient provisions of the Contract of Lease:

"1. DEFINITIONS

The following words and terms shall have the following respective meanings:

1.1 Rental Fee -- Amount to be paid by PCSO to the LESSOR as compensation for the fulfillment of the obligations of the LESSOR under this Contract, including, but not limited to the lease of the Facilities.

x x x

1.3 Facilities -- All capital equipment, computers, terminals, software (including source codes for the On-Line Lottery application software for the terminals, telecommunications and central systems), technology, intellectual property rights, telecommunications network, and furnishings and fixtures.

1.4 Maintenance and Other Costs -- All costs and expenses relating to printing, manpower, salaries and wages, advertising and promotion, maintenance, expansion and replacement, security and insurance, and all other related expenses needed to operate an On-Line Lottery System, which shall be for the account of the LESSOR. All expenses relating to the setting-up, operation and maintenance of ticket sales offices of dealers and retailers shall be borne by PCSO's dealers and retailers.

1.5 Development Plan -- The detailed plan of all games, the marketing thereof, number of players, value of winnings and the logistics required to introduce the games, including the Master Games Plan as approved by PCSO, attached hereto as Annex "A", modified as necessary by the provisions' of this Contract.

x x x

1.8 Escrow Deposit -- The proposal deposit in the sum of Three Hundred Million Pesos (P300,000,000.00) submitted by the LESSOR to PCSO pursuant to the requirements of the Request for Proposals.

2. SUBJECT MATTER OF THE LEASE

The LESSOR shall build, furnish and maintain at its own expense and risk the Facilities for the On-Line Lottery System of PCSO in the Territory on an exclusive basis. The LESSOR shall bear all Maintenance and Other Costs as defined herein.

x x x

3. RENTAL FEE

For and in consideration of the performance by the LESSOR of its obligations herein, PCSO shall pay LESSOR a fixed Rental Fee equal to four point nine percent (4.9%) of gross receipts from ticket sales, payable net of taxes required by law to be withheld, on a semi-monthly basis. Goodwill, franchise and similar fees shall belong to PCSO.

4. LEASE PERIOD

The period of the lease shall commence ninety (90) days from the date of effectivity of this Contract and shall run for a period of eight (8) years thereafter, unless sooner terminated in accordance with this Contract.

5. RIGHTS AND OBLIGATIONS OF PCSO AS OPERATOR OF THE ON-LINE LOTTERY SYSTEM

PCSO shall be the sole and individual operator of the On-Line Lottery System. Consequently:

5.1 PCSO shall have sole responsibility to decide whether to implement, fully or partially, the Master Games Plan of the LESSOR. PCSO shall have the sole responsibility to determine the time for introducing new games to the market. The Master Games Plan included in Annex "A" hereof is hereby approved by PCSO.

5.2 PCSO shall have control over revenues and receipts of whatever nature from the On-Line Lottery System. After paying the Rental Fee to the LESSOR, PCSO shall have exclusive responsibility to determine the Revenue Allocation Plan; Provided, that the same shall be consistent with the requirement of R.A. No. 1169, as amended, which fixes a prize fund of fifty five percent (55%) on the average.

5.3 PCSO shall have exclusive control over the printing of tickets, including but not limited to the design, text, and contents thereof.

5.4 PCSO shall have sole responsibility over the appointment of dealers or retailers throughout the country. PCSO shall appoint the dealers and retailers in a timely manner with due regard to the implementation timetable of the On-Line Lottery System. Nothing herein shall preclude the LESSOR from recommending dealers or retailers for appointment by PCSO, which shall act on said recommendation within forty-eight (48) hours.

5.5 PCSO shall designate the necessary personnel to monitor and audit the daily performance of the On-Line Lottery System. For this purpose, PCSO designees shall be given, free of charge, suitable and adequate space, furniture and fixtures, in all offices of the LESSOR, including but not limited to its headquarters, alternate site, regional and area offices.

5.6 PCSO shall have the responsibility to resolve, and exclusive jurisdiction over, all matters involving the operation of the On-Line Lottery System not otherwise provided in this Contract.

5.7 PCSO shall promulgate procedural and coordinating rules governing all activities relating to the On-Line Lottery System.

5.8 PCSO will be responsible for the payment of prize monies, commissions to agents and dealers, and taxes and levies (if any) chargeable to the operator of the On-Line Lottery System. The LESSOR will bear all other Maintenance and Other Costs, except as provided in Section 1.4.

5.9 PCSO shall assist the LESSOR in the following:

5.9.1 Work permits for the LESSOR's staff;

5.9.2 Approvals for importation of the Facilities;

5.9.3 Approvals and consents for the On-Line Lottery System; and

5.9.4 Business and premises licenses for all offices of the LESSOR and licenses for the telecommunications network.

5.10 In the event that PCSO shall pre-terminate this Contract or suspend the operation of the On-Line Lottery System, in breach of this Contract and through no fault of the LESSOR, PCSO shall promptly, and in any event not later than sixty (60) days, reimburse the LESSOR the amount of its total investment cost associated with the On-Line Lottery System, including but not limited to the cost of the Facilities, and further compensate the LESSOR for loss of expected net profit after tax, computed over the unexpired term of the lease.

6. DUTIES AND RESPONSIBILITIES OF THE LESSOR

The LESSOR is one of not more than three (3) lessors of similar facilities for the nationwide On-Line Lottery

System of PCSO. It is understood that the rights of the LESSOR are primarily those of a lessor of the Facilities, and consequently, all rights involving the business aspects of the use of the Facilities are within the jurisdiction of PCSO. During the term of the lease, the LESSOR shall:

- 6.1 Maintain and preserve its corporate existence, rights and privileges, and conduct its business in an orderly, efficient, and customary manner.
- 6.2 Maintain insurance coverage with insurers acceptable to PCSO on all Facilities.
- 6.3 Comply with all laws, statues, rules and regulations, orders and directives, obligations and duties by which it is legally bound.
- 6.4 Duly pay and discharge all taxes, assessments and government charges now and hereafter imposed of whatever nature that may be legally levied upon it.
- 6.5 Keep all the Facilities in fail safe condition and, if necessary, upgrade, replace and improve the Facilities from time to time as new technology develops, in order to make the On-Line Lottery System more cost-effective and/or competitive, and as may be required by PCSO. PCSO shall not impose such requirements unreasonably nor arbitrarily.
- 6.6 Provide PCSO with management terminals which will allow real-time monitoring of the On-Line Lottery System.
- 6.7 Upon effectivity of this Contract, commence the training of PCSO and other local personnel and the transfer of technology and expertise, such that at the end of the term of this Contract, PCSO will be able to effectively take-over the Facilities and efficiently operate the On-Line Lottery System.
- 6.8 Undertake a positive advertising and promotions campaign for both institutional and product lines without engaging in negative advertising against other lessors.
- 6.9 Bear all expenses and risks relating to the Facilities including, but not limited to, Maintenance and Other Costs and:

x x x
- 6.10 Bear all risks if the revenues from ticket sales, on an annualized basis, are insufficient to pay the entire prize money.
- 6.11 Be, and is hereby, authorized to collect and retain for its own account, a security deposit from dealers and retailers, in an amount determined with the approval of PCSO, in respect of equipment supplied by the LESSOR. PCSO's approval shall not be unreasonably withheld. x x x
- 6.12 Comply with procedural and coordinating rules issued by PCSO.

7. REPRESENTATIONS AND WARRANTIES

The LESSOR represents and warrants that:

- 7.1 The LESSOR is a corporation duly organized and existing under the laws of the Republic of the Philippines, at least sixty percent (60%) of the outstanding capital stock of which is owned by Filipino shareholders. The minimum required Filipino equity participation shall not be impaired through voluntary or involuntary transfer, disposition, or sale of shares of stock by the present stockholders.
- 7.2 The LESSOR and its Affiliates have the full corporate and legal power and authority to own and operate their

properties and to carry on their business in the place where such properties are now or may be conducted. x x x

7.3 The LESSOR has or has access to all the financing and funding requirements to promptly and effectively carry out the terms of this Contract. x x x

7.4 The LESSOR has or has access to all the managerial and technical expertise to promptly and effectively carry out the terms of this Contract. x x x

x x x

10. TELECOMMUNICATIONS NETWORK

The LESSOR shall establish a telecommunications network that will connect all municipalities and cities in the Territory in accordance with, at the LESSOR's option, either of the LESSOR's proposals (or a combinations of both such proposals) attached hereto as Annex "B," and under the following PCSO schedule:

x x x

PCSO may, at its option, require the LESSOR to establish the telecommunications network in accordance with the above Timetable in provinces where the LESSOR has not yet installed terminals. Provided, that such provinces have existing nodes. Once a municipality or city is serviced by land lines of a licensed public telephone company, and such lines are connected to Metro Manila, then the obligation of the LESSOR to connect such municipality or city through a telecommunications network shall cease with respect to such municipality or city.

The voice facility will cover the four offices of the Office of the President, National Disaster Control Coordinating Council, Philippine National Police and the National Bureau of Investigation, and each city and municipality in the Territory except Metro Manila, and those cities and municipalities which have easy telephone access from these four offices. Voice calls from the four offices shall be transmitted via radio or VSAT to the remote municipalities which will be connected to this voice facility through wired network or by radio. The facility shall be designed to handle four private conversations at any one time.

x x x

13. STOCK DISPERSAL PLAN

Within two (2) years from the effectivity of this Contract, the LESSOR shall cause itself to be listed in the local stock exchange and offer at least twenty five percent (25%) of its equity to the public.

14. NON-COMPETITION

The LESSOR shall not, directly or indirectly, undertake any activity or business in competition with or adverse to the On-Line Lottery System of PCSO unless it obtains the latter's prior written consent thereto.

15. HOLD HARMLESS CLAUSE

15.1 The LESSOR shall at all times protect and defend, at its cost and expense, PCSO from and against any and all liabilities and claims for damages and/or suits for or by reason of any deaths of, or any injury or injuries to any person or persons, or damages to property of any kind whatsoever, caused by the LESSOR, its subcontractors, its authorized agents or employees, from any cause or causes whatsoever.

15.2 The LESSOR hereby covenants and agrees to indemnify and hold PCSO harmless from all liabilities, charges, expenses (including reasonable counsel fees) and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses caused by the LESSOR'S fault or negligence.

15.3 The LESSOR shall at all times protect and defend, at its own cost and expense, its title to the facilities and

PCSO's interest therein from and against any and all claims for the duration of the Contract until transfer to PCSO of ownership of the serviceable Facilities.

16. SECURITY

16.1 To ensure faithful compliance by the LESSOR with the terms of the Contract, the LESSOR shall secure a Performance Bond from a reputable insurance company or companies acceptable to PCSO.

16.2 The Performance Bond shall be in the initial amount of Three Hundred Million Pesos (P300,000,000.00), to its U.S. dollar equivalent, and shall be renewed to cover the duration of the Contract. However, the Performance Bond shall be reduced proportionately to the percentage of unencumbered terminals installed; Provided, that the Performance Bond shall in no case be less than One Hundred Fifty Million Pesos (P150,000,000.00).

16.3 The LESSOR may at its option maintain its Escrow Deposit as the Performance Bond. x x x

17. PENALTIES

17.1 Except as may be provided in Section 17.2, should the LESSOR fail to take remedial measures within seven (7) days, and rectify the breach within thirty (30) days, from written notice by PCSO of any wilfull or grossly negligent violation of the material terms and conditions of this Contract, all unencumbered Facilities shall automatically become the property of PCSO without consideration and without need for further notice or demand by PCSO. The Performance Bond Shall likewise be forfeited in favor of PCSO.

17.2 Should the LESSOR fail to comply with the terms of the Timetables provided in Section 9 and 10, it shall be subject to an initial Penalty of Twenty Thousand Pesos (P20,000.00), per city or municipality per every month of delay; Provided, that the Penalty shall increase, every ninety (90) days, by the amount of Twenty Thousand Pesos (P20,000.00) per city or municipality per month, whilst shall failure to comply persists. The penalty shall be deducted by PCSO from the rental fee.

x x x

20. OWNERSHIP OF THE FACILITIES

After expiration of the term of the lease as provided in Section 4, the Facilities directly required for the On-Line Lottery System mentioned in Section 1.3 shall automatically belong in full ownership to PCSO without any further consideration other than the Rental Fees already paid during the effectivity of the lease.

21. TERMINATION OF THE LEASE

PCSO may terminate this Contract for any breach of the material provisions of this Contract, including the following:

21.1 The LESSOR is insolvent or bankrupt or unable to pay its debts, stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or proposes or makes a general assignment or an arrangement or compositions with or for the benefit of its creditors; or

21.2 An order is made or an effective resolution passed for the winding up or dissolution of the LESSOR or when it ceases or threatens to cease to carry on all or a material part of its operations or business; or

21.3 Any material statement, representation or warranty made or furnished by the LESSOR proved to be materially false or misleading;

said termination to take effect upon receipt of written notice of termination by the LESSOR and failure to take remedial action within seven (7) days and cure or remedy the same within thirty (30) days from notice.

Any suspension, cancellation or termination of this Contract shall not relieve the LESSOR of any liability that may have already accrued hereunder."

X X X

Considering the denial by the Office of the President of its protest and the statement of Assistant Executive Secretary Renato Corona that "only a court injunction can stop Malacañang," and the imminent implementation of the Contract of Lease in February 1994, KILOBAYAN, with its co-petitioners, filed on 28 January 1994 this petition.

In support of the petition, the petitioners claim that:

"X X X THE OFFICE OF THE PRESIDENT, ACTING THROUGH RESPONDENTS EXECUTIVE SECRETARY AND/OR ASSISTANT EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, AND THE PCSO GRAVELY ABUSE[D] THEIR DISCRETION AND/OR FUNCTIONS TANTAMOUNT TO LACK OF JURISDICTION AND/OR AUTHORITY IN RESPECTIVELY: (A) APPROVING THE AWARD OF THE CONTRACT TO, AND (B) ENTERING INTO THE SO-CALLED 'CONTRACT OF LEASE' WITH, RESPONDENT PGMIC FOR THE INSTALLATION, ESTABLISHMENT AND OPERATION OF THE ON-LINE LOTTERY AND TELECOMMUNICATION SYSTEMS REQUIRED AND/OR AUTHORIZED UNDER THE SAID CONTRACT, CONSIDERING THAT:

- a) Under Section 1 of the Charter of the PCSO, the PCSO is prohibited from holding and conducting lotteries 'in collaboration, association or joint venture with any person, association, company or entity';
- b) Under Act No. 3846 and established jurisprudence, a Congressional franchise is required before any person may be allowed to establish and operate said telecommunications system;
- c) Under Section 11, Article XII of the Constitution, a less than 60% Filipino-owned and/or controlled corporation, like the PGMIC, is disqualified from operating a public service, like the said telecommunications system; and
- d) Respondent PGMIC is not authorized by its charter and under the Foreign Investments Act (R.A. No. 7042) to install, establish and operate the on-line lotto and telecommunications systems." [18]

Petitioners submit that the PCSO cannot validly enter into the assailed Contract of Lease with the PGMIC because it is an arrangement wherein the PCSO would hold and conduct the on-line lottery system in "collaboration" or "association" with the PGMIC, in violation of Section 1(B) of R.A. No. 1169, as amended by B.P. Blg. 42, which prohibits the PCSO from holding and conducting charity sweepstakes races, lotteries, and other similar activities "in collaboration, association or joint venture with any person, association, company or entity, foreign or domestic." Even granting arguendo that a lease of facilities is not within the contemplation of "collaboration" or "association," an analysis, however, of the Contract of Lease clearly shows that there is a "collaboration, association, or joint venture between respondents PCSO and PGMIC in the holding of the On-Line Lottery System," and that there are terms and conditions of the Contract "showing that respondent PGMIC is the actual lotto operator and not respondent PCSO." [19]

The petitioners also point out that paragraph 10 of the Contract of Lease requires or authorizes PGMIC to establish a telecommunications network that will connect all the municipalities and cities in the territory. However, PGMIC cannot do that because it has no franchise from Congress to construct, install, establish, or operate the network pursuant to Section 1 of Act No. 3846, as amended. Moreover, PGMIC is a 75% foreign-owned or controlled corporation and cannot, therefore, be granted a franchise for that purpose because of Section 11, Article XII of the 1987 Constitution. Furthermore, since "the subscribed foreign capital" of the PGMIC "comes to about 75%, as

shown by paragraph EIGHT of its Articles of Incorporation," it cannot lawfully enter into the contract in question because all forms of gambling -- and lottery is one of them -- are included in the so-called foreign investments negative list under the Foreign Investments Act (R.A. No. 7042) where only up to 40% foreign capital is allowed.[20]

Finally, the petitioners insist that the Articles of Incorporation of PGMC do not authorize it to establish and operate an on-line lottery and telecommunications systems.[21]

Accordingly, the petitioners pray that we issue a temporary restraining order and a writ of preliminary injunction commanding the respondents or any person acting in their places or upon their instructions to cease and desist from implementing the challenged Contract of Lease and, after hearing the merits of the petition, that we render judgment declaring the Contract of Lease void and without effect and making the injunction permanent.[22]

We required the respondents to comment on the petition.

In its Comment filed on 1 March 1994, private respondent PGMC asserts that "(1) [it] is merely an independent contractor for a piece of work, (i.e., the building and maintenance of a lottery system to be used by PCSO in the operation of its lottery franchise); and (2) as such independent contractor, PGMC is not a co-operator of the lottery franchise with PCSO, nor is PCSO sharing its franchise, 'in collaboration, association or joint venture' with PGMC -- as such statutory limitation is viewed from the context, intent, and spirit of Republic Act 1169, as amended by Batas Pambansa 42." It further claims that as an independent contractor for a piece of work, it is neither engaged in "gambling" nor in "public service" relative to the telecommunications network, which the petitioners even consider as an "indispensable requirement" of an on-line lottery system. Finally, it states that the execution and implementation of the contract does not violate the Constitution and the laws; that the issue on the "morality" of the lottery franchise granted to the PCSO is political and not judicial or legal, which should be ventilated in another forum; and that the "petitioners do not appear to have the legal standing or real interest in the subject contract and in obtaining the reliefs sought." [23]

In their Comment filed by the Office of the Solicitor General, public respondents Executive Secretary Teofisto Guingona, Jr., Assistant Executive Secretary Renato Corona, and the PCSO maintain that the contract of lease in question does not violate Section 1 of R.A. No. 1169, as amended by B.P. Blg. 42, and that the petitioners' interpretation of the phrase "in collaboration, association or joint venture" in Section 1 is "much too narrow, strained and utterly devoid of logic" for it "ignores the reality that PCSO, as a corporate entity, is vested with the basic and essential prerogative to enter into all kinds of transactions or contracts as may be necessary for the attainment of its purposes and objectives." What the PCSO charter "seeks to prohibit is that arrangement akin to a 'joint venture' or partnership where there is 'community of interest in the business, sharing of profits and losses, and a mutual right of control,' a characteristic which does not obtain in a contract of lease." With respect to the challenged Contract of Lease, the "role of PGMC is limited to that of a lessor of the facilities" for the on-line lottery system; in "strict technical and legal sense," said contract "can be categorized as a contract for a- piece of work as defined in Articles 1467, 1713 and 1644 of the Civil Code."

They further claim that the establishment of the telecommunications system stipulated in the Contract of Lease does not require a congressional franchise because PGMC will not operate a public utility; moreover, PGMC's "establishment of a telecommunications system is not intended to establish a telecommunications business," and it has been held that where the facilities are operated "not for business purposes but for its own use," a legislative franchise is not required before a certificate of public convenience can be granted.[24] Even granting *arguendo* that PGMC is a public utility, pursuant to Albano S. Reyes,[25] "it can establish a telecommunications system even without a legislative franchise because not every public utility is required to secure a legislative franchise

before it could establish, maintain, and operate the service"; and, in any case, "PGMC's establishment of the telecommunications system stipulated in its contract of lease with PCSO falls within the exceptions under Section 1 of Act No. 3846 where a legislative franchise is not necessary for the establishment of radio stations."

They also argue that the contract does not violate the Foreign Investment Act of 1991; that the Articles of Incorporation of PGMC authorize it to enter into the Contract of Lease; and that the issues of "wisdom, morality and propriety of acts of the executive department are beyond the ambit of judicial review."

Finally, the public respondents allege that the petitioners have no standing to maintain the instant suit, citing our resolution in *Valmonte vs. Philippine Charity Sweepstakes Office*.^[26]

Several parties filed motions to intervene as petitioners in this case,^[27] but only the motion of Senators Alberto Romulo, Arturo Tolentino, Francisco Tatad, Gloria Macapagal-Arroyo, Vicente Sotto III, John Osmeña, Ramon Revilla, and Jose Lina^[28] was granted, and the respondents were required to comment on their petition in intervention, which the public respondents and PGMC did.

In the meantime, the petitioners filed with the Securities and Exchange Commission on 29 March 1994 a petition against PGMC for the nullification of the latter's General Information Sheets. That case, however, has no bearing in this petition.

On 11 April 1994, we heard the parties in oral arguments. Thereafter, we resolved to consider the matter submitted for resolution and pending resolution of the major issues in this case, to issue a temporary restraining order commanding the respondents or any person acting in their place or upon their instructions to cease and desist from implementing the challenged Contract of Lease.

In the deliberation on this case on 26 April 1994, we resolved to consider only these issues: (a) the locus standi of the petitioners, and (b) the legality and validity of the Contract of Lease in the light of Section 1 of R.A. No. 1169, as amended by B.P. Blg. 42, which prohibits the PCSO from holding and conducting lotteries "in collaboration, association or joint venture with any person, association, company or entity, whether domestic or foreign." On the first issue, seven Justices voted to sustain the locus standi of the petitioners, while six voted not to. On the second issue, the seven Justices were of the opinion that the Contract of Lease violates the exception to Section 1(B) of R.A. No. 1169, as amended by B.P. Blg. 42, and is, therefore, invalid and contrary to law. The six Justices stated that they wished to express no opinion thereon in view of their stand on the first issue. The Chief Justice took no part because one of the Directors of the PCSO is his brother-in-law.

This case was then assigned to this ponente for the writing of the opinion of the Court.

The preliminary issue on the locus standi of the petitioners should, indeed, be resolved in their favor. A party's standing before this Court is a procedural technicality which it may, in the exercise of its discretion, set aside in view of the importance of the issues raised. In the landmark *Emergency Powers Cases*,^[29] this Court brushed aside this technicality because "the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure. (*Avelino vs. Cuenco*, G.R. No. L-2821)." Insofar as taxpayers' suits are concerned, this Court had declared that it "is not devoid of discretion as to whether or not it should be entertained,"^[30] or that it "enjoys an open discretion to entertain the same or not."^[31] In *De La Llana vs. Alba*,^[32] this Court declared:

"1. The argument as to the lack of standing of petitioners is easily resolved. As far as Judge de la Llana is concerned, he certainly falls within the principle set forth in Justice Laurel's opinion in *People vs. Vera* [65 Phil. 56 (1937)]. Thus: 'The unchallenged rule is that the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a

result of its enforcement [Ibid, 89]. The other petitioners as members of the bar and officers of the court cannot be considered as devoid of 'any personal and substantial interest' on the matter. There is relevance to this excerpt from a separate opinion in *Aquino, Jr. v. Commission on Elections* [L-40004, January 31, 1975, 62 SCRA 275]: 'Then there is the attack on the standing of petitioners, as vindicating at most what they consider a public right and not protecting their rights as individuals. This is to conjure the specter of the public right dogma as an inhibition to parties intent on keeping public officials staying on the path of constitutionalism. As was so well put by Jaffe: "The protection of private rights is an essential constituent of public interest and, conversely, without a well-ordered state there could be no enforcement of private rights. Private and public interests are, both in a substantive and procedural sense, aspects of the totality of the legal order." Moreover, petitioners have convincingly shown that in their capacity as taxpayers, their standing to sue has been amply demonstrated. There would be a retreat from the liberal approach followed in *Pascual v. Secretary of Public Works*, foreshadowed by the very decision of *People v. Vera* where the doctrine was first fully discussed, if we act differently now. I do not think we are prepared to take that step. Respondents, however, would hark back to the American Supreme Court doctrine in *Mellon v. Frothingham*, with their claim that what petitioners possess "is an interest which is shared in common by other people and is comparatively so minute and indeterminate as to afford any basis and assurance that the judicial process can act on it." That is to speak in the language of a bygone era, even in the United States. For as Chief Justice Warren clearly pointed out in the later case of *Flast v. Cohen*, the barrier thus set up if not breached has definitely been lowered.'

In *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. vs. Tan*,^[33] reiterated in *Basco vs. Philippine Amusements and Gaming Corporation*,^[34] this Court stated:

"Objections to taxpayers' suits for lack of sufficient personality standing or interest are, however, in the main procedural matters. Considering the importance to the public of the cases at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, this Court has brushed aside technicalities of procedure and has taken cognizance of these petitions."

and in *Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform*,^[35] it declared:

"With particular regard to the requirement of proper party as applied in the cases before us, we hold that the same is satisfied by the petitioners and intervenors because each of them has sustained or is in danger of sustaining an immediate injury as a result of the acts or measures complained of. [Ex Parte Levitt, 303 US 633]. And even if, strictly speaking, they are not covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised.

In the first Emergency Powers Cases, ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they were invoking only an indirect and general interest shared in common with the public. The Court dismissed the objective that they were not proper parties and ruled that the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure. We have since then applied this exception in many other cases." (Emphasis supplied)

In *Daza vs. Singson*,^[36] this Court once more said:

"x x x For another, we have early as in the Emergency Powers Cases that where serious constitutional questions are involved, 'the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure.' The same policy has since then been consistently followed by the Court, as in *Gonzales vs. Commission on Elections* [21 SCRA 774] x x x."

The Federal Supreme Court of the United States of America has also expressed its discretionary power to liberalize the rule on locus standi. In *United States vs. Federal Power Commission and Virginia Rea Association vs. Federal Power Commission*,^[37] it held:

"We hold that petitioners have standing. Differences of view, however, preclude a single opinion of the Court as to both petitioners. It would not further clarification of this complicated specialty of federal jurisdiction, the solution of whose problems is in any event more or less determined by the specific circumstances of individual situations, to set out the divergent grounds in support of standing in these cases."

In line with the liberal policy of this Court on locus standi, ordinary taxpayers, members of Congress, and even association of planters, and non-profit civic organizations were allowed to initiate and prosecute actions before this Court to question the constitutionality or validity of laws, acts, decisions, rulings, or orders of various government agencies or instrumentalities. Among such cases were those assailing the constitutionality of (a) R.A. No. 3836 insofar as it allows retirement gratuity and commutation of vacation and sick leave to Senators and Representatives and to elective officials of both Houses of Congress;^[38] (b) Executive Order No. 284, issued by President Corazon C. Aquino on 25 July 1987, which allowed members of the cabinet, their undersecretaries, and assistant secretaries to hold other government offices or positions;^[39] (c) the automatic appropriation for debt service in the General Appropriations Act;^[40] (d) R.A. No. 7056 on the holding of desynchronized elections;^[41] (e) P.D. No. 1869 (the charter of the Philippine Amusement and Gaming Corporation) on the ground that it is contrary to morals, public policy, and order;^[42] and (f) R.A. No. 6975, establishing the Philippine National Police.^[43]

Other cases where we have followed a liberal policy regarding locus standi include those attacking the validity or legality of (a) an order allowing the importation of rice in the light of the prohibition imposed by R.A. No. 3452;^[44] (b) P.D. Nos. 991 and 1033 insofar as they proposed amendments to the Constitution and P.D. No. 1031 insofar as it directed the COMELEC to supervise, control, hold, and conduct the referendum?plebiscite on 16 October 1976;^[45] (c) the bidding for the sale of the 3,179 square meters of land at Roppongi, Minato-ku, Tokyo, Japan;^[46] (d) the approval without hearing by the Board of Investments of the amended application of the Bataan Petrochemical Corporation to transfer the site of its plant from Bataan to Batangas and the validity of such transfer and the shift of feedstock from naphtha only to naphtha and/or liquefied petroleum gas;^[47] (e) the decisions, orders, rulings, and resolutions of the Executive Secretary, Secretary of Finance, Commissioner of Internal Revenue, Commissioner of Customs, and the Fiscal Incentives Review Board exempting the National Power Corporation from indirect tax and duties;^[48] (f) the orders of the Energy Regulatory Board of 5 and 6 December 1990 on the ground that the hearings conducted on the second provisional increase in oil prices did not allow the petitioner substantial cross--examination;^[49] (g) Executive Order No. 478 which levied a special duty of P0.95 per liter or P151.05 per barrel of imported crude oil and P1.00 per liter of imported oil products;^[50] (h) resolutions of the Commission on Elections concerning the apportionment, by district, of the number of elective members of Sanggunians;^[51] and (i) memorandum orders issued by a Mayor affecting the Chief of Police of Pasay City.^[52]

In the 1975 case of *Aquino vs. Commission on Elections*,^[53] this Court, despite its unequivocal ruling that the petitioners therein had no personality to file the petition, resolved nevertheless to pass upon the issues raised because of the far-reaching implications of the petition. We did no less in *De Guia vs. COMELEC*^[54] where, although we declared that De Guia "does not appear to have locus standi, a standing in law, a personal or substantial interest," we brushed aside the procedural infirmity "considering the importance of the issue involved, concerning as it does the political exercise of qualified voters affected by the apportionment, and petitioner alleging abuse of discretion and violation of the Constitution by respondent."

We find the instant petition to be of transcendental importance to the public. The issues it raised are of paramount public interest and of a category even higher than those involved in many of the aforecited cases. The ramifications of such issues immeasurably affect the social, economic, and moral well-being of the people even in the remotest barangays of the country and the counter-productive and retrogressive effects of the envisioned on-line lottery system are as staggering as the billions in pesos it is expected to raise. The legal standing then of the petitioners deserves recognition and, in the exercise of its sound discretion, this Court hereby brushes aside the procedural barrier which the respondents tried to take advantage of.

And now on the substantive issue.

Section 1 of R.A. No. 1169, as amended by B.P. Blg. 42, prohibits the PCSO from holding and conducting lotteries "in collaboration, association or joint venture with any person, association, company or entity, whether domestic or foreign." Section 1 provides:

"Sec. 1. The Philippine Charity Sweepstakes Office. -- The Philippine Charity Sweepstakes Office, hereinafter designated the Office, shall be the principal government agency for raising and providing for funds for health programs, medical assistance and services and charities of national character, and as such shall have the general powers conferred in section thirteen of Act Numbered One thousand four hundred fifty-nine, as amended, and shall have the authority:

A. To hold and conduct charity sweepstakes races, lotteries and other similar activities, in such frequency and manner, as shall be determined, and subject to such rules and regulations as shall be promulgated by the Board of Directors.

B. Subject to the approval of the Minister of Human Settlements, to engage in health and welfare-related investments, programs, projects and activities which may be profit-oriented, by itself or in collaboration, association or joint venture with any person, association, company or entity, whether domestic or foreign, except for the activities mentioned in the preceding paragraph (A), for the purpose of providing for permanent and continuing sources of funds for health programs, including the expansion of existing ones, medical assistance and services, and/or charitable grants: Provided, That such investments will not compete with the private sector in areas where investments are adequate as may be determined by the National Economic and Development Authority." (emphasis supplied)

The language of the section is indisputably clear that with respect to its franchise or privilege "to hold and conduct charity sweepstakes races, lotteries and other similar activities," the PCSO cannot exercise it "in collaboration, association or joint venture" with any other party. This is the unequivocal meaning and import of the phrase "except for the activities mentioned in the preceding paragraph (A)," namely, "charity sweepstakes races, lotteries and other similar activities."

B.P. Blg. 42 originated from Parliamentary Bill No. 622, which was covered by Committee Report No. 103 as reported out by the Committee on Socio-Economic Planning and Development of the Interim Batasang Pambansa. The original text of paragraph B, Section 1 of Parliamentary Bill No. 622 reads as follows:

"To engage in any and all investments and related profit-oriented projects or programs and activities by itself or in collaboration, association or joint venture with any person, association, company or entity, whether domestic or foreign, for the main purpose of raising funds for health and medical assistance and services and charitable grants." [55]

During the period of committee amendments, the Committee on Socio-Economic Planning and Development, through Assemblyman Ronaldo B. Zamora, introduced an amendment by substitution to the said paragraph B such that, as amended, it should read as follows:

"Subject to the approval of the Minister of Human Settlements, to engage in health-oriented investments, programs, projects and activities which may be profit-oriented, by itself or in collaboration, association, or joint venture with any person, association, company or entity, whether domestic or foreign, for the purpose of providing for permanent and continuing sources of funds for health programs, including the expansion of existing ones, medical assistance and services and/or charitable grants."[56]

Before the motion of Assemblyman Zamora for the approval of the amendment could be acted upon, Assemblyman Davide introduced an amendment to the amendment:

"MR. DAVIDE.

Mr. Speaker.

THE SPEAKER.

The gentleman from Cebu is recognized.

MR. DAVIDE.

May I introduce an amendment to the committee amendment? The amendment would be to insert after 'foreign' in the amendment just read the following: EXCEPT FOR THE ACTIVITY IN LETTER (A) ABOVE.

When it is a joint venture or in collaboration with any entity such collaboration or joint venture must not include activity letter (a) which is the holding and conducting of sweepstakes races, lotteries and other similar acts.

MR. ZAMORA.

We accept the amendment, Mr. Speaker.

MR. DAVIDE.

Thank you, Mr. Speaker.

THE SPEAKER.

Is there any objection to the amendment? (Silence) The amendment, as amended, is approved."[57]

Further amendments to paragraph B were introduced and approved. When Assemblyman Zamora read the final text of paragraph B as further amended, the earlier approved amendment of Assemblyman Davide became "EXCEPT FOR THE ACTIVITIES MENTIONED IN PARAGRAPH (A)"; and by virtue of the amendment introduced by Assemblyman Emmanuel Pelaez, the word PRECEDING was inserted before PARAGRAPH. Assemblyman Pelaez introduced other amendments. Thereafter, the new paragraph B was approved.[58] This is now paragraph B, Section 1 of R.A. No. 1169, as amended by B.P. Blg. 42.

No interpretation of the said provision to relax or circumvent the prohibition can be allowed since the privilege to hold or conduct charity sweepstakes races, lotteries, or other similar activities is a franchise granted by the legislature to the PCSO. It is a settled rule that "in all grants by the government to individuals or corporations of rights, privileges and franchises, the words are to be taken most strongly against the grantee [o]ne who claims a franchise or privilege in derogation of the common rights of the public must prove his title thereto by a grant which is clearly and definitely expressed, and he cannot enlarge it by equivocal or doubtful provisions or by probable inferences. Whatever is not unequivocally granted is withheld. Nothing passes by mere implication."[59]

In short then, by the exception explicitly made in paragraph B, Section 1 of its charter, the PCSO cannot share its franchise with another by way of collaboration, association or joint venture. Neither can it assign, transfer, or

lease such franchise. It has been said that "the rights and privileges conferred under a franchise may, without doubt, be assigned or transferred when the grant is to the grantee and assigns, or is authorized by statute. On the other hand, the right of transfer or assignment may be restricted by statute or the constitution, or be made subject to the approval of the grantor or a governmental agency, such as a public utilities commission, except that an existing right of assignment cannot be impaired by subsequent legislation." [60]

It may also be pointed out that the franchise granted to the PCSO to hold and conduct lotteries allows it to hold and conduct a species of gambling. It is settled that "a statute which authorizes the carrying on of a gambling activity or business should be strictly construed and every reasonable doubt so resolved as to limit the powers and rights claimed under its authority." [61]

Does the challenged Contract of Lease violate or contravene the exception in Section 1 of R.A. No. 1169, as amended by B.P. Blg. 42, which prohibits the PCSO from holding and conducting lotteries "in collaboration, association or joint venture with" another?

We agree with the petitioners that it does, notwithstanding its denomination or designation as a Contract of Lease. We are neither convinced nor moved or fazed by the insistence and forceful arguments of the PGMC that it does not because in reality it is only an independent contractor for a piece of work, i.e., the building and maintenance of a lottery system to be used by the PCSO in the operation of its lottery franchise. Whether the contract in question is one of lease or whether the PGMC is merely an independent contractor should not be decided on the basis of the title or designation of the contract but by the intent of the parties, which may be gathered from the provisions of the contract itself. *Animus hominis est anima scripti*. The intention of the party is the soul of the instrument. In order to give life or effect to an instrument, it is essential to look to the intention of the individual who executed it. [62] And; pursuant to Article 1371 of the Civil Code, "to determine the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered." To put it more bluntly, no one should be deceived by the title or designation of a contract.

A careful analysis and evaluation of the provisions of the contract and a consideration of the contemporaneous acts of the PCSO and PGMC indubitably disclose that the contract is not in reality a contract of lease under which the PGMC is merely an independent contractor for a piece of work, but one where the statutorily proscribed collaboration or association, in the least, or joint venture, at the most, exists between the contracting parties. Collaboration is defined as the acts of working together in a joint project. [63] Association means the act of a number of persons in uniting together for some special purpose or business. [64] Joint venture is defined as an association of persons or companies jointly undertaking some commercial enterprise; generally all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement to share both in profit and losses. [65]

The contemporaneous acts of the PCSO and the PGMC reveal that the PCSO had neither funds of its own nor the expertise to operate and manage an on-line lottery system, and that although it wished to have the system, it would have it "at no expense or risks to the government." Because of these serious constraints and unwillingness to bear expenses and assume risks, the PCSO was candid enough to state in its RFP that it is seeking for "a suitable contractor which shall build, at its own expense, all the facilities needed to operate and maintain" the system; exclusively bear "all capital, operating expenses and expansion expenses and risks"; and submit "a comprehensive nationwide lottery development plan ... which will include the game, the marketing of the games, and the logistics to introduce the game to all the cities and municipalities of the country within five (5) years"; and that the operation of the on-line lottery system should be "at no expense or risk to the government" -- meaning itself, since it is a government-owned and controlled agency. The facilities referred to means "all capital

equipment, computers, terminals, software, nationwide telecommunications network, ticket sales offices, furnishings and fixtures, printing costs, costs of salaries and wages, advertising and promotions expenses, maintenance costs, expansion and replacement costs, security and insurance, and all other related expenses needed to operate a nationwide on-line lottery system."

In short, the only contribution the PCSO would have is its franchise or authority to operate the on-line lottery system; with the rest, including the risks of the business, being borne by the proponent or bidder. It could be for this reason that it warned that "the proponent must be able to stand to the acid test of proving that it is an entity able to take on the role of responsible maintainer of the on-line lottery system." The PCSO, however, makes it clear in its RFP that the proponent can propose a period of the contract which shall not exceed fifteen years, during which time it is assured of a "rental" which shall not exceed 12% of gross receipts. As admitted by the PGMC, upon learning of the PCSO's decision, the Berjaya Group Berhad, with its affiliates, wanted to offer its services and resources to the PCSO. Forthwith, it organized the PGMC as "a medium through which the technical and management services required for the project would be offered and delivered to PCSO." [66]

Undoubtedly, then, the Berjaya Group Berhad knew all along that in connection with an on-line lottery system, the PCSO had nothing but its franchise, which it solemnly guaranteed it had in the General Information of the RFP. [67] Howsoever viewed then, from the very inception, the PCSO and the PGMC mutually understood that any arrangement between them would necessarily leave to the PGMC the technical, operations, and management aspects of the on-line lottery system while the PCSO would, primarily, provide the franchise. The words Gaming and Management in the corporate name of respondent Philippine Gaming Management Corporation could not have been conceived just for euphemistic purposes. Of course, the RFP cannot substitute for the Contract of Lease which was subsequently executed by the PCSO and the PGMC. Nevertheless, the Contract of Lease incorporates their intention and understanding.

The so-called Contract of Lease is not, therefore, what it purports to be. Its denomination as such is a crafty device, carefully conceived, to provide a built-in defense in the event that the agreement is questioned as violative of the exception in Section 1(B) of the PCSO's charter. The acuity or skill of its draftsmen to accomplish that purpose easily manifests itself in the Contract of Lease. It is outstanding for its careful and meticulous drafting designed to give an immediate impression that it is a contract of lease. Yet, woven therein are provisions which negate its title and betray the true intention of the parties to be in or to have a joint venture for a period of eight years in the operation and maintenance of the on-line lottery system.

Consistent with the above observations on the RFP, the PCSO has only its franchise to offer, while the PGMC represents and warrants that it has access to all managerial and technical expertise to promptly and effectively carry out the terms of the contract. And, for a period of eight years, the PGMC is under obligation to keep all the Facilities in safe condition and if necessary, upgrade, replace, and improve them from time to time as new technology develops to make the on-line lottery system more cost-effective and competitive; exclusively bear all costs and expenses relating to the printing, manpower, salaries and wages, advertising and promotion, maintenance, expansion and replacement, security and insurance, and all other related expenses needed to operate the on-line lottery system; undertake a positive advertising and promotions campaign for both institutional and product lines without engaging in negative advertising against other lessors; bear the salaries and related costs of skilled and qualified personnel for administrative and technical operations; comply with procedural and coordinating rules issued by the PCSO; and to train PCSO and other local personnel and to effect the transfer of technology and other expertise, such that at the end of the term of the contract, the PCSO will be able to effectively take over the Facilities and efficiently operate the on-line lottery system. The latter simply means that, indeed, the managers, technicians or employees who shall operate the on-line lottery system are not managers,

technicians or employees of the PCSO, but of the PGMC and that it is only after the expiration of the contract that the PCSO will operate the system. After eight years, the PCSO would automatically become the owner of the Facilities without any other further consideration.

For these reasons, too, the PGMC has the initial prerogative to prepare the detailed plan of all games and the marketing thereof, and determine the number of players, value of winnings, and the logistics required to introduce the games, including the Master Games Plan. Of course, the PCSO has the reserved authority to disapprove them.[68] And, while the PCSO has the sole responsibility over the appointment of dealers and retailers throughout the country, the PGMC may, nevertheless, recommend for appointment dealers and retailers which shall be acted upon by the PCSO within forty-eight hours and collect and retain, for its own account, a security deposit from dealers and retailers in respect of equipment supplied by it.

This joint venture is further established by the following:

(a) Rent is defined in the lease contract as the amount to be paid to the PGMC as compensation for the fulfillment of its obligations under the contract, including, but not limited to the lease of the Facilities. However, this rent is not actually a fixed amount. Although it is stated to be 4.9% of gross receipts from ticket sales, payable net of taxes required by law to be withheld, it may be drastically reduced or, in extreme cases, nothing may be due or demandable at all because the PGMC binds itself to "bear all risks if the revenue from the ticket sales, on an annualized basis, are insufficient to pay the entire prize money." This risk-bearing provision is unusual in a lessor-lessee relationship, but inherent in a joint venture.

(b) In the event of pre-termination of the contract by the PCSO, or its suspension of operation of the on-line lottery system in breach of the contract and through no fault of the PGMC, the PCSO binds itself "to promptly, and in any event not later than sixty (60) days, reimburse the LESSOR the amount of its total investment cost associated with the On-Line Lottery System, including but not limited to the cost of the Facilities, and further compensate the LESSOR for loss of expected net profit after tax, computed over the unexpired term of the lease." If the contract were indeed one of lease, the payment of the expected profits or rentals for the unexpired portion of the term of the contract would be enough.

(c) The PGMC cannot "directly or indirectly undertake any activity or business in competition with or adverse to the On-Line Lottery System of PCSO unless it obtains the latter's prior written consent." If the PGMC is engaged in the business of leasing equipment and technology for an on-line lottery system, we fail to see any acceptable reason why it should allow a restriction on the pursuit of such business.

(d) The PGMC shall provide the PCSO the audited Annual Report sent to its stockholders, and within two years from the effectivity of the contract, cause itself to be listed in the local stock exchange and offer at least 25% of its equity to the public. If the PGMC is merely a lessor, this imposition is unreasonable and whimsical, and could only be tied up to the fact that the PGMC will actually operate and manage the system; hence, increasing public participation in the corporation would enhance public interest.

(e) The PGMC shall put up an Escrow Deposit of P300,000,000.00 pursuant to the requirements of the RFP, which it may, at its option, maintain as its initial performance bond required to ensure its faithful compliance with the terms of the contract.

(f) The PCSO shall designate the necessary personnel to monitor and audit the daily performance of the on-line lottery system; and promulgate procedural and coordinating rules governing all activities relating to the on-line lottery system. The first further confirms that it is the PGMC which will operate the system and the PCSO may, for the protection of its interest, monitor and audit the daily performance of the system. The second admits the

coordinating and cooperative powers and function of the parties.

(g) The PCSO may validly terminate the contract if the PGMC becomes insolvent or bankrupt or is unable to pay its debts, or if it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts.

All of the foregoing unmistakably confirm the indispensable role of the PGMC in the pursuit, operation, conduct, and management of the On-Line Lottery System. They exhibit and demonstrate the parties' indivisible community of interest in the conception, birth and growth of the on-line lottery, and, above all, in its profits, with each having a right in the formulation and implementation of policies related to the business and sharing, as well, in the losses -- with the PGMC bearing the greatest burden because of its assumption of expenses and risks, and the PCSO the least, because of its confessed unwillingness to bear expenses and risks. In a manner of speaking, each is wed to the other for better or for worse. In the final analysis, however, in the light of the PCSO's RFP and the above highlighted provisions, as well as the "Hold Harmless Clause" of the Contract of Lease, it is even safe to conclude that the actual lessor in this case is the PCSO and the subject matter thereof is Its franchise to hold and conduct lotteries since it is, in reality, the PGMC which operates and manages the on-line lottery system for a period of eight years.

We thus declare that the challenged Contract of Lease violates the exception provided for in paragraph B, Section 1 of R.A. No. 1169, as amended by B.P. Blg. 42, and is, therefore, invalid for being contrary to law. This conclusion renders unnecessary further discussion on the other issues raised by the petitioners.

WHEREFORE, the instant petition is hereby GRANTED and the challenged Contract of Lease executed on 17 December 1993 by respondent Philippine Charity Sweepstakes Office (PCSO) and respondent Philippine Gaming Management Corporation (PGMC) is hereby DECLARED contrary to law and invalid.

The Temporary Restraining Order issued on 11 April 1994 is hereby MADE PERMANENT.

No pronouncement as to costs.

SO ORDERED.

Regalado, Romero, and Bellosillo, JJ., concur.

Cruz, Feliciano, and, Padilla, JJ., separate concurring opinion.

Bidin, J., joins J. Melo, J. Quiason, J. Puno, and J. Kapunan, in their dissenting opinions.

Vitug, J., separate opinion.

Narvasa, C.J., no part.

[1] PGMC's Comment, 3-4; Rollo, 181-182.

[2] Annex "A," Id.; Id., 207-220.

[3] Rollo, 210-211.

[4] Rollo, 213.

[5] Id., 215.

[6] Id., 220.

[7] PGMC's Comment, 7; Rollo, 184.

[8] Annex "P" of Petition.

[9] Annexes "L" and "N" of Petition.

[10] Petition, 9; Rollo, 10. The announcement also stated that G-Tech Philippines, Inc. and the Tanjong Public Limited Company had likewise been authorized to operate separate lotto systems.

[11] Id.; Id.

[12] Annex "C" of Petition.

[13] Petition, 10; Rollo, 11. The meeting was called to deliberate on the proposed nationwide on-line lottery program.

[14] Id.; Id.

[15] Id.; Id.

[16] Annex "J" of Petition.

[17] Annex "H" of Petition.

[18] Rollo, 13-14.

[19] Rollo, 16-19.

[20] Id., 27-28; 30-32.

[21] Id., 27.

[22] Rollo, 35.

[23] Id., 180-181.

[24] Citing *Teresa Electric & Power Co., Inc. vs. Public Service Commission*, 21 SCRA 198 [1967].

[25] 175 SCRA 262 [1989].

[26] G.R. No. 78716, 22 September 1987.

[27] Philippine Christian Lawyers Fellowship, Inc., Gamaliel G. Bongco, Oscar Karaan, and Jedideoh Sincero (Rollo, 147); Catholic Lawyer's Guild of the Philippines, Inc., Enrique Syquia, and Pacifico Ma. Castro (Id., 154).

[28] Rollo, 249 et seq.

[29] G.R. No. L-2044 (*Araneta vs. Dinglasan*); G.R. No. L-2756 (*Araneta vs. Angeles*); G.R. No. L-3054 (*Rodriguez vs. Tesorero de Filipinas*); G.R. No. L-3055 (*Guerrero vs. Commissioner of Customs*); and G.R. No. L-3056 (*Barredo vs. Commission on Elections*), 84 Phil. 368 [1949].

[30] *Tan vs. Macapagal*, 43 SCRA 677, 680 [1972].

[31] *Sanidad vs. Commission on Elections*, 73 SCRA 333 [1976].

[32] 112 SCRA 294, 314-315 [1982].

[33] 163 SCRA 371, 378 [1988].

[34] 197 SCRA 52, 60 [1991].

[35] 175 SCRA 343, 364-365 [1989] (emphasis supplied).

[36] 180 SCRA 496, 502 [1988].

[37] 345 US 153, L ed 918, 735 Ct 609.

[38] Philippine Constitution Association, Inc. vs. Gimenez, 15 SCRA 479 [1965].

[39] Civil Liberties Union vs. Executive Secretary, 194 SCRA 317 [1991].

[40] Guingona vs. Carague, 196 SCRA 221 [1991].

[41] Osmeña vs. Commission on Elections, 199 SCRA 750 [1991].

[42] Basco vs. Philippine Gaming and Amusement Corp., 197 SCRA 52 [1991].

[43] Carpio vs. Executive Secretary, 206 SCRA 290 [1992].

[44] Iloilo Palay and Corn Planters Association, Inc. vs. Feliciano, 13 SCRA 377 [1965].

[45] Sanidad vs. Commission on Elections, *supra*.

[46] Laurel vs. Garcia, 187 SCRA 797 [1990].

[47] Garcia vs. Board of Investments, 177 SCRA 374 [1989]; Garcia vs. Board of Investments, 191 SCRA 288 [1990].

[48] Maceda vs. Macaraig, 197 SCRA 771 [1991].

[49] Maceda vs. Energy Regulatory Board, 199 SCRA 454 [1991].

[50] Garcia vs. Executive Secretary, 211 SCRA 219 [1992].

[51] De Guia vs. Commission on Elections, 208 SCRA 420 [1992].

[52] Pasay Law and Conscience Union, Inc. vs. Cuneta, 101 SCRA 662 [1980].

[53] 62 SCRA 275 [1975].

[54] *Supra*.

[55] Record of the Batasan, vol. Two, 993.

[56] *Id.*, 1006-1007.

[57] Record of the Batasan, vol. Two, 1007 (emphasis supplied).

[58] *Id.*

[59] 36 AM. JUR. 2d Franchises § 26 (1968).

[60] 36 AM. JUR. 2d Franchises § 63 (1968).

[61] 38 AM. JUR. 2d Gambling § 18 (1968).

[62] Black's Law Dictionary, Sixth Ed., 88.

[63] Id., 261.

[64] Id., 121.

[65] Id., 839.

[66] PGMC's Comment; Rollo, 181-182.

[67] It declares therein that it "has the legal authority under R.A. 1169, as amended, to hold and conduct sweepstakes races, lotteries, and other similar activities."

[68] Attached to the Contract of Lease as Annex "A" is the Master Games Plan prepared by the PGMC and approved by the PCSO.

104 6 pt 6 pt 0 3

concurring OPINION

CRUZ, J.:

I am happy to join Mr. Justice Hilario G. Davide, Jr. in his excellent ponencia. I will add the following personal observations only for emphasis as it is not necessary to supplement his thorough exposition.

The respondents take great pains to cite specific provisions of the contract to show that it is PCSO that is actually operating the on-line lottery, but they have not succeeded in disproving the obvious, to wit, that the document was intentionally so crafted to make it appear that the operation is not a joint undertaking of PCSO and PGMC but a mere lease of services. It is a clever instrument, to be sure, but we are, gratifyingly, not deluded. Lawyers have a special talent to disguise the real intention of the parties in a contract to make it come ostensibly within the provisions of a law although the real if furtive purpose is to violate it. That talent has been exercised in this case, but not convincingly enough.

It should be quite clear, from the adroit way the contract has been drafted, that the primary objective was to avoid the conclusion that PCSO will be operating a lottery "in association, collaboration or joint venture with any person, association, company or entity," which is prohibited by Section 1 of Rep. Act No. 1169 as amended by B.P. Blg. 42. Citing the self-serving provisions of the contract, the respondents would have us believe that the contract is perfectly lawful because all it does is provide for the lease to PCSO of the technical know-how and equipment of PGMC, with PCSO acting as "the sole and individual operator" of the lottery. I am glad we are not succumbing to this sophistry.

Despite the artfulness of the contract (authorship of which was pointedly denied by both counsel for the government and the private respondent during the oral argument on this case), a careful study will reveal telling stipulations that it is PGMC and not PCSO that will actually be operating the lottery. Thus, it is provided inter alia that PGMC shall furnish all capital equipment and other facilities needed for the operation; bear all expenses relating to the operation, including those for the salaries and wages of the administrative and technical personnel; undertake a positive advertising and promotion campaign for public support of the lottery; establish a radio communications network throughout the country as part of the operation; and assume all risks if the revenues from ticket sales are insufficient to pay the entire prize money. Most significantly, to show that it is only after eight years from the effectivity of the contract that PCSO will actually operate the lottery, Par. 6.7 of the agreement provides that PGMC shall:

6.7. Upon effectivity of this Contract, commence the training of PCSO and other local personnel and the

transfer of technology and expertise, such that at the end of the term of this Contract, PCSO will be able to effectively take-over the Facilities and efficiently operate the On-Line Lottery System. (Emphasis supplied).

In the meantime, that is to say during the entire 8-year term of the contract, it will be PGMC that will be operating the lottery. Only "at the end of the term of this Contract" will PCSO "be able to effectively take-over the Facilities and efficiently operate the On-Line Lottery System."

Even on the assumption that it is PCSO that will be operating the lottery at the very start, the authority granted to PGMC by the agreement will readily show that PCSO will not be acting alone, as the respondents pretend. In fact, it cannot. PGMC is an indispensable co-worker because it has the equipment and the technology and the management skills that PCSO does not have at this time for the operation of the lottery. PCSO cannot deny that it needs the assistance of PGMC for this purpose, which was its reason for entering into the contract in the first place.

And when PCSO does avail itself of such assistance, how will it be operating the lottery? Undoubtedly, it will be doing so "in collaboration, association or joint venture" with PGMC, which, let it be added, will not be serving as a mere "hired help" of PCSO subject to its control. PGMC will be functioning independently in the discharge of its own assigned role as stipulated in detail under the contract. PGMC is plainly a partner of PCSO in violation of law, no matter how PGMC's assistance is called or the contract is denominated.

Even if it be conceded that the assistance partakes of a lease of services, the undeniable fact is that PCSO would still be collaborating or cooperating with PGMC in the operation of the lottery. What is even worse is that PCSO and PGMC may be actually engaged in a joint venture, considering that PGMC does not collect the usual fixed rentals due an ordinary lessor but is entitled to a special "Rental Fee," as the contract calls it, "equal to four point nine percent (4.9%) of gross receipts from ticket sales."

The flexibility of this amount is significant. As may be expected, it will induce in PGMC an active interest and participation in the success of PCSO that is not expected of an ordinary detached lessor who gets to be paid his rentals - not a rental fee - whether the lessee's business prospers or not. PGMC's share in the operation depends on its own performance and the effectiveness of its collaboration with PCSO. Although the contract pretends otherwise, PGMC is a co-investor with PCSO in what is practically, if not in a strictly legal sense, a joint venture.

Concerning the doctrine of locus standi, I cannot agree that out of the sixty million Filipinos affected by the proposed lottery, not a single solitary citizen can question the agreement. Locus standi is not such an absolute rule that it cannot admit of exceptions under certain conditions or circumstances like those attending this transaction. As I remarked in my dissent in *Guazon v. De Villa*, 181 SCRA 623, "It is not only the owner of the burning house who has the right to call the firemen. Every one has the right and responsibility to prevent the fire from spreading even if he lives in the other block."

What is especially galling is that the transaction in question would foist upon our people an essentially immoral activity through the instrumentality of a foreign corporation, which naturally does not have the same concern for our interests as we ourselves have. I am distressed that foreigners should be allowed to exploit the weakness of some of us for instant gain without work, and with the active collaboration and encouragement of our own government at that.

200 6 pt 6 pt 0 3

Concurring OPINION

Feliciano, J.:

I agree with the conclusions reached by my distinguished brother in the Court Davide, Jr., J., both in respect of the question of locus standi and in respect of the merits of this case, that is, the issues of legality and constitutionality of the Contract of Lease entered into between the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Gaming Management Corporation (PGMC).

In this separate opinion, I propose to address only the question of locus standi. It is with some hesitation that I do so, considering the extensive separate opinions on this question written by my learned brothers Melo, Puno and Vitug, JJ. I agree with the great deal of what my brothers Melo, Puno and Vitug say about locus standi in their separate opinions and there is no need to go over the ground that I share with them. Because, however, I reach a different conclusion in respect of the presence or absence of locus standi on the part of the petitioners in the case before the Court, there is an internal need (a need internal to myself) to articulate the considerations which led me to that conclusion.

There is no dispute that the doctrine of locus standi reflects an important constitutional principle, that is, the principle of separation of powers which, among other things, mandates that each of the great Departments of government is responsible for performance of its constitutionally allotted tasks. Insofar as the Judicial Department is concerned, the exercise of judicial power and carrying out of judicial functions commonly take place within the context of actual cases or controversies. This, in turn, reflects the basic notion of judicial power as the power to resolve actual disputes and of the traditional business of courts as the hearing and deciding of specific controversies brought before them. In our own jurisdiction, and at least since the turn of the present century, judicial power has always included the power of judicial review, understood as the authority of courts (more specifically the Supreme Court) to assay contested legislative and executive acts in terms of their constitutionality or legality. Thus, the general proposition has been that a petitioner who assails the legal or constitutional quality of an executive or legislative act must be able to show that he has locus standi. Otherwise, the petition becomes vulnerable to prompt dismissal by the court.

There is, upon the other hand, little substantive dispute that the possession of locus standi^[1] is not, in each and every case, a rigid and absolute requirement for access to the courts. Certainly that is the case where great issues of public law are at stake, issues which cannot be approached in the same way that a court approaches a suit for the collection of a sum of money or a complaint for the recovery of possession of a particular piece of land. The broad question is when, or in what types of cases, the court should insist on a clear showing of locus standi understood as a direct and personal interest in the subject matter of the case at bar, and when the court may or should relax that apparently stringent requirement and proceed to deal with the legal or constitutional issues at stake in a particular case.

I submit, with respect, that it is not enough for the Court simply to invoke "public interest" or even "paramount considerations of national interest," and to say that the specific requirements of such public interest can only be ascertained on a "case to case" basis. For one thing, such an approach is not intellectually satisfying. For another, such an answer appears to come too close to saying that locus standi exists whenever at least a majority of the Members of this Court participating in a case feel that an appropriate case for judicial intervention has arisen.

This is not, however, to say that there is somewhere an over-arching juridical principle or theory, waiting to be discovered, that permits a ready answer to the question of when, or in what types of cases, the need to show locus standi may be relaxed in greater or lesser degree. To My knowledge, no satisfactory principle or theory has been discovered and none has been crafted, whether in our jurisdiction or in the United States.^[2] I have neither the competence nor the opportunity to try to craft such principle or formula. It might, however, be useful to attempt to

indicate the considerations of principle which, in the present case, appear to me to require an affirmative answer to the question of whether or not petitioners are properly regarded as imbued with the standing necessary to bring and maintain the present petition.

Firstly, the character of the funds or other assets involved in the case is of major importance. 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. My learned brothers Melo, Puno and Vitug, JJ. concede that taxpayers' suits have been recognized as an exception to the traditional requirement of recognized as an exception to the traditional requirement of locus standi. They insist, however, that because the funds here involved will not have been generated by the exercise of the taxing power of the Government, the present petition cannot be regarded as a taxpayer's suit and therefore, must be dismissed by the Court. It is my respectful submission that that constitutes much too narrow a conception of the taxpayer's suit and of the public policy that it embodies. It is also to overlook the fact that tax monies, strictly so called, constitute only one (1) of the major categories of funds today raised and used for public purposes. It is widely known that the principal sources of funding for government operations today include, not just taxes and customs duties, but also revenues derived from activities of the Philippine Amusement Gaming Corporation (PAGCOR), as well as the proceeds of privatization of government owned or controlled corporations and other government owned assets. 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.

A second factor of high relevance is the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government. A showing that a constitutional or legal provision is patently being disregarded by the agency or instrumentality whose act is being assailed, can scarcely be disregarded by court. The concept of locus standi -- which is part and parcel of the broader notion of ripeness of the case -- "does not operate independently and is not alone decisive. x x x [I]t is in substantial part a function of a judge's estimate of the merits of the constitutional [or legal] issue." [3] The notion of locus standi and the judge's conclusions about the merits of the case, in other words, interact with each other. Where the Court perceives a serious issue of violation of some constitutional or statutory limitation, it will be much less difficult for the Court to find locus standi in the petitioner and to confront the legal or constitutional issue. In the present case, the majority of the Court considers that a very substantial showing has been made that the Contract of Lease between the PCSO and the PGMC flies in the face of legal limitations.

A third consideration of importance in the present case is the lack of any other party with a more direct and specific interest in raising the questions here being raised. Though a public bidding was held, no losing or dissatisfied bidder has come before the Court. The Office of the Ombudsman has not, to the knowledge of the Court, raised questions about the legality or constitutionality of the Contract of Lease here involved. The National Government itself, through the Office of the Solicitor General, is defending the PCSO Contract (though it had not participated in the drafting thereof). In a situation like that here obtaining, the submission may be made that the

institution, so well known in corporation law and practice, of the corporate stockholders' derivative suit furnishes an appropriate analogy and that on the basis of such an analogy, a taxpayer's derivative suit should be recognized as available.

The wide range of impact of the Contract of Lease here assailed and of its implementation, constitutes still another consideration of significance. In the case at bar, the agreement if implemented will be practically nationwide in its scope and reach (the PCSO-PGMC Contract is limited in its application to the Island of Luzon; but if the PCSO Contracts with the other two [2] private "gaming management" corporations in respect of the Visayas and Mindanao are substantially similar to PCSO's Contract with PGMC, then the Contract before us may be said to be national indeed in its implications and consequences). Necessarily, the amounts of money expected to be raised by the proposed activities of the PCSO and PGMC will be very substantial, probably in the hundreds of millions of pesos. It is not easy to conceive of a contract with greater and more far-reaching consequences, literally speaking, for the country than the Contract of Lease here involved. Thus, the subject matter of the petition is not something that the Court may casually pass over as unimportant and as not warranting the expenditure of significant judicial resources.

In the examination of the various features of this, case, the above considerations have appeared to me to be important and as pressing for acceptance and exercise of jurisdiction on the part of this Court. It is with these considerations in mind that I vote to grant due course to the Petition and to hold that the Contract of Lease between the PCSO and PGMC in its present form and content, and given the present state of the law, is fatally defective.

[1] The requirement of locus standi forms part of the "application of ordinary law technique to the Constitution" which historically, in the United States, promoted and reinforced the "legalization" or acceptance of the power of judicial review; S. Snowiss, *Judicial Review and the Law of the Constitution*, p. 197 (1990).

[2] A stimulating effort is offered by Prof. Laurence H. Tribe, *Constitutional Choices* (1985), Chap. 8, where he examined certain trends in, and circumstances relating to, the case law of the Supreme Court of the United States which "make a satisfactory theory of standing specially elusive" (p. 100).

[3] A.M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* 169 (1962); brackets supplied.

200 6 pt 6 pt 0 3

dissenting OPINION

KAPUNAN, J.:

I regret that I am unable to join my colleagues in the majority in spite of my own personal distaste for gambling and other gaming operations. Such considerations aside, I feel there are compelling reasons why the instant petition should be dismissed. I shall forthwith state the reasons why.

Petitioners anchor their principal objections against the contract entered into between the Philippine Charity Sweepstakes Office (PCSO) and the PGMC on the ground that the contract entered into by the PCSO with the PGMC violates the PCSO Charter (R.A. No. 1169 as amended by B.P. Blg 427, specifically section 1 thereof which bars the said body from holding conducting lotteries "in collaboration, association or joint venture with any person association, company or entity."). However, a perusal of the petition reveals that the compelling reasons

behind it, while based on apparently legal questions involving the contract between the PCSO and the PGMG, are prompted by the petitioners' moral objections against the whole idea of gambling operations operated by the government through the PCSO. The whole point of the petition, in essence, is a fight between good and evil, between the morality or amorality of lottery operations conducted on a wide scale involving millions of individuals and affecting millions of lives. Their media of opposition are the above stated defects in the said contract which they assail to be fatally defective. They come to this Court, as taxpayers and civic spirited citizens, asserting a right of standing on a transcendental issue which they assert to be of paramount public interest.

Moral or legal questions aside, I believe that there are unfortunately certain standards^[1] that have to be followed in the exercise of this Court's awesome power of review before this Court could even begin to assay the validity of the contract between the PCSO and the PGMG. This, in spite of the apparent expansion of judicial power granted by Section 1 of Article VIII of the 1987 Constitution. It is fundamental that such standards be complied with before this Court could even begin to explore the substantive issues raised by any controversy brought before it, for no issue brought before this court could possibly be so fundamental and paramount as to warrant a relaxation of the requisite rules for judicial review developed by settled jurisprudence in order to avoid entangling this court in controversies which properly belong to the legislative or executive branches of our government. The potential harm to our system of government, premised on the concept of separation of powers, by the Court eager to exercise its powers and prerogatives at every turn, cannot be gainsaid. The Constitution does not mandate this Court to wield the power of judicial review with excessive vigor and alacrity in every area or at every turn, except in appropriate cases and controversies which meet established requirements for constitutional adjudication. Article VIII Sec. 1 of the Constitution notwithstanding, there are questions which I believe are still beyond the pale of judicial power. Moreover, it is my considered opinion that the instant petition does not meet the requirements set by this court for a valid exercise of judicial review.

Our Constitution expressly defines judicial power as including "the duty to settle actual cases and controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to a lack or excess of jurisdiction on the part of any branch or instrumentality of the government."^[2] This constitutional requirement for an actual case and controversy limits this Court's power of review to precisely those suits between adversary litigants with real interests at stake thus preventing it from making all sorts of hypothetical pronouncements on abstract, contingent and amorphous issues. The Court will therefore not pass upon the validity of an act of government or a statute passed by a legislative body without a requisite showing of injury.^[3] A personal stake is essential, which absence renders our pronouncements gratuitous and certainly violative of the constitutional requirement for actual cases and controversies.

The requirement for standing based on personal injury may of course be bypassed, as the petitioners in this case attempt to do, by considering the case as a "taxpayer suit" which would thereby clothe them with the personality they would lack under ordinary circumstances. However, the act assailed by the petitioners on the whole involves the generation rather than disbursement of public funds. In a line of cases starting from *Pascual v. Secretary of Public Works*^[4] "taxpayer suits" have been understood to refer only to those cases where the act or statute assailed involves the illegal or unconstitutional disbursement of public funds derived from taxation. The main premise behind the "taxpayer suit" is that the pecuniary interest of the taxpayer is involved whenever there is an illegal or wasteful use of public funds which grants them the right to question the appropriation or disbursement on the basis of their contribution to government funds.^[5] Since it has not been alleged that an illegal appropriation or disbursement of a fund derived from taxation would be made in the instant case, I fail to see how the petitioners in this case would be able to satisfy the locus standi requirement on the basis of a "taxpayer's suit". This alone should inhibit this Court from proceeding with the case at bench. The interest alleged and the potential injury asserted are far too general and hypothetical for us to rush into a judicial determination of what to me

appears to be judgment better left to executive branch of our government.

This brings me to one more important point: The idea that a norm of constitutional adjudication could be lightly brushed aside on the mere supposition that an issue before the Court is of paramount public concern does great harm to a democratic system which espouses a delicate balance between three separate but co-equal branches of government. It is equally of paramount public concern, certainly paramount to the survival of our democracy, that acts of the other branches of government are accorded due respect by this Court. Such acts, done within their sphere of competence, have been- and should always be- accorded with a presumption of regularity. When such acts are assailed as illegal or unconstitutional, the burden falls upon those who assail these acts to prove that they satisfy the essential norms of constitutional adjudication, because when we finally proceed to declare an act of the executive or legislative branch of our government unconstitutional or illegal, what we actually accomplish is the thwarting of the will of the elected representatives of the people in the executive or legislative branches government.[6] Notwithstanding Article VIII, Section 1 of the Constitution, since the exercise of the power of judicial review by this Court is inherently antidemocratic, this Court should exercise a becoming modesty in acting as a revisor of an act of the executive or legislative branch. The tendency of a frequent and easy resort to the function of judicial review, particularly in areas of economic policy has become lamentably too common as to dwarf the political capacity of the people expressed through their representatives in the policy making branches of government and to deaden their sense of moral responsibility.[7]

This court has been accused, of late, of an officious tendency to delve into areas better left to the political branches of government.[8] This tendency, if exercised by a court running riot over the other co-equal branches of government, poses a greater danger to our democratic system than the perceived danger - real or imagined - of an executive branch espousing economic or social policies of doubtful moral worth. Moreover economic policy decisions in the current milieu - including the act challenged in the instant case-involve complex factors requiring flexibility and a wide range of discretion on the part of our economic managers which this Court should respect because our power of review, under the constitution, is a power to check, not to supplant those acts or decisions of the elected representatives of the people.

Finally, the instant petition was brought to this Court on the assumption that the issue at bench raises primarily constitutional issues. As it has ultimately turned out, the core foundation of the petitioners' objections to the LOTTO operations was based on the validity of the contract between the PCSO and the PGMIC in the light of Section 1 of R.A. 1169 as amended by B.P. Blg. 427. It might have been much more appropriate for the issue to have taken its normal course in the courts below.

I vote to deny the petition.

[1] *People v. Vera*, 65 Phil. 56 (1937)

[2] JACKSON, *The Supreme Court in the American System of Government* in McKay, *An American Constitutional Law Reader* 30 (1958).

[3] *Ashwander v. Tennessee Valley Authority*, 297 US 288, at 346-348 (1936).

[4] 110 Phil. 331 (1960). See also *Lozada v. COMELEC* 120 SCRA 337 (1983); *Dumlao v. COMELEC*, 95 SCRA 392 (1980); *Maceda v. Macaraig*, 197 SCRA 771, (1991)).

[5] *Appeal of Sears, Roebuck and Co.*, 123 Ind., App.; 109 NE 2d., 620 (1952).

[6] See A. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF*

POLITICS 16-17 (1962).

[7] Id., citing J.B. Thayer, JOHN MARSHALL, 106-107 (1901).

[8] See Romulo, The Supreme Court and Economic Policy: A Plea for Judicial Abstinence 67 Phil. L.J. 348-353 (1993). See also Fernandez, Judicial Overreaching in Selected Supreme Court Decisions Affecting Economic Policy, 67 Phil. L.J. 332-347 (1993) and Castro & Pison, The Economic Policy Determining Function of the Supreme Court in Times of National Crisis, 67 Phil. L.J. 354-411 (1993).

230 6 pt 6 pt 0 3

Dissenting opinion

MELO, J.:

I submit that the petition before the Court deserves no less than outright dismissal for the reason that petitioners, as concerned citizens and as taxpayers and as members of Congress, do not possess the necessary legal standing to assail the validity of the contract of lease entered into by the Philippine Charity Sweepstakes Office and the Philippine Gaming Management Corporation relative to the establishment and operation of an "On-line Hi-Tech Lottery System" in the country.

As announced in *Lamb vs. Phipps* (22 Phil. [1912], 559), "[J]udicial power in its nature, is the power to hear and decide causes pending between parties who have the right to sue and be sued in the courts of law and equity." Necessarily, this implies that a party must show a personal stake in the outcome of the controversy or an injury to himself that can be addressed by a favorable decision so as to warrant his invocation of the court's jurisdiction and to justify the court's remedial powers in his behalf (*Warth vs. Seldin*, 422 U.S. 490; *Guzman vs. Marrero*, 180 U.S. 81; *McMicken vs. United States*, 97 U.S. 204). Here, we have yet to see any of petitioners acquiring a personal stake in the outcome of the controversy or being placed in a situation whereby injury may be sustained if the contract of lease in question is implemented. It may be that the contract has somehow evoked public interest which petitioners claim to represent. But the alleged public interest which they pretend to represent is not only broad and encompassing but also strikingly and veritably indeterminate that one cannot truly say whether a handful of the public, like herein petitioners, may lay a valid claim of representation in behalf of the millions of citizens spread all over the land who may have just as many varied reactions relative to the contract in question.

Any effort to infuse personality on petitioners by considering the present case as a "taxpayer's suit" could not cure the lack of locus standi on the part of petitioners. As understood in this jurisdiction, a "taxpayer's suit" refers to a case where the act complained of directly involves the illegal disbursement of public funds derived from taxation (*Pascual vs. Secretary of Public Works*, 110 Phil. [1960] 331; *Maceda vs. Macaraig*, 197 SCRA [1991]; *Lozada vs. COMELEC*, 120 SCRA [1983] 337; *Dumlao vs. COMELEC*, 95 SCRA [1980] 392; *Gonzales vs. Marcos*, 65 SCRA [1975] 624). It cannot be overstressed that no public fund raised by taxation is involved in this case. In fact, it is even doubtful if the rentals which the PCSO will pay to the lessor for its operation of the lottery system may be regarded as "public fund". The PCSO is not a revenue-collecting arm of the government. Income or money realized by it from its operations will not and need not be turned over to the National Treasury. Rather, this will constitute corporate funds which will remain with the corporation to finance its various activities as authorized in its charter. And if ever some semblance of "public character" may be said to attach to its earnings, it is simply because PCSO is a government-owned or controlled entity and not a purely private enterprise.

It must be conceded though that a "taxpayer's suit" had been allowed in a number of instances in this jurisdiction. For sure, after the trail was blazed by *Pascual vs. Secretary of Public Works*, supra, several more followed. It is to

be noted, however, that in those occasions where this Court allowed such a suit, the case invariably involved either the constitutionality of a statute or the legality of the disbursement of public funds through the enforcement of what was perceived to be an invalid or unconstitutional statute or legislation (Pascual, *supra*; Philippine Constitution Association, Inc. vs. Jimenez, 15 SCRA [1965] 479; Philippine Constitution Association, Inc. vs. Mathay, 18 SCRA [1966] 300; Tolentino vs. COMELEC, 41 SCRA [1971] 702; Pelaez vs. Auditor General, 15 SCRA [1965] 569; Iloilo Palay and Corn Planters Association vs. Feliciano, 13 SCRA [1965] 377).

The case before us is not a challenge to the validity of a statute or an attempt to restrain expenditure of public funds pursuant to an alleged invalid congressional enactment. What petitioners ask us to do is to nullify a simple contract of lease entered into by a government-owned corporation with a private entity. That contract, as earlier pointed out, does not involve the disbursement of public funds but of strictly corporate money. If every taxpayer, claiming to have interest in the contract, no matter how remote, could come to this Court and seek nullification of said contract, the day may come when the activities of government corporate entities will ground to a standstill on account of nuisance suits filed against them by persons whose supposed interest in the contract is as remote and as obscure as the interest of any man in the street. The dangers attendant thereto are not hard to discern and this Court must not allow them to come to pass.

One final observation must be emphasized. When the petition at bench was filed, the Court decided to hear the case on oral argument on the initial perception that a constitutional issue could be involved. However, it now appears that no question of constitutional dimension is at stake as indeed the majority barely touches on such an issue, concentrating as it does on its interpretation of the contract between the Philippine Charity Sweepstakes Office and the Philippine Gaming Management Corporation.

I, therefore, vote to dismiss the petition.

6 pt 6 pt 0 3

SEPARATE CONCURRING OPINION

PADILLA, J.:

My views against gambling are a matter of judicial record. In *Basco v. PAGCOR*, (G.R. No. 91649, 14 May 1991, 197 SCRA 52) I expressed these views in a separate opinion where I was joined by that outstanding lady jurist, Mme. Justice A. Melencio-Herrera whose incisive approach to legal problems is today missed in this Court. I reproduce here those views because they are highly persuasive to the conclusions I reach in the present controversy:

"I concur in the result of the learned decision penned by my brother Mr. Justice Paras. This means that I agree with the decision insofar as it holds that the prohibition, control, and regulation of the entire activity known as gambling properly pertain to "state policy." It is, therefore, the political departments of government, namely, the legislative and the executive that should decide on what government should do in the entire area of gambling, and assume full responsibility to the people for such policy.

The courts, as the decision states, cannot inquire into the wisdom, morality or expediency of policies adopted by the political departments of government in areas which fall within their authority, except only when such policies pose a clear and present danger to the life, liberty or property of the individual. This case does not involve such a factual situation.

However, I hasten to make of record that I do not subscribe to gambling in any form. It demeans the human personality, destroys self-confidence and eviscerates one's self-respect, which in the long run will corrode

whatever is left of the Filipino moral character. Gambling has wrecked and will continue to wreck families and homes; it is an antithesis to individual reliance and reliability as well as personal industry which are the touchstones of real economic progress and national development.

Gambling is reprehensible whether maintained by government or privatized. The revenues realized by the government out of "legalized" gambling will, in the long run, be more than offset and negated by the irreparable damage to the people's moral values.

Also, the moral standing of the government in its repeated avowals against "illegal gambling" is fatally flawed and becomes untenable when it itself engages in the very activity it seeks to eradicate.

One can go through the Court's decision today and mentally replace the activity referred to therein as gambling, which is legal only because it is authorized by law and run by the government, with the activity known as prostitution. Would prostitution be any less reprehensible were it to be authorized by law, franchised, and "regulated" by the government, in return for the substantial revenues it would yield the government to carry out its laudable projects, such as infrastructure and social amelioration? The question, I believe, answers itself. I submit that the sooner the legislative department outlaws all forms of gambling, as a fundamental state policy, and the sooner the executive implements such policy, the better it will be for the nation."

We presently have the sweepstakes lotteries; we already have the PAGCOR's gambling casinos; the Filipino people will soon, if plans do not miscarry, be initiated into an even more sophisticated and encompassing nationwide gambling network known as the "on-line hi-tech lotto system." To be sure, it is not wealth producing; it is not export oriented. It will draw from existing wealth in the hands of Filipinos and transfer it into the coffers of the PCSO and its foreign partners at a price of further debasement of the moral standards of the Filipino people, the bulk of whom are barely subsisting below the poverty line.

1. It is said that petitioners[1] have no locus standi to bring this suit even as they challenge the legality and constitutionality of a contract of lease between the PCSO, a government-owned corporation and the PGMCC, a private corporation with substantial (if not controlling) foreign composition and content. Such contract of lease contains the terms and conditions under which an "on-line hi-tech lotto system" will operate in the country.

As the ponente of the extended, unsigned en banc resolution in *Valmonte v. PCSO*, (G.R. No. 78716 and G.R. No. 79084, 22 September 1987), I would be the last to downgrade the rule, therein reiterated, that in order to maintain a suit challenging the constitutionality and/or legality of a statute, order or regulation or assailing a particular governmental action as done with grave abuse of discretion or with lack of jurisdiction, the petitioner must show that he has a clear personal or legal right that would be violated with the enforcement of the challenged statute, order or regulation or the implementation of the questioned governmental action. But, in my considered view, this rule maybe (and should be) relaxed when the issue involved or raised in the petition is of such paramount national interest and importance as to dwarf the above procedural rule into a barren technicality. As a unanimous Court en banc aptly put it in *De Guia vs. COMELEC*, G.R. No. 104712, 6 May 1992, 208 SCRA 420,

"Before addressing the crux of the controversy, the Court observes that petitioner does not allege that he is running for reelection, much less, that he is prejudiced by the election, by district, in Parañaque. As such, he does not appear to have locus standi, a standing in law, a personal or substantial interest. (*Sanidad vs. COMELEC*, G.R. No. L-44640, October 12, 1976, 73 SCRA 333; *Municipality of Malabang vs. Benito*, G.R. No. L-28113, March 28, 1969, 27 SCRA 533) He does not also allege any legal right that has been violated by respondent. If for this alone, petitioner does not appear to have any cause of action.

However, considering the importance of the issue involved, concerning as it does the political exercise of qualified voters affected by the apportionment, and petitioner alleging abuse of discretion and violation of the Constitution by respondent, We resolved to brush aside the question of procedural infirmity, even as We

perceive the petition to be one of declaratory relief. We so held similarly through Mr. Justice Edgardo L. Paras in *Osmeña vs. Commission on Elections*."

I view the present case as falling within the *De Guia* case doctrine. For, when the contract of lease in question seeks to establish and operate a nationwide gambling network with substantial if not controlling foreign participation, then the issue is of paramount national interest and importance as to justify and warrant a relaxation of the above-mentioned procedural rule on *locus standi*.

2. The charter of the PCSO - Republic Act No. 1169 as amended by BP No. 42 - insofar as relevant, reads:

"Sec. 1. The Philippine Charity Sweepstakes Office. - The Philippine Charity Sweepstakes Office, hereinafter designated the Office, shall be the principal government agency for raising and providing for funds for health programs, medical assistance and services and charities of national character, and as such shall have the general powers conferred in section thirteen of Act Numbered One Thousand Four Hundred Fifty-Nine, as amended, and shall have the authority:

‘A. To hold and conduct charity sweepstakes races, lotteries and other similar activities, in such frequency and manner, as shall be determined, and subject to such rules and regulations as shall be promulgated by the Board of Directors.

‘B. Subject to the approval of the Minister of Human Settlements, to engage in health and welfare-related investments, programs, projects and activities which may be profit-oriented, by itself or in collaboration, association or joint venture with any person, association, company or entity, whether domestic or foreign, except for the activities mentioned in the preceding paragraph (A), for the purpose of providing for permanent and continuing sources of funds for health programs, including the expansion of existing ones, medical assistance and services, and/or charitable grants: Provided, That such investments will not compete with the private sector in areas where investments are adequate as may be determined by the National Economic and Development Authority."

It is at once clear from the foregoing legal provisions that, while the PCSO charter allows the PCSO to itself engage in lotteries, it does not however permit the PCSO to undertake or engage in lotteries in "collaboration, association or joint venture" with others. The palpable reason for this prohibition is, that PCSO should not and cannot be made a vehicle for an otherwise prohibited foreign or domestic entity to engage in lotteries (gambling activities) in the Philippines.

The core question then is whether the lease contract between PCSO and PGMC is a device whereby PCSO will engage in lottery in collaboration, association or joint venture with another, i.e. PGMC. I need not go here into the details and different specific features of the contract to show that it is a joint venture between PCSO and PGMC. That has been taken care of in the opinion of Mr. Justice Davide to which I fully subscribe.

On a slightly different plane and, perhaps simplified, I consider the agreement or arrangement between the PCSO and PGMC a joint venture because each party to the contract contributes its share in the enterprise or project. PGMC contributes its facilities, equipment and know-how (expertise). PCSO contributes (aside from its charter) the market, directly or through dealers - and this to me is most important - in the totality or mass of the Filipino gambling elements who will invest in lotto tickets. PGMC will get its 4.9% of gross receipts (with assumption of certain risks in the course of lotto operations); the residue of the whole exercise will go to PCSO. To any person with a minimum of business know-how, this is a joint venture between PCSO and PGMC, plain and simple.

But assuming *ex gratia* argumenti that such arrangement between PCSO and PGMC is not a joint venture between the two of them to install and operate an "on-line hi-tech lotto system" in the country, it can hardly be denied that it is, at the very least, an association or collaboration between PCSO and PGMC. For one cannot do without the

other in the installation, operation and, most importantly, marketing of the entire enterprise or project in this country.

Indeed, the contract of lease in question is a clear violation of Republic Act No. 1169 as amended by BP No. 42 (the PCSO charter).

Having arrived at the conclusion that the contract of lease in question between the PCSO and PGMG is illegal and, therefore, invalid, I find it unnecessary to dwell on the other issues raised in the pleadings and arguments of the parties.

I, therefore, vote to give DUE COURSE to the petition and to declare the contract of lease in question between PCSO and PGMG, for the reasons aforesated, of no force and effect.

[1] KILOBAYAN, INCORPORATED, a non-stock corporation composed of civic-spirited citizens, pastors, priests, nuns and lay leaders who are committed to the cause of truth, justice and national renewal as well as members of the Board of Trustees of KILOBAYAN as taxpayers and concerned citizens and senators Freddie Webb, Wigberto Tanada and Representative Joker P. Arroyo as taxpayers, concerned citizens and legislators.

230 6 pt 6 pt 0 3

DISSENTING OPINION

PUNO, J.:

At the outset, let me state that my religious faith and family upbringing compel me to regard gambling, regardless of its garb, with hostile eyes. Such antagonism tempts me to view the case at bench as a struggle between good and evil, a fight between the forces of light against the forces of darkness. I will not, however, yield to that temptation for we are not judges of the Old Testament type who were not only arbiters of law but were also high priests of morality.

I will therefore strictly confine the peregrinations of my mind to the legal issues for resolution: (1) whether or not the petitioners have the locus standi to file the petition at bench; and (2) assuming their locus standi, whether or not the Contract of Lease between PCSO and PGMG is null and void considering: (a) section 1 of R.A. No. 1169, as amended by B.P. Blg. 42 (Charter of PCSO) which prohibits PCSO from holding and conducting lotteries "in collaboration, association or joint venture with any person, association, company or entity"; (b) Act No. 3836 which requires a congressional franchise before any person or entity can establish and operate a telecommunication system; (c) section 11, Art. XII of the Constitution, which requires that for a corporation to operate a public utility, at least 60% of its capital must be owned by Filipino citizens; and (d) R.A. No. 7042, otherwise known as the "Foreign Investments Act", which includes all forms of gambling in its "negative list."

While the legal issues abound, I deferentially submit that the threshold issue is the locus standi, or standing to sue, of petitioners. The petition describes petitioner Kilobayan, Inc., as a non-stock corporation composed of "civic spirited citizens, pastors, priests, nuns, and lay leaders who are committed to the cause of truth, justice, and national renewal." [1] Petitioners Jovito R. Salonga, Cirilo A. Rigos, Ernie Camba, Emilio C. Capulong, Jr., Jose Abcede, Christine Tan, Felipe L. Gozon, Rafael G. Fernando, Raoul V. Victorino, Jose Cunanan, and Quintin S. Doromal joined the petition in their capacity as trustees of Kilobayan, Inc., and as taxpayers and concerned citizens. [2] Petitioners Freddie Webb and Wigberto Tanada joined the petition as senators, taxpayers and concerned citizens. [3] Petitioner Joker P. Arroyo joined the petition as a member of the House of Representative,

a taxpayer and a concerned citizen.[4]

With due respect to the majority opinion, I wish to focus on the interstices of locus standi, a concept described by Prof. Paul Freund as "among the most amorphous in the entire domain of public law." The requirement of standing to sue inheres from the definition of judicial power. It is not merely a technical rule of procedure which we are at liberty to disregard. Section 1, Article VIII of the Constitution provides:

"x x x

"Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." (Underscoring supplied)

The phrase "actual controversies involving rights which are legally demandable and enforceable" has acquired a cultivated meaning given by courts. It spells out the requirements that must be satisfied before one can come to court to litigate a constitutional issue. Our distinguished colleague, Mr. Justice Isagani A. Cruz, gives a shorthand summary of these requirements when he states that no constitutional question will be heard and decided by courts unless there is a showing of the following: x x x (1) there must be an actual case or controversy; (2) the question of constitutionality must be raised by the proper party; (3) the constitutional question must be raised at the earliest possible opportunity; and (4) the decision of the constitutional question must be necessary to the determination of the case itself.[5]

The complexion of the rule on locus standi has been undergoing a change. Mr. Justice Cruz has observed the continuing relaxation of the rule on standing,[6] thus:

"x x x

"A proper party is one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of. Until and unless such actual or potential injury is established, the complainant cannot have the legal personality to raise the constitutional question.

"In *Tilesen v. Ullmann*, a physician questioned the constitutionality of a law prohibiting the use of contraceptives, upon the ground that it might prove dangerous to the life or health of some of his patients whose physical condition would not enable them to bear the rigors of childbirth. The court dismissed the challenge, holding that the patients of the physician and not the physician himself were the proper parties.

"In *Cuyegkeng v. Cruz*, the petitioner challenged in a quo warranto proceeding the title of the respondent who, he claimed, had been appointed to the board of medical examiners in violation of the provisions of the Medical Act of 1959. The Supreme Court dismissed the petition, holding that Cuyegkeng had not made a claim to the position held by Cruz and therefore could not be regarded as a proper party who had sustained an injury as a result of the questioned act.

"In *People v. Vera*, it was held that the Government of the Philippines was a proper party to challenge the constitutionality of the Probation Act because, more than any other, it was the government itself that should be concerned over the validity of its own laws.

"In *Ex Parte Levitt*, the petitioner, an American taxpayer and member of the bar, filed a motion for leave to question the qualifications of Justice Black who, he averred, had been appointed to the U.S. Supreme Court in violation of the Constitution of the United States. The Court dismissed the petition, holding that Levitt was not a proper party since he was not claiming the position held by Justice Black.

"The rule before was that an ordinary taxpayer did not have the proper party personality to question the legality

of an appropriation law since his interest in the sum appropriated was not substantial enough. Thus, in *Custodio v. Senate President*, a challenge by an ordinary taxpayer to the validity of a law granting back pay to government officials, including members of Congress, during the period corresponding to the Japanese Occupation was dismissed as having been commenced by one who was not a proper party.

"Since the first Emergency Powers Cases, however, the rule has been changed and it is now permissible for an ordinary taxpayer, or a group of taxpayers, to raise the question of the validity of an appropriation law. As the Supreme Court then put it. 'The transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure.'

"In *Tolentino v. Commission on Elections*, it was held that a senator had the proper party personality to seek the prohibition of a plebiscite for the ratification of a proposed constitutional amendment. In *PHILCONSA v. Jimenez*, an organization of taxpayers and citizens was held to be a proper party to question the constitutionality of a law providing for special retirement benefits for members of the legislature.

"In *Sanidad v. Commission on Elections*, the Supreme Court upheld the petitioners as proper parties, thus ?

'As a preliminary resolution, We rule that the petitioners in L-44640 (Pablo C. Sanidad and Pablito V. Sanidad) possess locus standi to challenge the constitutional premise of Presidential Decree Nos. 991, 1031, and 1033. It is now an ancient rule that the valid source of a statute - Presidential Decrees are of such nature - may be contested by one who will sustain a direct injury as a result of its enforcement. At the instance of taxpayers, laws providing for the disbursement of public funds may be enjoined, upon the theory that the expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds. The breadth of Presidential Decree No. 991 carries an appropriation of Five Million Pesos for the effective implementation of its purposes. Presidential Decree No. 1031 appropriates the sum of Eight Million Pesos to carry out its provisions. The interest of the aforementioned petitioners as taxpayers in the lawful expenditure of these amounts of public money sufficiently clothes them with that personality to litigate the validity of the Decrees appropriating said funds. Moreover, as regard taxpayer's suits, this Court enjoys that open discretion to entertain the same or not. For the present case, We deem it sound to exercise that discretion affirmatively so that the authority upon which the disputed Decrees are predicated may be inquired into.'

"In *Lozada v. Commission on Elections*, however, the petitioners were held without legal standing to demand the filling of vacancies in the legislature because they had only 'a generalized interest' shared with the rest of the citizenry."

Last July 30, 1993, we further relaxed the rule on standing in *Oposa, et al. v. Hon. Fulgencio S. Factoran, Jr.*,^[7] where we recognized the locus standi of minors representing themselves as well as generations unborn to protect their constitutional right to a balanced and healthful ecology.

I am perfectly at peace with the drift of our decisions liberalizing the rule on locus standi. The once stubborn disinclination to decide constitutional issues due to lack of locus standi is incompatible with the expansion of judicial power mandated in section 1 of Article VIII of the Constitution, i.e., "to determine whether or not there has been a grave abuse of discretion, amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." As we held thru the ground breaking ponencia of Mr. Justice Cruz in *Daza v. Singson*,^[8] this provision no longer precludes the Court from resolving political questions in proper cases. But even perusing this provision as a constitutional warrant for the court to enter the once forbidden political thicket, it is clear that the requirement of locus standi has not been jettisoned by the Constitution for it still commands courts in no uncertain terms to settle only "actual controversies involving rights which are legally demandable and enforceable." Stated otherwise, courts are neither free to decide all kinds of cases dumped into their laps nor are they free to open their doors to all parties or entities claiming a grievance. The rationale for this constitutional

requirement of locus standi is by no means trifle. It is intended "to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government."^[9] It thus goes to the very essence of representative democracies. As Mr. Justice Powell carefully explained in *U.S. v. Richardson*,^[10] viz:

"Relaxation of standing requirements is directly related to the expansion of judicial power. It seems to me inescapable that allowing unrestricted taxpayer or citizen standing would significantly alter the allocation of power at the national level, with a shift away from a democratic form of government. I also believe that repeated and essentially head-on confrontations between the life-tenured branch and the representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter may well erode if we do not exercise self-restraint in the utilization of our power to negative the actions of the other branches. We should be ever mindful of the contradictions that would arise if a democracy were to permit at large oversight of the elected branches of government by a nonrepresentative, and in large measure insulated, judicial branch. Moreover, the argument that the Court should allow unrestricted taxpayer or citizen standing underestimates the ability of the representative branches of the Federal Government to respond to the citizen pressure that has been responsible in large measure for the current drift toward expanded standing. Indeed, taxpayer or citizen advocacy, given its potentially broad base, is precisely the type of leverage that in a democracy ought to be employed against the branches that were intended to be responsive to public attitudes about the appropriate operation of government. 'We must as judges recall that, as Mr. Justice Holmes wisely observed, the other branches of Government are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.'

"Unrestrained standing in federal taxpayer or citizen suits would create a remarkably illogical system of judicial supervision of the coordinate branches of the Federal Government. Randolph's proposed Council of Revision, which was repeatedly rejected by the Framers, at least had the virtue of being systematic; every law passed by the legislature automatically would have been previewed by the judiciary before the law could take effect. On the other hand, since the judiciary cannot select the taxpayers or citizens who bring suit or the nature of the suits, the allowance of public actions would produce uneven and sporadic review, the quality of which would be influenced by the resources and skill of the particular plaintiff. And issues would be presented in abstract form, contrary to the Court's recognition that 'judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury.' *Sierra Club v. Morton*, 405 U.S. 727, 740-741, n.16 (1972)."

A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.

Prescinding from these premises, and with great reluctance, I am not prepared to concede the standing to sue of petitioners. On a personal level, they have not shown that elemental injury in fact which will endow them with a standing to sue. It must be stressed that petitioners are in the main, seeking the nullity not of a law but of a Contract of Lease. Not one of the petitioners is a party to the Contract of Lease executed between PCSO and PGMC. None of the petitioners participated in the bidding, and hence they are not losing bidders. They are complete strangers to the contract. They stand neither to gain nor to lose economically by its enforcement. It seems to me unusual that an unaffected third party to a contract could be allowed to question its validity. Petitioner Kilosbayan cannot justify this officious interference on the ground of its commitment to "truth, justice and national renewal." Such commitment to truth, justice and national renewal, however noble it may be, cannot give Kilosbayan a roving commission to check the validity of contracts entered into by the government and its agencies. Kilosbayan is not a private commission on audit.

Neither can I perceive how the other petitioners can be personally injured by the Contract of Lease between PCSO and PGMC even if petitioner Salonga assails as unmitigated fraud the statistical probability of winning the lotto as he compared it to the probability of being struck twice by lightning. The reason is obvious: none of the petitioners will be exposed to this alleged fraud for all of them profess to abjure playing the lotto. It is self-evident that lotto cannot physically or spiritually injure him who does not indulge in it.

Petitioners also contend they have locus standi as taxpayers. But the case at bench does not involve any expenditure of public money on the part of PCSO. In fact, paragraph 2 of the Contract of Lease provides that it is PGMC that shall build, furnish, and maintain at its own expense and risk the facilities for the On-Line Lottery System of PCSO and shall bear all maintenance and other costs. Thus, PGMC alleged it has already spent P245M in equipment and fixtures and would be investing close to P1 billion to supply adequately the technology and other requirements of PCSO.[11] If no tax money is being illegally deflected in the Contract of Lease between PCSO and PGMC, petitioners have no standing to impugn its validity as taxpayers. Our ruling in *Dumlao v. Comelec*,[12] settled this issue well enough, viz:

"However, the statutory provisions questioned in this case, namely, sec. 7, BP Blg. 51, and sections 4, 1, and 5 BP Blg. 52, do not directly involve the disbursement of public funds. While, concededly, the elections to be held involve the expenditure of public moneys, nowhere in their Petition do said petitioners allege that their tax money is 'being extracted and spent in violation of specific constitutional protections against abuses of legislative power' (*Flast v. Cohen*, 392 U.S. 83 [1960]), or that there is a misapplication of such funds by respondent COMELEC (see *Pascual vs. Secretary of Public Works*, 110 Phil. 331 [1960]), or that public money is being deflected to any improper purpose. Neither do petitioners seek to restrain respondent from wasting public funds through the enforcement of an invalid or unconstitutional law. (*Philippine Constitution Association vs. Mathay*, 18 SCRA 300 [1966]), citing *Philippine Constitution Association vs. Gimenez*, 15 SCRA 479 [1965]). Besides, the institution of a taxpayer's suit, per se, is no assurance of judicial review. As held by this Court in *Yan vs. Macapagal* (43 SCRA 677 [1972]), speaking through our present Chief Justice, this Court is vested with discretion as to whether or not a taxpayer's suit should be entertained."

Next, petitioners plead their standing as "concerned citizens." As citizens, petitioners are pleading that they be allowed to advocate the constitutional rights of other persons who are not before the court and whose protection is allegedly their concern. A citizen qua citizen suit urges a greater relaxation of the rule on locus standi. I feel no aversion to the further relaxation of the rule on standing to accommodate what in other jurisdictions is known as an assertion of *jus tertii* in constitutional litigation provided the claimant can demonstrate: (1) an injury in fact to himself, and (2) the need to prevent the erosion of a preferred constitutional right of a third person. As stressed before, the first requirement of injury in fact cannot be abandoned for it is an essential element for the exercise of judicial power. Again, as stressed by Mr. Justice Powell, viz:[13]

"The revolution in standing doctrine that has occurred, particularly in the 12 years since *Baker v. Carr*, supra, has not meant, however, that standing barriers have disappeared altogether. As the Court noted in *Sierra Club*, 'broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury.' 405 U.S., at 738 . . . Indeed, despite the diminution of standing requirements in the last decade, the Court has not broken with the traditional requirement that, in the absence of a specific statutory grant of the right of review, a plaintiff must allege some particularized injury that sets him apart from the man on the street.

I recognize that the Court's allegiance to a requirement of particularized injury has on occasion required a reading of the concept that threatens to transform it beyond recognition. E.G., *Baker v. Carr*, supra; *Flast v. Cohen*, supra. But despite such occasional digressions, the requirement remains, and I think it does so for the reasons outlined above. In recognition of those considerations, we should refuse to go the last mile towards abolition of standing requirements that is implicit in broadening the 'precarious opening' for federal taxpayers

created by *Flast*, see 392 U.S., at 116 (Mr. Justice Fortas, concurring) or in allowing a citizen qua citizen to invoke the power of the federal courts to negative unconstitutional acts of the Federal Government.

In sum, I believe we should limit the expansion of federal taxpayer and citizen standing in the absence of specific statutory authorization to an outer boundary drawn by the results in *Flast* and *Baker v. Carr*. I think we should face up to the fact that all such suits are an effort 'to employ a federal court as a forum in which to air . . . generalized grievances about the conduct of government or the allocation of power in the Federal System.' *Flast v. Cohen*, 392 U.S., at 106. The Court should explicitly reaffirm traditional prudential barriers against such public actions. My reasons for this view are rooted in respect for democratic processes and in the conviction that '[t]he powers of the federal judiciary will be adequate for the great burdens placed upon them only if they are employed prudently, with recognition of the strengths as well as the hazards that go with our kind of representative government.' *Id.*, at 131

The second requirement recognizes society's right in the protection of certain preferred rights in the Constitution even when the rightholders are not before the court. The theory is that their dilution has a substantial fall out detriment to the rights of others, hence the latter can vindicate them.

In the case at bench, it is difficult to see how petitioners can satisfy these two requirements to maintain a *jus tertii* claim. They claim violation of two constitutional provisions, to wit:

"Section 1, Article XIII. - The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

"To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments."

and

"Section 11, Article XII. - No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorizations be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizen of the Philippines."

Section 1, Article XIII of the Constitution cannot be the matrix of petitioners' *jus tertii* claim for it expresses no more than a policy direction to the legislative in the discharge of its ordained duty - to give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities and remove cultural inequities by equitably diffusing wealth and political power for the common good. Whether the act of the legislature in amending the charter of PCSO by giving it the authority to conduct lotto and whether the Contract of Lease entered into between PCSO and PGMC are incongruent to the policy direction of this constitutional provision is a highly debatable proposition and can be endlessly argued. Respondents steadfastly insist that the operation of lotto will increase the revenue base of PCSO and enable government to provide a wider range of social services to the people. They also allege that the operation of high-tech lotto will eradicate illegal jueteng. Petitioners are scandalized by this submission. They dismiss gambling as evil per se and castigate government for attempting to correct a wrong by committing another

wrong. In any event, the proper forum for this debate, however cerebrally exciting it may be, is not this court but congress. So we held in *PCSO v. Inopiquez*, to wit:[14]

"By bringing their suit in the lower court, the private respondents in G.R. No. 79084 do not question the power of PCSO to conduct the Instant Sweepstakes game. Rather, they assail the wisdom of embarking upon this project because of their fear of the 'pernicious repercussions' which may be brought about by the Instant Sweepstakes Game which they have labelled as 'the worst form of gambling' which thus 'affects the moral values' of the people.

"The Court, as held in several cases, does not pass upon questions of wisdom, justice, or expediency of legislation and executive acts. It is not the province of the courts to supervise legislation or executive orders as to keep them within the bounds of propriety, moral values and common sense. That is primarily and even exclusively a concern of the political departments of the government; otherwise, there will be a violation of the principle of separation of powers." (Underscoring supplied)

I am not also convinced that petitioners can justify their locus standi to advocate the rights of hypothetical third parties not before the court by invoking the need to keep inviolate section 11, Article XII of the Constitution which imposes a nationality requirement on operators of a public utility. For even assuming arguendo that PGMCM is a public utility, still, the records do not at the moment bear out the claim of petitioners that PGMCM is a foreign owned and controlled corporation. This factual issue remains unsettled and is still the subject of litigation by the parties in the Securities and Exchange Commission. We are not at liberty to anticipate the verdict on this contested factual issue. But over and above this consideration, I respectfully submit that this constitutional provision does not confer on third parties any right of a preferred status comparable to the Bill of Rights whose dilution will justify petitioners to vindicate them in behalf of its rightholders. The legal right of hypothetical third parties they profess to advocate is to my mind too impersonal, too unsubstantial, too indirect, too amorphous to justify their access to this Court and the further lowering of the constitutional barrier of locus standi.

Again, with regret, I do not agree that the distinguished status of some of the petitioners as lawmakers gives them the appropriate locus standi. I cannot perceive how their constitutional rights and prerogatives as legislators can be adversely affected by the contract in question. Their right to enact laws for the general conduct of our society remains unimpaired and undiminished.[15] Their status as legislators, notwithstanding, they have to demonstrate that the said contract has caused them to suffer a personal, direct, and substantial injury in fact. They cannot simply advance a generic grievance in common with the people in general.

I am not unaware of our ruling in *De Guia v. Comelec*,[16] viz:

"Before addressing the crux of the controversy, the Court observes that petitioner does not allege that he is running for reelection, much less, that he is prejudiced by the election, by district, in Paranaque. As such, he does not appear to have locus standi, a standing in law, a personal or substantial interest. (*Sanidad vs. COMELEC*, G.R. No. L-44640, October 12, 1976, 73 SCRA 333; *Municipality of Malabang vs. Benito*, G.R. No. L-28113, March 28, 1969, 27 SCRA 533). He does not also allege any legal right that has been violated by respondent. If for this alone, petitioner does not appear to have any cause of action.

However, considering the importance of the issue involved, concerning as it does the political exercise of qualified voters affected by the apportionment, and petitioner alleging abuse of discretion and violation of the Constitution by respondent, We resolved to brush aside the question of procedural infirmity, even as We perceive the petition to be one of declaratory relief. We so held similarly through Mr. Justice Edgardo L. Paras in *Osmena vs. Commission on Elections*."

It is my respectful submission, however, that we should re-examine *de Guia*. It treated the rule on locus standi as a mere procedural rule. It is not a plain procedural rule but a constitutional requirement derived from section 1,

Article VIII of the Constitution which mandates courts of justice to settle only "actual controversies involving rights which are legally demandable and enforceable." The phrase has been construed since time immemorial to mean that a party in a constitutional litigation must demonstrate a standing to sue. By downgrading the requirement on locus standi as a procedural rule which can be discarded in the name of public interest, we are in effect amending the Constitution by judicial fiat.

De Guia would also brush aside the rule on locus standi if a case raises an important issue. In this regard, I join the learned observation of Mr. Justice Feliciano: "that it is not enough for the Court simply to invoke 'public interest' or even 'paramount considerations of national interest,' and to say that the specific requirements of such public interest can only be ascertained on a 'case to case' basis. For one thing, such an approach is not intellectually satisfying. For another, such an answer appears to come too close to saying that locus standi exists whenever at least a majority of the Members of this Court participating in a case feel that an appropriate case for judicial intervention has arisen."

I also submit that de Guia failed to perceive that the rule on locus standi has little to do with the issue posed in a case, however, important it may be. As well pointed out in *Flast v. Cohen*:^[17]

"The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *Baker v. Carr*, 369 U.S. 186, 204 (1962). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable. Thus, a party may have standing in a particular case, but the federal court may nevertheless decline to pass on the merits of the case because, for example, it presents a political question. A proper party is demanded so that federal courts will not be asked to decide 'ill-defined controversies over constitutional issues,' *United Public Workers v. Mitchell*, 330 U.S. 75, 90 (1947), or a case which is of 'a hypothetical or abstract character,' *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 240 (1937)."

It is plain to see that in de Guia, the court took an unorthodox posture, to say the least. It held there was no proper party before it, and yet it resolved the issues posed by the petition. As there was no proper party before the court, its decision is vulnerable to be criticized as an advisory opinion.

With due respect, the majority decision appears to have set a dangerous precedent by unduly trivializing the rule on locus standi. By its decision, the majority has entertained a public action to annul a private contract. In so doing, the majority may have given sixty (60) million Filipinos the standing to assail contracts of government and its agencies. This is an invitation for chaos to visit our law on contract, and certainly will not sit well with prospective foreign investors. Indeed, it is difficult to tread the path of the majority on this significant issue. The majority granted locus standi to petitioners because of lack of any other party with more direct and specific interest. But one has standing because he has standing on his own and standing cannot be acquired because others with standing have refused to come to court. The thesis is also floated that petitioners have standing as they can be considered taxpayers with right to file derivative suit like a stockholder's derivative suit in private corporations. The fact, however, is that PCSO is not a private but a quasi-public corporation. Our law on private corporation categorically sanctions stockholder's derivative suit. In contrast, our law on public corporation does not recognize this so-called taxpayer's derivative suit. Hence, the idea of a taxpayer's derivative suit, while alluring, has no legal warrant.

Our brethren in the majority have also taken the unprecedented step of striking down a contract at the

importunings of strangers thereto, but without justifying the interposition of judicial power on any felt need to prevent violation of an important constitutional provision. The contract in question was voided on the sole ground that it violated an ordinary statute, section 1 of R.A. 1169, as amended by B.P. Blg. 42. If there is no provision of the Constitution that is involved in the case at bench, it boggles the mind how the majority can invoke considerations of national interest to justify its abandonment of the rule on locus standi. The volume of noise created by the case cannot magically convert it to a case of paramount national importance. By its ruling, the majority has pushed the Court in uncharted water bereft of any compass, and it may have foisted the false hope that it is the repository of all remedies.

If I pay an unwavering reverence to the rule of locus standi, it is because I consider it as a touchstone in maintaining the proper balance of power among the three branches of our government. The survival of our democracy rests in a large measure on our ability to maintain this delicate equipoise of powers. For this reason, I look at judicial review from a distinct prism. I see it both as a power and a duty. It is a power because it enables the judiciary to check excesses of the Executive and the Legislative. But, it is also a duty because its requirement of locus standi, among others, keeps the judiciary from overreaching the powers of the other branches of government. By balancing this duality, we are able to breathe life to the principle of separation of powers and prevent tyranny. To be sure, it is our eternal concern to prevent tyranny but that includes tyranny by ourselves. The Constitution did not install a government by the judiciary, nay, not a government by the unelected. In offering this submission, I reject the subliminal fear that an unyielding insistence on the rule on locus standi will weaken the judiciary vis-a-vis the other branches of government. The hindsight of history ought to tell us that it is not power per se that strengthens. Power unused is preferable than power misused. We contribute to constitutionalism both by the use of our power to decide and its non use. As well said, the cases we decide are as significant as the cases we do not decide. Real power belongs to him who has power over power.

IN VIEW WHEREOF, and strictly on the ground of lack of locus standi on the part of petitioners, I vote to DENY the petition.

[1] Petition, pp. 5-6.

[2] Ibid, p. 6.

[3] Ibid, p. 7.

[4] Ibid.

[5] Philippine Political Law, 1989 ed., p. 18 citing *Dumlao v. COMELEC*, 95 SCRA 392.

[6] Ibid., citations omitted.

[7] G.R. No. 101083.

[8] G.R. No. 86344, 180 SCRA 496 [1989].

[9] Dorsen, Bender, Neuborne, *Political and Civil Rights in the United States*, Vol. I, 4th ed., p. 1200.

[10] 418 U.S. 166, 194 S. Ct. 2940, 41 L. Ed. 2d 678 [1974].

[11] *Manila Bulletin*, April 21, 1994, pp. 1 and 8.

[12] 95 SCRA 392, 403.

[13] US v. Richardson, op. cit.

[14] G.R. No. 79084, September 22, 1987.

[15] Compare Coleman v. Miller, 307 US 433 [1939]; Mitchell v. Laird, 488 F2d 611 CD.C. Cir. 1973); Kennedy v. Sampson, 511 F2d 430 CD.C. Cir. 1974).

[16] G.R. No. 104712, May 6, 1992, 208 SCRA 420.

[17] 392 U.S. 83, 88 S. Ct. 1942, 20 L ed. 2d. 947 [1968].

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SEPARATE OPINION

VITUG, J.:

Judicial power encompasses both an authority and duty to resolve "actual controversies involving rights which are legally demandable and enforceable" (Article VIII, Section 1, 1987 Constitution). As early as the case of *Lamb vs. Phipps*,^[1] this Court ruled: "Judicial power, in its nature, is the power to hear and decide causes pending between parties who have the right to sue in the courts of law and equity."^[2] An essential part of, and corollary to, this principle is the locus standi of a party litigant, referring to one who is directly affected by, and whose interest is immediate and substantial in, the controversy. The rule requires that a party must show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision so as to warrant his invocation of the court's jurisdiction and to justify the exercise of the court's remedial powers in his behalf.^[3] If it were otherwise, the exercise of that power can easily become too unwieldy by its sheer magnitude and scope to a point that may, in no small degree, adversely affect its intended essentiality, stability and consequentiality.

Locus standi, nevertheless, admits of the so-called "taxpayer's suit." Taxpayer's suits are actions or proceedings initiated by one or more taxpayers in their own behalf or, conjunctively, in representation of others similarly situated for the purpose of declaring illegal or unauthorized certain acts of public officials which are claimed to be injurious to their common interests as such taxpayers (Cf. 71 Am Jur 2d., 179-180). The principle is predicated upon the theory that taxpayers are, in equity, the cestui que trust of tax funds, and any illegal diminution thereof by public officials constitutes a breach of trust even as it may result in an increased burden on taxpayers (*Haddock vs. Board of Public Education*, 86 A[2d] 157; *Henderson vs. McCormick*, 17 ALR [2d] 470).

Justice Brandeis of the United States Supreme Court, in his concurring opinion in *Ashwander vs. Tennessee Valley Authority* (297 U.S. 288), said:

"x x x. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. *Tyler v. The Judges*, 179 U.S. 405; *Hendrick v. Maryland*, 234 U.S. 610, 621. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. *Columbus & Greenville Ry. v. Miller*, 283 U.S. 96, 99--100. In *Fairchild v. Hughes*, 258 U.S. 126; the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In *Massachusetts v. Mellon*, 262 U.S. 447, the challenge of the federal Maternity Act was not entertained although made by the Commonwealth on behalf of all its citizens."

Justice Brandeis' view, shared by Justice Frankfurter in *Joint Anti-Fascist Refugee Commission vs. McGrath* (351 U.S. 123), was adopted by the U.S. Supreme Court in *Flast vs. Cohen* (392 U.S. 83) which held that it is only when a litigant is able to show such a personal stake in the controversy as to assure a concrete adverseness in the issues submitted that legal standing can attach.

A "taxpayer's suit," enough to confer locus standi to a party, we have held before, is understood to be a case where the act complained of directly involves the illegal disbursement of public funds derived from taxation.[4] It is not enough that the dispute concerns public funds. A contrary rule could easily lead to a limitless application of the term "taxpayer's suit," already by itself a broad concept, since a questioned act of government would almost so invariably entail, as a practical matter, a financial burden of some kind.

To be sure, serious doubts have even been raised on the propriety and feasibility of unqualifiedly recognizing the "taxpayer's suit" as an exception from the standard rule of requiring a party who invokes the exercise of judicial power to have a real and personal interest or a direct injury in the outcome of a controversy. This Court has heretofore spoken on the matter, at times even venturing beyond the usual understanding of its applicability in the name of national or public interest. It is remarkable, nevertheless, that the accepted connotation of locus standi has still managed to be the rule, sanctioning, by way of exception, the so-called "taxpayer's suit" which courts accept on valid and compelling reasons.

A provision which has been introduced by the 1987 Constitution is a definition, for the first time in our fundamental law, of the term "judicial power," as such authority and duty of courts of justice "to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of any branch or instrumentality of the Government" (Article VIII, Section 1, Constitution). I take it that the provision has not been intended to unduly mutate, let alone to disregard, the long established rules on locus standi. Neither has it been meant, I most respectfully submit, to do away with the principle of separation of powers and its essential incidents such as by, in effect, conferring omnipotence on, or allowing an intrusion by, the courts in respect to purely political decisions, the exercise of which is explicitly vested elsewhere, and subordinate, to that of their own, the will of either the Legislative Department or the Executive Department -- both co--equal, independent and coordinate branches, along with the Judiciary, in our system of government. Again, if it were otherwise, there indeed would be truth to the charge, in the words of some constitutionalists, that "judicial tyranny" has been institutionalized by the 1987 Constitution, an apprehension which should, I submit, rather be held far from truth and reality.

In sum, while any act of government, be it executive in nature or legislative in character, may be struck down and declared a nullity either because it contravenes an express provision of the Constitution or because it is perceived and found to be attended by or the result of grave abuse of discretion, amounting to lack or excess of jurisdiction, that issue, however, must first be raised in a proper judicial controversy. The Court's authority to look into and grant relief in such cases would necessitate locus standi on the part of party litigants. This requirement, in my considered view, is not merely procedural or technical but goes into the essence of jurisdiction and the competence of courts to take cognizance of justiciable disputes.

In *Bugnay Construction and Development Corporation vs. Laron*,[5] this Court ruled:

"x x x. Considering the importance to the public of a suit assailing the constitutionality of a tax law, and in keeping with the Court's duty, specially explicated in the 1987 Constitution, to determine whether or not the other branches of the Government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the Supreme Court may brush aside technicalities of procedure and take cognizance of the suit. (Citing *Kapatiran vs. Tan*, G.R. No. 81311, June 30, 1988.)

"However, for the above rule to apply, it is exigent that the taxpayer-plaintiff sufficiently show that he would be benefited or injured by the judgment or entitled to the avails of the suit as a real party in interest. (Citing *Estate of George Litton vs. Mendoza*, G.R. No. 49120, June 30 1988.) Before he can invoke the power of judicial review, he must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation (citing 11 Am. Jur. 761; *Dumlao, et al. vs. Commission on Elections*, 95 SCRA 392) and that he will sustain a direct injury as a result of the enforcement of the questioned statute or contract. (Citing *Sanidad, et al. vs. Commission on Elections, et al.*, 73 SCRA 333.) It is not sufficient that he has merely a general interest common to all members of the public. (Citing *Ex Parte Levitt*, 302 U.S. 633, cited in 15 SCRA 497, Annotation.)

As so well pointed out by Mr. Justice Camilo D. Quiason during the Court's deliberations, "due respect and proper regard for the rule on locus standi would preclude the rendition of advisory opinions and other forms of pronouncement on abstract issues, avoid an undue interference on matters which are not justiciable in nature and spare the Court from getting itself involved in political imbroglio."

The words of Senate President Edgardo J. Angara, carry wisdom; we quote:

"The powers of the political branches of our government over economic policies is rather clear: the Congress is to set in broad but definite strokes the legal framework and structures for economic development, while the Executive provides the implementing details for realizing the economic ends identified by Congress and executes the same.

"x x x x x x x x.

"If each economic decision made by the political branches of government, particularly by the executive, are fully open to re-examination by the judicial branch, then very little, if any, reliance can be placed by private economic actors on those decisions. Investors would always have to factor in possible costs arising from judicially-determined changes affecting their immediate business, notwithstanding assurances by executive authorities.

"Judicial decisions are, in addition, inflexible and can never substitute for sound decision-making at the level of those who are assigned to execute the laws of the land. Since judicial power cannot be exercised unless an actual controversy is brought before the courts for resolution, decisions cannot be properly modified unless another appropriate controversy arises." (Sen. Edgardo J. Angara, 'The Supreme Court in Economic Policy Making,' Policy Review - A Quarterly Journal of Policy Studies, Vol. 1, No. 1, January-March 1994, published by the Senate Policy Studies Group, pp. 2-3.)

A further set-back in entertaining the petition is that it unfortunately likewise strikes at factual issues. The allegations to the effect that irregularities have been committed in the processing and evaluation of the bids to favor respondent PGMG; that the Malacañang Special Review Committee did not verify warranties embodied in the contract; that the operation of telecommunication facilities is indispensable in the operation of the lottery system; the involvement of multi-national corporations in the operation of the on-line "hi-tech" lottery system, and the like, require the submission of evidence. This Court is not a trier of facts, and it cannot, at this time, resolve the above issues. Just recently, the Court has noted petitioners' manifestation of its petition with the Securities and Exchange Commission "for the nullification of the General Information Sheets of PGMG" in respect particularly to the nationality holdings in the corporation. The doctrine of primary jurisdiction would not justify a disregard of the jurisdiction of, nor would it permit us to now preempt, said Commission on the matter.

Petitioners strongly assert, in an attempt to get the Court's concurrence in accepting the petition, that since lottery is a game of chance, the "lotto" system would itself be a "crime against morals" defined by Articles 195-199[6] of the Revised Penal Code. Being immoral and a criminal offense under the Revised Penal Code, petitioners

contend, any special law authorizing gambling must, by all canons of statutory constructions, be interpreted strictly against the grantee. Citing previous decisions of this Court, they maintain that lottery is gambling, pure and simple,[7] and that this Court has consistently condemned the immorality and illegality of gambling to be a "national offense and not a minor transgression;[8] "that it is a social scourge which must be stamped out;"[9] and, that it is pernicious to the body politic and detrimental to the nation and its citizens.[10]

I most certainly will not renounce this Court's above concerns. Nevertheless, the Court must recognize the limitations of its own authority. Courts neither legislate nor ignore legal mandates. Republic Act No. 1169, as amended, explicitly gives public respondent PCSO the authority and power "to hold and conduct sweepstakes races, lotteries, and other similar activities." In addition, it is authorized:

"c. To undertake any other activity that will enhance its funds generation, operations and funds management capabilities, subject to the same limitations provided for in the preceding paragraph.

"It shall have a Board of Directors, hereinafter designated the Board, composed of five members who shall be appointed, and whose compensation and term of office shall be fixed, by the President.

"x x x x x x x x.

"Section 9. Powers and functions of the Board of Directors. - The Board of Directors of the Office shall have the following powers and functions.

"(a) To adopt or amend such rules and regulations to implement the provisions of this Act.

"x x x x x x x x.

"(d) To promulgate rules and regulations for the operation of the Office and to do such act or acts as may be necessary for the attainment of its purposes and objectives." (Underscoring supplied).

In *People vs. Dionisio*,^[11] cited by the petitioners themselves, we remarked: "What evils should be corrected as pernicious to the body politic, and how correction should be done, is a matter primarily addressed to the discretion of the legislative department, not of the courts x x x." In *Valmonte vs. PCSO*,^[12] we also said:

"The Court, as held in several cases, does not pass upon questions of wisdom, justice or expediency of legislation and executive acts. It is not the province of the courts to supervise legislation or executive orders as to keep them within the bounds of propriety, moral values and common sense. That is primarily and even exclusively a concern of the political departments of the government; otherwise, there will be a violation of the principle of separation of powers."

The constraints on judicial power are clear. I feel, the Court must thus beg off, albeit not without reluctance, from giving due course to the instant petition.

Accordingly, I vote for the dismissal of the petition.

[1] 22 Phil. 456, 559.

[2] See also *Lopez vs. Roxas*, 17 SCRA 761.

[3] *Warth vs. Seldin*, 422 U.S. 490, 498-499, 45 L.Ed. 2d 343, 95 S. Ct. 2197 (1975); *Guzman vs. Marrero*, 100 U.S. 81, 45 L.Ed. 436, 21 S.Ct. 293 (1901); *McMicken vs. United States*, 97 U.S. 204, 24 L.Ed. 947 (1978); *Silver Star Citizens' Committee vs. Orlando Fla.* 194 So. 2d 681 (1967); *In Re Kenison's Guardianship*, 72 S.D. 180, 31 N.W. 2d 326 (1948).

[4] See *Pascual v. Secretary of Public Works*, 110 Phil. 331; *Maceda v. Macaraig*, 197 SCRA 771; *Loads v. COMELEC*, 120 SCRA 337; *Dumlao vs. COMELEC*, 95 SCRA 392; *Gonzales v. Marcos*, 65 SCRA 624.

[5] 176 SCRA 240, 251.

[6] The provisions of Arts. 195-199 of the Revised Penal Code (Forms of Gambling and Betting), Republic Act No. 3063 (Horse Racing Bookies), Presidential Decree No. 483 (Penalizing Betting, Game-fixing or Pointshaving and Machinations in Sports Contests); No. 449, as amended (Cockfighting Law of 1974); No. 510 (Slot Machines) in relation to Opinion Nos. 33 and 97 of the Ministry of Justice; No. 1306 (Jai-Alai Bookies) have been repealed by Presidential Decree No. 1602, otherwise known as the New Gambling Law (Prescribing Stiffer Penalties on Illegal Gambling). Subsequently, Letter of Instruction No. 816 was issued which excluded certain prohibited games under Presidential Decree No. 1602.

[7] *U.S. v. Filart*, 30 Phil. 80, 83 /1915/; *U.S. v. Baguio*, 39 Phil. 962, 966.

[8] *Ly Hong v. Republic*, 109 Phil. 635.

[9] *People v. De Gorostiza, et al.*, 77 Phil. 88.

[10] *People v. Dionisio*, 22 SCRA 129.

[11] 22 SCRA 1299, 1302.

[12] G.R. No. 78716 and G.R. No. 79084, En Banc Resolution, 22 September 1987.

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