

**AQUILINO Q. PIMENTEL JR., PETITIONER, VS. HON. ALEXANDER AGUIRRE IN HIS CAPACITY AS EXECUTIVE SECRETARY, HON. EMILIA BONCODIN IN HER CAPACITY AS SECRETARY OF THE DEPARTMENT OF B...**

*G.R. No. 132988. July 19, 2000*

Ponente: PANGANIBAN, J.

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**PANGANIBAN, J.:**

The Constitution vests the President with the power of supervision, not control, over local government units (LGUs). Such power enables him to see to it that LGUs and their officials execute their tasks in accordance with law. While he may issue advisories and seek their cooperation in solving economic difficulties, he cannot prevent them from performing their tasks and using available resources to achieve their goals. He may not withhold or alter any authority or power given them by the law. Thus, the withholding of a portion of internal revenue allotments legally due them cannot be directed by administrative fiat.

**The Case**

Before us is an original Petition for Certiorari and Prohibition seeking (1) to annul Section 1 of Administrative Order (AO) No. 372, insofar as it requires local government units to reduce their expenditures by 25 percent of their authorized regular appropriations for non-personal services; and (2) to enjoin respondents from implementing Section 4 of the Order, which withholds a portion of their internal revenue allotments.

On November 17, 1998, Roberto Pagdanganan, through Counsel Alberto C. Agra, filed a Motion for Intervention/Motion to Admit Petition for Intervention,[1] attaching thereto his Petition in Intervention[2] joining petitioner in the reliefs sought. At the time, intervenor was the provincial governor of Bulacan, national president of the League of Provinces of the Philippines and chairman of the League of Leagues of Local Governments. In a Resolution dated December 15, 1998, the Court noted said Motion and Petition.

**The Facts and the Arguments**

On December 27, 1997, the President of the Philippines issued AO 372. Its full text, with emphasis on the assailed provisions, is as follows:

"ADMINISTRATIVE ORDER NO. 372

ADOPTION OF ECONOMY MEASURES  
IN GOVERNMENT FOR FY 1998

WHEREAS, the current economic difficulties brought about by the peso depreciation requires continued prudence in government fiscal management to maintain economic stability and sustain the country's growth momentum;

WHEREAS, it is imperative that all government agencies adopt cash management measures to match expenditures with available resources;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct:

SECTION 1. All government departments and agencies, including state universities and colleges, government-owned and controlled corporations and local governments units will identify and implement measures in FY 1998 that will reduce total expenditures for the year by at least 25% of authorized regular appropriations for non-personal services items, along the following suggested areas:

1. Continued implementation of the streamlining policy on organization and staffing by deferring action on the following:

- a. Operationalization of new agencies;
- b. Expansion of organizational units and/or creation of positions;
- c. Filling of positions; and
- d. Hiring of additional/new consultants, contractual and casual personnel, regardless of funding source.

2. Suspension of the following activities:

- Implementation of new capital/infrastructure projects, except those which have already been contracted out;
- Acquisition of new equipment and motor vehicles;
- All foreign travels of government personnel, except those associated with scholarships and trainings funded by grants;
- Attendance in conferences abroad where the cost is charged to the government except those clearly essential to Philippine commitments in the international field as may be determined by the Cabinet;
- Conduct of trainings/workshops/seminars, except those conducted by government training institutions and agencies in the performance of their regular functions and those that are funded by grants;
- Conduct of cultural and social celebrations and sports activities, except those associated with the Philippine Centennial celebration and those involving regular competitions/events;
- Grant of honoraria, except in cases where it constitutes the only source of compensation from government received by the person concerned;
- Publications, media advertisements and related items, except those required by law or those already being undertaken on a regular basis;
- Grant of new/additional benefits to employees, except those expressly and specifically authorized by law; and
- Donations, contributions, grants and gifts, except those given by institutions to victims of calamities.

3. Suspension of all tax expenditure subsidies to all GOCCs and LGUs

4. Reduction in the volume of consumption of fuel, water, office supplies, electricity and other utilities

5. Deferment of projects that are encountering significant implementation problems

6. Suspension of all realignment of funds and the use of savings and reserves

SECTION 2. Agencies are given the flexibility to identify the specific sources of cost-savings, provided the 25% minimum savings under Section 1 is complied with.

SECTION 3. A report on the estimated savings generated from these measures shall be submitted to the Office of

the President, through the Department of Budget and Management, on a quarterly basis using the attached format.

SECTION 4. Pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation, the amount equivalent to 10% of the internal revenue allotment to local government units shall be withheld.

SECTION 5. The Development Budget Coordination Committee shall conduct a monthly review of the fiscal position of the National Government and if necessary, shall recommend to the President the imposition of additional reserves or the lifting of previously imposed reserves.

SECTION 6. This Administrative Order shall take effect January 1, 1998 and shall remain valid for the entire year unless otherwise lifted.

DONE in the City of Manila, this 27[th] day of December, in the year of our Lord, nineteen hundred and ninety-seven."

Subsequently, on December 10, 1998, President Joseph E. Estrada issued AO 43, amending Section 4 of AO 372, by reducing to five percent (5%) the amount of internal revenue allotment (IRA) to be withheld from the LGUs.

Petitioner contends that the President, in issuing AO 372, was in effect exercising the power of control over LGUs. The Constitution vests in the President, however, only the power of general supervision over LGUs, consistent with the principle of local autonomy. Petitioner further argues that the directive to withhold ten percent (10%) of their IRA is in contravention of Section 286 of the Local Government Code and of Section 6, Article X of the Constitution, providing for the automatic release to each of these units its share in the national internal revenue.

The solicitor general, on behalf of the respondents, claims on the other hand that AO 372 was issued to alleviate the "economic difficulties brought about by the peso devaluation" and constituted merely an exercise of the President's power of supervision over LGUs. It allegedly does not violate local fiscal autonomy, because it merely directs local governments to identify measures that will reduce their total expenditures for non-personal services by at least 25 percent. Likewise, the withholding of 10 percent of the LGUs' IRA does not violate the statutory prohibition on the imposition of any lien or holdback on their revenue shares, because such withholding is "temporary in nature pending the assessment and evaluation by the Development Coordination Committee of the emerging fiscal situation."

#### The Issues

The Petition[3] submits the following issues for the Court's resolution:

"A. Whether or not the president committed grave abuse of discretion [in] ordering all LGUS to adopt a 25% cost reduction program in violation of the LGU[']S fiscal autonomy

"B. Whether or not the president committed grave abuse of discretion in ordering the withholding of 10% of the LGU[']S IRA"

In sum, the main issue is whether (a) Section 1 of AO 372, insofar as it "directs" LGUs to reduce their expenditures by 25 percent; and (b) Section 4 of the same issuance, which withholds 10 percent of their internal revenue allotments, are valid exercises of the President's power of general supervision over local governments.

Additionally, the Court deliberated on the question whether petitioner had the locus standi to bring this suit, despite respondents' failure to raise the issue.[4] However, the intervention of Roberto Pagdanganan has rendered academic any further discussion on this matter.

## The Court's Ruling

The Petition is partly meritorious.

Main Issue:

Validity of AO 372

Insofar as LGUs Are Concerned

Before resolving the main issue, we deem it important and appropriate to define certain crucial concepts: (1) the scope of the President's power of general supervision over local governments and (2) the extent of the local governments' autonomy.

### Scope of President's Power of Supervision Over LGUs

Section 4 of Article X of the Constitution confines the President's power over local governments to one of general supervision. It reads as follows:

"Sec. 4. The President of the Philippines shall exercise general supervision over local governments. x x x"

This provision has been interpreted to exclude the power of control. In *Mondano v. Silvosa*,<sup>[5]</sup> the Court contrasted the President's power of supervision over local government officials with that of his power of control over executive officials of the national government. It was emphasized that the two terms -- supervision and control -- differed in meaning and extent. The Court distinguished them as follows:

"x x x In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter."<sup>[6]</sup>

In *Taule v. Santos*,<sup>[7]</sup> we further stated that the Chief Executive wielded no more authority than that of checking whether local governments or their officials were performing their duties as provided by the fundamental law and by statutes. He cannot interfere with local governments, so long as they act within the scope of their authority. "Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body,"<sup>[8]</sup> we said.

In a more recent case, *Drilon v. Lim*,<sup>[9]</sup> the difference between control and supervision was further delineated. Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.

Under our present system of government, executive power is vested in the President.<sup>[10]</sup> The members of the Cabinet and other executive officials are merely alter egos. As such, they are subject to the power of control of the President, at whose will and behest they can be removed from office; or their actions and decisions changed, suspended or reversed.<sup>[11]</sup> In contrast, the heads of political subdivisions are elected by the people. Their sovereign powers emanate from the electorate, to whom they are directly accountable. By constitutional fiat, they

are subject to the President's supervision only, not control, so long as their acts are exercised within the sphere of their legitimate powers. By the same token, the President may not withhold or alter any authority or power given them by the Constitution and the law.

#### Extent of Local Autonomy

Hand in hand with the constitutional restraint on the President's power over local governments is the state policy of ensuring local autonomy.[12]

In *Ganzon v. Court of Appeals*,[13] we said that local autonomy signified "a more responsive and accountable local government structure instituted through a system of decentralization." The grant of autonomy is intended to "break up the monopoly of the national government over the affairs of local governments, x x x not x x x to end the relation of partnership and interdependence between the central administration and local government units x x x." Paradoxically, local governments are still subject to regulation, however limited, for the purpose of enhancing self-government.[14]

Decentralization simply means the devolution of national administration, not power, to local governments. Local officials remain accountable to the central government as the law may provide.[15] The difference between decentralization of administration and that of power was explained in detail in *Limbona v. Mangelin*[16] as follows:

"Now, autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments 'more responsive and accountable,'[17] and 'ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress.'[18] At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. The President exercises 'general supervision'[19] over them, but only to 'ensure that local affairs are administered according to law.'[20] He has no control over their acts in the sense that he can substitute their judgments with his own.[21]

Decentralization of power, on the other hand, involves an abdication of political power in the favor of local government units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to 'self-immolation,' since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency." [22]

Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress. As we stated in *Magtajas v. Pryce Properties Corp., Inc.*, municipal governments are still agents of the national government.[23]

#### The Nature of AO 372

Consistent with the foregoing jurisprudential precepts, let us now look into the nature of AO 372. As its preambular clauses declare, the Order was a "cash management measure" adopted by the government "to match expenditures with available resources," which were presumably depleted at the time due to "economic difficulties

brought about by the peso depreciation." Because of a looming financial crisis, the President deemed it necessary to "direct all government agencies, state universities and colleges, government-owned and controlled corporations as well as local governments to reduce their total expenditures by at least 25 percent along suggested areas mentioned in AO 372.

Under existing law, local government units, in addition to having administrative autonomy in the exercise of their functions, enjoy fiscal autonomy as well. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not. Hence, the necessity of a balancing of viewpoints and the harmonization of proposals from both local and national officials,[24] who in any case are partners in the attainment of national goals.

Local fiscal autonomy does not however rule out any manner of national government intervention by way of supervision, in order to ensure that local programs, fiscal and otherwise, are consistent with national goals. Significantly, the President, by constitutional fiat, is the head of the economic and planning agency of the government,[25] primarily responsible for formulating and implementing continuing, coordinated and integrated social and economic policies, plans and programs[26] for the entire country. However, under the Constitution, the formulation and the implementation of such policies and programs are subject to "consultations with the appropriate public agencies, various private sectors, and local government units." The President cannot do so unilaterally.

Consequently, the Local Government Code provides:[27]

"x x x [I]n the event the national government incurs an unmanaged public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of [the] Secretary of Finance, Secretary of the Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the liga, to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year x x x."

There are therefore several requisites before the President may interfere in local fiscal matters: (1) an unmanaged public sector deficit of the national government; (2) consultations with the presiding officers of the Senate and the House of Representatives and the presidents of the various local leagues; and (3) the corresponding recommendation of the secretaries of the Department of Finance, Interior and Local Government, and Budget and Management. Furthermore, any adjustment in the allotment shall in no case be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current one.

Petitioner points out that respondents failed to comply with these requisites before the issuance and the implementation of AO 372. At the very least, they did not even try to show that the national government was suffering from an unmanageable public sector deficit. Neither did they claim having conducted consultations with the different leagues of local governments. Without these requisites, the President has no authority to adjust, much less to reduce, unilaterally the LGU's internal revenue allotment.

The solicitor general insists, however, that AO 372 is merely directory and has been issued by the President consistent with his power of supervision over local governments. It is intended only to advise all government agencies and instrumentalities to undertake cost-reduction measures that will help maintain economic stability in

the country, which is facing economic difficulties. Besides, it does not contain any sanction in case of noncompliance. Being merely an advisory, therefore, Section 1 of AO 372 is well within the powers of the President. Since it is not a mandatory imposition, the directive cannot be characterized as an exercise of the power of control.

While the wordings of Section 1 of AO 372 have a rather commanding tone, and while we agree with petitioner that the requirements of Section 284 of the Local Government Code have not been satisfied, we are prepared to accept the solicitor general's assurance that the directive to "identify and implement measures x x x that will reduce total expenditures x x x by at least 25% of authorized regular appropriation" is merely advisory in character, and does not constitute a mandatory or binding order that interferes with local autonomy. The language used, while authoritative, does not amount to a command that emanates from a boss to a subaltern.

Rather, the provision is merely an advisory to prevail upon local executives to recognize the need for fiscal restraint in a period of economic difficulty. Indeed, all concerned would do well to heed the President's call to unity, solidarity and teamwork to help alleviate the crisis. It is understood, however, that no legal sanction may be imposed upon LGUs and their officials who do not follow such advice. It is in this light that we sustain the solicitor general's contention in regard to Section 1.

#### Withholding a Part of LGUs' IRA

Section 4 of AO 372 cannot, however, be upheld. A basic feature of local fiscal autonomy is the automatic release of the shares of LGUs in the national internal revenue. This is mandated by no less than the Constitution.[28] The Local Government Code[29] specifies further that the release shall be made directly to the LGU concerned within five (5) days after every quarter of the year and "shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose." [30] As a rule, the term "shall" is a word of command that must be given a compulsory meaning.[31] The provision is, therefore, imperative.

Section 4 of AO 372, however, orders the withholding, effective January 1, 1998, of 10 percent of the LGUs' IRA "pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation" in the country. Such withholding clearly contravenes the Constitution and the law. Although temporary, it is equivalent to a holdback, which means "something held back or withheld, often temporarily." [32] Hence, the "temporary" nature of the retention by the national government does not matter. Any retention is prohibited.

In sum, while Section 1 of AO 372 may be upheld as an advisory effected in times of national crisis, Section 4 thereof has no color of validity at all. The latter provision effectively encroaches on the fiscal autonomy of local governments. Concededly, the President was well-intentioned in issuing his Order to withhold the LGUs' IRA, but the rule of law requires that even the best intentions must be carried out within the parameters of the Constitution and the law. Verily, laudable purposes must be carried out by legal methods.

#### Refutation of Justice Kapunan's Dissent

Mr. Justice Santiago M. Kapunan dissents from our Decision on the grounds that, allegedly, (1) the Petition is premature; (2) AO 372 falls within the powers of the President as chief fiscal officer; and (3) the withholding of the LGUs' IRA is implied in the President's authority to adjust it in case of an unmanageable public sector deficit.

First, on prematurity. According to the Dissent, when "the conduct has not yet occurred and the challenged construction has not yet been adopted by the agency charged with administering the administrative order, the determination of the scope and constitutionality of the executive action in advance of its immediate adverse effect involves too remote and abstract an inquiry for the proper exercise of judicial function."

This is a rather novel theory -- that people should await the implementing evil to befall on them before they can question acts that are illegal or unconstitutional. Be it remembered that the real issue here is whether the Constitution and the law are contravened by Section 4 of AO 372, not whether they are violated by the acts implementing it. In the unanimous en banc case *Tañada v. Angara*,<sup>[33]</sup> this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. Said the Court:

"In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. 'The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld.'<sup>[34]</sup> Once a 'controversy as to the application or interpretation of a constitutional provision is raised before this Court x x x , it becomes a legal issue which the Court is bound by constitutional mandate to decide.'<sup>[35]</sup>

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"As this Court has repeatedly and firmly emphasized in many cases,<sup>[36]</sup> it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government."

In the same vein, the Court also held in *Tatad v. Secretary of the Department of Energy*:<sup>[37]</sup>

"x x x Judicial power includes not only the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, but also the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. The courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. Where the statute violates the Constitution, it is not only the right but the duty of the judiciary to declare such act unconstitutional and void."

By the same token, when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws, as in the present case, settling the dispute becomes the duty and the responsibility of the courts.

Besides, the issue that the Petition is premature has not been raised by the parties; hence it is deemed waived. Considerations of due process really prevents its use against a party that has not been given sufficient notice of its presentation, and thus has not been given the opportunity to refute it.<sup>[38]</sup>

Second, on the President's power as chief fiscal officer of the country. Justice Kapunan posits that Section 4 of AO 372 conforms with the President's role as chief fiscal officer, who allegedly "is clothed by law with certain powers to ensure the observance of safeguards and auditing requirements, as well as the legal prerequisites in the release and use of IRAs, taking into account the constitutional and statutory mandates."<sup>[39]</sup> He cites instances when the President may lawfully intervene in the fiscal affairs of LGUs.

Precisely, such powers referred to in the Dissent have specifically been authorized by law and have not been challenged as violative of the Constitution. On the other hand, Section 4 of AO 372, as explained earlier, contravenes explicit provisions of the Local Government Code (LGC) and the Constitution. In other words, the acts alluded to in the Dissent are indeed authorized by law; but, quite the opposite, Section 4 of AO 372 is bereft

of any legal or constitutional basis.

Third, on the President's authority to adjust the IRA of LGUs in case of an unmanageable public sector deficit. It must be emphasized that in striking down Section 4 of AO 372, this Court is not ruling out any form of reduction in the IRAs of LGUs. Indeed, as the President may make necessary adjustments in case of an unmanageable public sector deficit, as stated in the main part of this Decision, and in line with Section 284 of the LGC, which Justice Kapunan cites. He, however, merely glances over a specific requirement in the same provision -- that such reduction is subject to consultation with the presiding officers of both Houses of Congress and, more importantly, with the presidents of the leagues of local governments.

Notably, Justice Kapunan recognizes the need for "interaction between the national government and the LGUs at the planning level," in order to ensure that "local development plans x x x hew to national policies and standards." The problem is that no such interaction or consultation was ever held prior to the issuance of AO 372. This is why the petitioner and the intervenor (who was a provincial governor and at the same time president of the League of Provinces of the Philippines and chairman of the League of Leagues of Local Governments) have protested and instituted this action. Significantly, respondents do not deny the lack of consultation.

In addition, Justice Kapunan cites Section 287[40] of the LGC as impliedly authorizing the President to withhold the IRA of an LGU, pending its compliance with certain requirements. Even a cursory reading of the provision reveals that it is totally inapplicable to the issue at bar. It directs LGUs to appropriate in their annual budgets 20 percent of their respective IRAs for development projects. It speaks of no positive power granted the President to priorly withhold any amount. Not at all.

WHEREFORE, the Petition is GRANTED. Respondents and their successors are hereby permanently PROHIBITED from implementing Administrative Order Nos. 372 and 43, respectively dated December 27, 1997 and December 10, 1998, insofar as local government units are concerned.

### **SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.

Kapunan, J., see dissenting opinion.

Purisima, and Ynares-Santiago, JJ., join J. Kapunan in his dissenting opinion.

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[1] Rollo, pp. 48-55.

[2] Ibid., pp. 56-75.

[3] This case was deemed submitted for decision on September 27, 1999, upon receipt by this Court of respondents' 10-page Memorandum, which was signed by Asst. Sol. Gen. Mariano M. Martinez and Sol. Ofelia B. Cajigal. Petitioner's Memorandum was filed earlier, on September 21, 1999. Intervenor failed, despite due notice, to submit a memorandum within the allotted time; thus, he is deemed to have waived the filing of one.

[4] Issues of mootness and locus standi were not raised by the respondents. However, the intervention of Roberto Pagdanganan, as explained in the main text, has stopped any further discussion of petitioner's standing. On the other hand, by the failure of respondents to raise mootness as an issue, the Court thus understands that the main issue is still justiciable. In any case, respondents are deemed to have waived this defense or, at the very least, to have submitted the Petition for resolution on the merits, for the future guidance of the government, the bench and the bar.

[5]97 Phil. 143, May 30, 1955; per Padilla, J.

[6]Ibid., pp. 147-148. Reiterated in *Ganzon v. Kayanan*, 104 Phil. 484 (1985); *Ganzon v. Court of Appeals*, 200 SCRA 271, August 5, 1991; *Taule v. Santos*, 200 SCRA 512, August 12, 1991.

[7]Ibid.; citing *Pelaez v. Auditor General*, 15 SCRA 569, December 24, 1965; *Hebron v. Reyes*, 104 Phil. 175 (1958); and *Mondano v. Silvosa*, *supra*.

[8]Ibid., p. 522; citing *Hebron v. Reyes*, *ibid.*, per Concepcion, J.

[9]235 SCRA 135, 142, August 4, 1994.

[10]§1, Art. VII of the Constitution.

[11]Joaquin G. Bernas, SJ, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 739.

[12]The Constitution provides:

"Sec. 25[, Art. II]. The State shall ensure the autonomy of local governments."

"Sec. 2[, Art. X]. The territorial and political subdivisions shall enjoy local autonomy."

[13]200 SCRA 271, 286, August 5, 1991, per Sarmiento, J.; citing §3, Art. X of the Constitution.

[14]Ibid.

[15]Ibid.

[16]170 SCRA 786, 794-795, February 28, 1989, per Sarmiento, J.

[17]Citing §3, Art. X, 1987 Const.

[18]Citing §2, BP 337.

[19]Citing §4, Art. X, 1987 Const.

[20]Citing BP 337; and *Hebron v. Reyes*, *supra*.

[21]Citing *Hebron v. Reyes*, *supra*.

[22]Citing Bernas, "Brewing storm over autonomy," *The Manila Chronicle*, pp. 4-5.

[23]234 SCRA 255, 272, July 20, 1994.

[24]*San Juan v. Civil Service Commission*, 196 SCRA 69, 79, April 19, 1991.

[25]§9, Art. XII of the Constitution.

[26]§3, Chapter 1, Subtitle C, Title II, Book V, EO 292 (Administrative Code of 1987).

[27]§284. See also Art. 379 of the Rules and Regulations Implementing the Local Government Code of 1991.

[28]§6 of Art. X of the Constitution reads:

"Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them."

[29]§286 (a) provides:

"Automatic Release of Shares. -- (a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose."

[30]Emphasis supplied.

[31]Ruben E. Agpalo, *Statutory Construction*, 1990 ed., p. 239.

[32]Webster's Third New International Dictionary, 1993 ed.

[33]272 SCRA 18, May 2, 1997, per Panganiban, J.

[34]Citing *Aquino Jr. v. Ponce Enrile*, 59 SCRA 183, 196, September 17, 1974.

[35]Citing *Guingona Jr. v. Gonzales*, 219 SCRA 326, 337, March 1, 1993.

[36]Cf. *Daza v. Singson*, 180 SCRA 496, December 21, 1989.

[37]281 SCRA 330, 347-48, November 5, 1997, per Puno, J.

[38]See *Philippine National Bank v. Sayo, Jr.*, 292 SCRA 202, July 9, 1998; *Vinta Maritime Co., Inc. v. NLRC*, 284 SCRA 656, January 23, 1998.

[39]Footnotes omitted.

[40]"Sec. 287. Local Development Projects. -- Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual internal revenue allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of Interior and Local Government."

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## DISSENTING OPINION

### KAPUNAN, J.:

In striking down as unconstitutional and illegal Section 4 of Administrative Order No. 372 ("AO No. 372"), the majority opinion posits that the President exercised power of control over the local government units ("LGU"), which he does not have, and violated the provisions of Section 6, Article X of the Constitution, which states:

SEC. 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

and Section 286(a) of the Local Government Code, which provides:

SEC. 286. Automatic Release of Shares. - (a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.

The share of the LGUs in the national internal revenue taxes is defined in Section 284 of the same Local Government Code, to wit:

SEC. 284. Allotment of Internal Revenue Taxes. - Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as

follows:

- (a) On the first year of the effectivity of this Code, thirty percent (30%);
- (b) On the second year, thirty-five (35%) percent; and
- (c) On the third year and thereafter, forty percent (40%).

Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga," to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

x x x

The majority opinion takes the view that the withholding of ten percent (10%) of the internal revenue allotment ("IRA") to the LGUs pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation as called for in Section 4 of AO No. 372 transgresses against the above-quoted provisions which mandate the "automatic" release of the shares of the LGUs in the national internal revenue in consonance with local fiscal autonomy. The pertinent portions of AO No. 372 are reproduced hereunder:

ADMINISTRATIVE ORDER NO. 372

ADOPTION OF ECONOMY MEASURES IN GOVERNMENT FOR FY 1998

WHEREAS, the current economic difficulties brought about by the peso depreciation requires continued prudence in government fiscal management to maintain economic stability and sustain the country's growth momentum;

WHEREAS, it is imperative that all government agencies adopt cash management measures to match expenditures with available resources; NOW THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct:

SECTION 1. All government departments and agencies, including x x x local government units will identify and implement measures in FY 1998 that will reduce total appropriations for non-personal services items, along the following suggested areas:

x x x

SECTION 4. Pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation the amount equivalent to 10% of the internal revenue allotment to local government units shall be withheld.

x x x

Subsequently, on December 10, 1998, President Joseph E. Estrada issued Administrative Order No. 43 ("AO No. 43"), amending Section 4 of AO No. 372, by reducing to five percent (5%) the IRA to be withheld from the LGUs, thus:

## ADMINISTRATIVE ORDER NO. 43

AMENDING ADMINISTRATIVE ORDER NO. 372 DATED 27 DECEMBER 1997 ENTITLED "ADOPTION OF ECONOMY MEASURES IN GOVERNMENT FOR FY 1998"

WHEREAS, Administrative Order No. 372 dated 27 December 1997 entitled "Adoption of Economy Measures in Government for FY 1998" was issued to address the economic difficulties brought about by the peso devaluation in 1997;

WHEREAS, Section 4 of Administrative Order No. 372 provided that the amount equivalent to 10% of the internal revenue allotment to local government units shall be withheld; and,

WHEREAS, there is a need to release additional funds to local government units for vital projects and expenditures.

NOW, THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order the reduction of the withheld Internal Revenue Allotment (IRA) of local government units from ten percent to five percent.

The five percent reduction in the IRA withheld for 1998 shall be released before 25 December 1998.

DONE in the City of Manila, this 10th day of December, in the year of our Lord, nineteen hundred and ninety eight.

With all due respect, I beg to disagree with the majority opinion.

Section 4 of AO No. 372 does not present a case ripe for adjudication. The language of Section 4 does not conclusively show that, on its face, the constitutional provision on the automatic release of the IRA shares of the LGUs has been violated. Section 4, as worded, expresses the idea that the withholding is merely temporary which fact alone would not merit an outright conclusion of its unconstitutionality, especially in light of the reasonable presumption that administrative agencies act in conformity with the law and the Constitution. Where the conduct has not yet occurred and the challenged construction has not yet been adopted by the agency charged with administering the administrative order, the determination of the scope and constitutionality of the executive action in advance of its immediate adverse effect involves too remote and abstract an inquiry for the proper exercise of judicial function. Petitioners have not shown that the alleged 5% IRA share of LGUs that was temporarily withheld has not yet been released, or that the Department of Budget and Management (DBM) has refused and continues to refuse its release. In view thereof, the Court should not decide as this case suggests an abstract proposition on constitutional issues.

The President is the chief fiscal officer of the country. He is ultimately responsible for the collection and distribution of public money:

SECTION 3. Powers and Functions. - The Department of Budget and Management shall assist the President in the preparation of a national resources and expenditures budget, preparation, execution and control of the National Budget, preparation and maintenance of accounting systems essential to the budgetary process, achievement of more economy and efficiency in the management of government operations, administration of compensation and position classification systems, assessment of organizational effectiveness and review and evaluation of legislative proposals having budgetary or organizational implications.[1]

In a larger context, his role as chief fiscal officer is directed towards "the nation's efforts at economic and social upliftment"[2] for which more specific economic powers are delegated. Within statutory limits, the President can, thus, fix "tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the government,"[3] as he is also responsible for enlisting the

country in international economic agreements.[4] More than this, to achieve "economy and efficiency in the management of government operations," the President is empowered to create appropriation reserves,[5] suspend expenditure appropriations,[6] and institute cost reduction schemes.[7]

As chief fiscal officer of the country, the President supervises fiscal development in the local government units and ensures that laws are faithfully executed.[8] For this reason, he can set aside tax ordinances if he finds them contrary to the Local Government Code.[9] Ordinances cannot contravene statutes and public policy as declared by the national government.[10] The goal of local economy is not to "end the relation of partnership and inter-dependence between the central administration and local government units,"[11] but to make local governments "more responsive and accountable" [to] "ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress." [12]

The interaction between the national government and the local government units is mandatory at the planning level. Local development plans must thus hew to "national policies and standards"[13] as these are integrated into the regional development plans for submission to the National Economic Development Authority. "[14] Local budget plans and goals must also be harmonized, as far as practicable, with "national development goals and strategies in order to optimize the utilization of resources and to avoid duplication in the use of fiscal and physical resources." [15]

Section 4 of AO No. 372 was issued in the exercise by the President not only of his power of general supervision, but also in conformity with his role as chief fiscal officer of the country in the discharge of which he is clothed by law with certain powers to ensure the observance of safeguards and auditing requirements, as well as the legal prerequisites in the release and use of IRAs, taking into account the constitutional<sup>16</sup> and statutory<sup>17</sup> mandates.

However, the phrase "automatic release" of the LGUs' shares does not mean that the release of the funds is mechanical, spontaneous, self-operating or reflex. IRAs must first be determined, and the money for their payment collected.<sup>18</sup> In this regard, administrative documentations are also undertaken to ascertain their availability, limits and extent. The phrase, thus, should be used in the context of the whole budgetary process and in relation to pertinent laws relating to audit and accounting requirements. In the workings of the budget for the fiscal year, appropriations for expenditures are supported by existing funds in the national coffers and by proposals for revenue raising. The money, therefore, available for IRA release may not be existing but merely inchoate, or a mere expectation. It is not infrequent that the Executive Department's proposals for raising revenue in the form of proposed legislation may not be passed by the legislature. As such, the release of IRA should not mean release of absolute amounts based merely on mathematical computations. There must be a prior determination of what exact amount the local government units are actually entitled in light of the economic factors which affect the fiscal situation in the country. Foremost of these is where, due to an unmanageable public sector deficit, the President may make the necessary adjustments in the IRA of LGUs. Thus, as expressly provided in Article 284 of the Local Government Code:

x x x

(I)n the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga," to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year. x x x.

Under the aforecited provision, if facts reveal that the economy has sustained or will likely sustain such

"unmanageable public sector deficit," then the LGUs cannot assert absolute right of entitlement to the full amount of forty percent (40%) share in the IRA, because the President is authorized to make an adjustment and to reduce the amount to not less than thirty percent (30%). It is, therefore, impractical to immediately release the full amount of the IRAs and subsequently require the local government units to return at most ten percent (10%) once the President has ascertained that there exists an unmanageable public sector deficit.

By necessary implication, the power to make necessary adjustments (including reduction) in the IRA in case of an unmanageable public sector deficit, includes the discretion to withhold the IRAs temporarily until such time that the determination of the actual fiscal situation is made. The test in determining whether one power is necessarily included in a stated authority is: "The exercise of a more absolute power necessarily includes the lesser power especially where it is needed to make the first power effective."<sup>19</sup> If the discretion to suspend temporarily the release of the IRA pending such examination is withheld from the President, his authority to make the necessary IRA adjustments brought about by the unmanageable public sector deficit would be emasculated in the midst of serious economic crisis. In the situation conjured by the majority opinion, the money would already have been gone even before it is determined that fiscal crisis is indeed happening.

The majority opinion overstates the requirement in Section 286 of the Local Government Code that the IRAs "shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose" as proof that no withholding of the release of the IRAs is allowed albeit temporary in nature.

It is worthy to note that this provision does not appear in the Constitution. Section 6, Art X of the Constitution merely directs that LGUs "shall have a just share" in the national taxes "as determined by law" and which share "shall be automatically released to them." This means that before the LGU's share is released, there should be first a determination, which requires a process, of what is the correct amount as dictated by existing laws. For one, the Implementing Rules of the Local Government Code allows deductions from the IRAs, to wit:

Article 384. Automatic Release of IRA Shares of LGUs:

x x x

(c) The IRA share of LGUs shall not be subject to any lien or hold back that may be imposed by the National Government for whatever purpose unless otherwise provided in the Code or other applicable laws and loan contract on project agreements arising from foreign loans and international commitments, such as premium contributions of LGUs to the Government Service Insurance System and loans contracted by LGUs under foreign-assisted projects.

Apart from the above, other mandatory deductions are made from the IRAs prior to their release, such as: (1) total actual cost of devolution and the cost of city-funded hospitals;<sup>20</sup> and (2) compulsory contributions<sup>21</sup> and other remittances.<sup>22</sup> It follows, therefore, that the President can withhold portions of IRAs in order to set-off or compensate legitimately incurred obligations and remittances of LGUs.

Significantly, Section 286 of the Local Government Code does not make mention of the exact amount that should be automatically released to the LGUs. The provision does not mandate that the entire 40% share mentioned in Section 284 shall be released. It merely provides that the "share" of each LGU shall be released and which "shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose." The provision on automatic release of IRA share should, thus, be read together with Section 284, including the proviso on adjustment or reduction of IRAs, as well as other relevant laws. It may happen that the share of the LGUs may amount to the full forty percent (40%) or the reduced amount of thirty percent (30%) as adjusted without any law being violated. In other words, all that Section 286 requires is the automatic release of the amount that the LGUs are rightfully and legally entitled to, which, as the same section provides, should not be less

than thirty percent (30%) of the collection of the national revenue taxes. So that even if five percent (5%) or ten percent (10%) is either temporarily or permanently withheld, but the minimum of thirty percent (30%) allotment for the LGUs is released pursuant to the President's authority to make the necessary adjustment in the LGUs' share, there is still full compliance with the requirements of the automatic release of the LGUs' share.

Finally, the majority insists that the withholding of ten percent (10%) or five percent (5%) of the IRAs could not have been done pursuant to the power of the President to adjust or reduce such shares under Section 284 of the Local Government Code because there was no showing of an unmanageable public sector deficit by the national government, nor was there evidence that consultations with the presiding officers of both Houses of Congress and the presidents of the various leagues had taken place and the corresponding recommendations of the Secretary of Finance, Secretary of Interior and Local Government and the Budget Secretary were made.

I beg to differ. The power to determine whether there is an unmanageable public sector deficit is lodged in the President. The President's determination, as fiscal manager of the country, of the existence of economic difficulties which could amount to "unmanageable public sector deficit" should be accorded respect. In fact, the withholding of the ten percent (10%) of the LGUs' share was further justified by the current economic difficulties brought about by the peso depreciation as shown by one of the "WHEREASES" of AO No. 372.23 In the absence of any showing to the contrary, it is presumed that the President had made prior consultations with the officials thus mentioned and had acted upon the recommendations of the Secretaries of Finance, Interior and Local Government and Budget.<sup>24</sup>

Therefore, even assuming hypothetically that there was effectively a deduction of five percent (5%) of the LGUs' share, which was in accordance with the President's prerogative in view of the pronouncement of the existence of an unmanageable public sector deficit, the deduction would still be valid in the absence of any proof that the LGUs' allotment was less than the thirty percent (30%) limit provided for in Section 284 of the Local Government Code.

In resume, the withholding of the amount equivalent to five percent (5%) of the IRA to the LGUs was temporary pending determination by the Executive of the actual share which the LGUs are rightfully entitled to on the basis of the applicable laws, particularly Section 284 of the Local Government Code, authorizing the President to make the necessary adjustments in the IRA of LGUs in the event of an unmanageable public sector deficit. And assuming that the said five percent (5%) of the IRA pertaining to the 1998 Fiscal Year has been permanently withheld, there is no showing that the amount actually released to the LGUs that same year was less than thirty percent (30%) of the national internal revenue taxes collected, without even considering the proper deductions allowed by law.

WHEREFORE, I vote to DISMISS the petition.

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[1] Executive Order No. 292, Book IV, Title XVII, Chapter 1.

[2] *Garcia v. Corona*, G.R. No. 132451, December 17, 1999.

[3] 1987 CONSTITUTION, Article VI, Section 28 (2).

[4] *Tañada v. Angara*, 272 SCRA 18 (1997).

[5] Executive Order No. 292, Book VI, Chapter 5, Section 37.

[6] *Id.*, at Section 38.

- [7] Id., at Section 48.
- [8] *San Juan v. CSC*, 196 SCRA 69 (1991).
- [9] *Drilon v. Lim*, 235 SCRA 135 (1994).
- [10] *Magtajas v. Pryce Properties Corp., Inc. and PAGCOR*, 234 SCRA 255 (1994).
- [11] *Ganzon v. CA*, 200 SCRA 271, 286 (1991).
- [12] Id., at 287.
- [13] Rules and Regulations Implementing the Local Government code of 1991, Rule XXIII, Article 182 (1) (3).
- [14] Rules and Regulations Implementing the Local Government Code of 1991, Rule XXIII, Article 182 (j) (1) (2).
- [15] Rules and Regulations Implementing the Local Government Code of 1991, Rule XXXIV, Article 405 (b).
- [16] 1987 CONSTITUTION, Art. X, Section 6.
- [17] Republic Act No. 7160, Title III, Section 286.
- [18] Hector De Leon, *PHILIPPINE CONSTITUTIONAL LAW: PRINCIPLES AND CASES*, p. 505 (1991).
- [19] Separate Opinion of J. Esguerra in *Aquino v. Enrile*, 59 SCRA 183 (1974).
- [20] Republic Act No. 8760 (General Appropriations ACT for FY 2000).
- [21] See Eexecutive Order No. 190 (1999), Directing The Department of Budget And Management To Remit directly The Contributions And Other Remittances Of Local Government Units To the Concerned National Government Agencies (NGA), Government Financial Institutions (GFI), And Government Owned And/Or Controlled Corporations (GOCC).
- [22] Republic Act No. 8760 (General Appropriations Act for FY 2000). Includes debt write-offs under Sec. 531 of the Local Government Code: Debt Relief for Local Government Units.-- xxx

(e) Recovery schemes for the national government.---xxx

The national government is hereby authorized to deduct from the quarterly share of each local government unit in the internal revenue collections an amount to be determined on the basis of the amortization schedule of the local unit concerned: Provided, That such amount shall not exceed five percent (5%) of the monthly internal revenue allotment of the local government unit concerned.

[23] WHEREAS, the current economic difficulties brought about by the peso depreciation requires continued prudence in government fiscal management to maintain economic stability and sustain the country's growth momentum.

[24] Section 3, Rule 131 of the RULES OF COURT provides:

SEC. 3 Disputable presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx

(m) That official duty has been regularly performed;

XXX.

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