

DEMOSTHENES P. AGAN, JR., JOSEPH B. CATAHAN, JOSE MARI B. REUNILLA, MANUEL ANTONIO B. BOÑE, MAMERTO S. CLARA, REUEL E. DIMALANTA, MORY V. DOMALAON, CONRADO G. DIMAANO, LOLITA R....

G.R. No. 155001. January 21, 2004

Ponente: PUNO, J.

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PUNO, J.:

Before this Court are the separate Motions for Reconsideration filed by respondent Philippine International Air Terminals Co., Inc. (PIATCO), respondents-intervenors Jacinto V. Paras, Rafael P. Nantes, Eduardo C. Zialcita, Willie Buyson Villarama, Prospero C. Nograles, Prospero A. Pichay, Jr., Harlin Cast Abayon and Benasing O. Macaranbon, all members of the House of Representatives (Respondent Congressmen),[1] respondents-intervenors who are employees of PIATCO and other workers of the Ninoy Aquino International Airport International Passenger Terminal III (NAIA IPT III) (PIATCO Employees)[2] and respondents-intervenors Nagkaisang Maralita ng Tañong Association, Inc., (NMTAI)[3] of the Decision of this Court dated May 5, 2003 declaring the contracts for the NAIA IPT III project null and void.

Briefly, the proceedings. On October 5, 1994, Asia's Emerging Dragon Corp. (AEDC) submitted an unsolicited proposal to the Philippine Government through the Department of Transportation and Communication (DOTC) and Manila International Airport Authority (MIAA) for the construction and development of the NAIA IPT III under a build-operate-and-transfer arrangement pursuant to R.A. No. 6957, as amended by R.A. No. 7718 (BOT Law).[4] In accordance with the BOT Law and its Implementing Rules and Regulations (Implementing Rules), the DOTC/MIAA invited the public for submission of competitive and comparative proposals to the unsolicited proposal of AEDC. On September 20, 1996 a consortium composed of the People's Air Cargo and Warehousing Co., Inc. (Paircargo), Phil. Air and Grounds Services, Inc. (PAGS) and Security Bank Corp. (Security Bank) (collectively, Paircargo Consortium), submitted their competitive proposal to the Prequalification Bids and Awards Committee (PBAC).

After finding that the Paircargo Consortium submitted a bid superior to the unsolicited proposal of AEDC and after failure by AEDC to match the said bid, the DOTC issued the notice of award for the NAIA IPT III project to the Paircargo Consortium, which later organized into herein respondent PIATCO. Hence, on July 12, 1997, the Government, through then DOTC Secretary Arturo T. Enrile, and PIATCO, through its President, Henry T. Go, signed the "Concession Agreement for the Build-Operate-and-Transfer Arrangement of the Ninoy Aquino International Airport Passenger Terminal III" (1997 Concession Agreement). On November 26, 1998, the 1997 Concession Agreement was superseded by the Amended and Restated Concession Agreement (ARCA) containing certain revisions and modifications from the original contract. A series of supplemental agreements was also entered into by the Government and PIATCO. The First Supplement was signed on August 27, 1999, the Second Supplement on September 4, 2000, and the Third Supplement on June 22, 2001 (collectively, Supplements) (the 1997 Concession Agreement, ARCA and the Supplements collectively referred to as the PIATCO Contracts).

On September 17, 2002, various petitions were filed before this Court to annul the 1997 Concession Agreement, the ARCA and the Supplements and to prohibit the public respondents DOTC and MIAA from implementing them.

In a decision dated May 5, 2003, this Court granted the said petitions and declared the 1997 Concession Agreement, the ARCA and the Supplements null and void.

Respondent PIATCO, respondent-Congressmen and respondents-intervenors now seek the reversal of the May 5, 2003 decision and pray that the petitions be dismissed. In the alternative, PIATCO prays that the Court should not strike down the entire 1997 Concession Agreement, the ARCA and its supplements in light of their separability clause. Respondent-Congressmen and NMTAI also pray that in the alternative, the cases at bar should be referred to arbitration pursuant to the provisions of the ARCA. PIATCO-Employees pray that the petitions be dismissed and remanded to the trial courts for trial on the merits or in the alternative that the 1997 Concession Agreement, the ARCA and the Supplements be declared valid and binding.

I

Procedural Matters

a. Lack of Jurisdiction

Private respondents and respondents-intervenors reiterate a number of procedural issues which they insist deprived this Court of jurisdiction to hear and decide the instant cases on its merits. They continue to claim that the cases at bar raise factual questions which this Court is ill-equipped to resolve, hence, they must be remanded to the trial court for reception of evidence. Further, they allege that although designated as petitions for certiorari and prohibition, the cases at bar are actually actions for nullity of contracts over which the trial courts have exclusive jurisdiction. Even assuming that the cases at bar are special civil actions for certiorari and prohibition, they contend that the principle of hierarchy of courts precludes this Court from taking primary jurisdiction over them.

We are not persuaded.

There is a question of fact when doubt or difference arises as to the truth or falsity of the facts alleged.[5] Even a cursory reading of the cases at bar will show that the Court decided them by interpreting and applying the Constitution, the BOT Law, its Implementing Rules and other relevant legal principles on the basis of clearly undisputed facts. All the operative facts were settled, hence, there is no need for a trial type determination of their truth or falsity by a trial court.

We reject the unyielding insistence of PIATCO Employees that the following factual issues are critical and beyond the capability of this Court to resolve, viz: (a) whether the National Economic Development Authority-Investment Coordinating Committee (NEDA-ICC) approved the Supplements; (b) whether the First Supplement created ten (10) new financial obligations on the part of the government; and (c) whether the 1997 Concession Agreement departed from the draft Concession Agreement contained in the Bid Documents.[6]

The factual issue of whether the NEDA-ICC approved the Supplements is hardly relevant. It is clear in our Decision that the PIATCO contracts were invalidated on other and more substantial grounds. It did not rely on the presence or absence of NEDA-ICC approval of the Supplements. On the other hand, the last two issues do not involve disputed facts. Rather, they involve contractual provisions which are clear and categorical and need only to be interpreted. The interpretation of contracts and the determination of whether their provisions violate our laws or contravene any public policy is a legal issue which this Court may properly pass upon.

Respondents' corollary contention that this Court violated the hierarchy of courts when it entertained the cases at bar must also fail. The rule on hierarchy of courts in cases falling within the concurrent jurisdiction of the trial courts and appellate courts generally applies to cases involving warring factual allegations. For this reason, litigants are required to repair to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties. Cases which depend on disputed facts for decision cannot be brought immediately before appellate courts as they are not triers of facts.

It goes without saying that when cases brought before the appellate courts do not involve factual but legal questions, a strict application of the rule of hierarchy of courts is not necessary. As the cases at bar merely concern the construction of the Constitution, the interpretation of the BOT Law and its Implementing Rules and Regulations on undisputed contractual provisions and government actions, and as the cases concern public interest, this Court resolved to take primary jurisdiction over them. This choice of action follows the consistent stance of this Court to settle any controversy with a high public interest component in a single proceeding and to leave no root or branch that could bear the seeds of future litigation. The suggested remand of the cases at bar to the trial court will stray away from this policy.[7]

b. Legal Standing

Respondent PIATCO stands pat with its argument that petitioners lack legal personality to file the cases at bar as they are not real parties in interest who are bound principally or subsidiarily to the PIATCO Contracts. Further, respondent PIATCO contends that petitioners failed to show any legally demandable or enforceable right to justify their standing to file the cases at bar.

These arguments are not difficult to deflect. The determination of whether a person may institute an action or become a party to a suit brings to fore the concepts of real party in interest, capacity to sue and standing to sue. To the legally discerning, these three concepts are different although commonly directed towards ensuring that only certain parties can maintain an action.[8] As defined in the Rules of Court, a real party in interest is the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit.[9] Capacity to sue deals with a situation where a person who may have a cause of action is disqualified from bringing a suit under applicable law or is incompetent to bring a suit or is under some legal disability that would prevent him from maintaining an action unless represented by a guardian ad litem. Legal standing is relevant in the realm of public law. In certain instances, courts have allowed private parties to institute actions challenging the validity of governmental action for violation of private rights or constitutional principles.[10] In these cases, courts apply the doctrine of legal standing by determining whether the party has a direct and personal interest in the controversy and whether such party has sustained or is in imminent danger of sustaining an injury as a result of the act complained of, a standard which is distinct from the concept of real party in interest.[11] Measured by this yardstick, the application of the doctrine on legal standing necessarily involves a preliminary consideration of the merits of the case and is not purely a procedural issue.[12]

Considering the nature of the controversy and the issues raised in the cases at bar, this Court affirms its ruling that the petitioners have the requisite legal standing. The petitioners in G.R. Nos. 155001 and 155661 are employees of service providers operating at the existing international airports and employees of MIAA while petitioners-intervenors are service providers with existing contracts with MIAA and they will all sustain direct injury upon the implementation of the PIATCO Contracts. The 1997 Concession Agreement and the ARCA both provide that upon the commencement of operations at the NAIA IPT III, NAIA Passenger Terminals I and II will cease to be used as international passenger terminals.[13] Further, the ARCA provides:

(d) For the purpose of an orderly transition, MIAA shall not renew any expired concession agreement relative to any service or operation currently being undertaken at the Ninoy Aquino International Airport Passenger

Terminal I, or extend any concession agreement which may expire subsequent hereto, except to the extent that the continuation of the existing services and operations shall lapse on or before the In-Service Date.[14]

Beyond iota of doubt, the implementation of the PIATCO Contracts, which the petitioners and petitioners-intervenors denounce as unconstitutional and illegal, would deprive them of their sources of livelihood. Under settled jurisprudence, one's employment, profession, trade, or calling is a property right and is protected from wrongful interference.[15] It is also self evident that the petitioning service providers stand in imminent danger of losing legitimate business investments in the event the PIATCO Contracts are upheld.

Over and above all these, constitutional and other legal issues with far-reaching economic and social implications are embedded in the cases at bar, hence, this Court liberally granted legal standing to the petitioning members of the House of Representatives. First, at stake is the build-operate-and-transfer contract of the country's premier international airport with a projected capacity of 10 million passengers a year. Second, the huge amount of investment to complete the project is estimated to be P13,000,000,000.00. Third, the primary issues posed in the cases at bar demand a discussion and interpretation of the Constitution, the BOT Law and its implementing rules which have not been passed upon by this Court in previous cases. They can chart the future inflow of investment under the BOT Law.

Before writing finis to the issue of legal standing, the Court notes the bid of new parties to participate in the cases at bar as respondents-intervenors, namely, (1) the PIATCO Employees and (2) NMTAI (collectively, the New Respondents-Intervenors). After the Court's Decision, the New Respondents-Intervenors filed separate Motions for Reconsideration-In-Intervention alleging prejudice and direct injury. PIATCO employees claim that "they have a direct and personal interest [in the controversy]... since they stand to lose their jobs should the government's contract with PIATCO be declared null and void." [16] NMTAI, on the other hand, represents itself as a corporation composed of responsible tax-paying Filipino citizens with the objective of "protecting and sustaining the rights of its members to civil liberties, decent livelihood, opportunities for social advancement, and to a good, conscientious and honest government." [17]

The Rules of Court govern the time of filing a Motion to Intervene. Section 2, Rule 19 provides that a Motion to Intervene should be filed "before rendition of judgment..." The New Respondents-Intervenors filed their separate motions after a decision has been promulgated in the present cases. They have not offered any worthy explanation to justify their late intervention. Consequently, their Motions for Reconsideration-In-Intervention are denied for the rules cannot be relaxed to await litigants who sleep on their rights. In any event, a sideglance at these late motions will show that they hoist no novel arguments.

c. Failure to Implead an Indispensable Party

PIATCO next contends that petitioners should have impleaded the Republic of the Philippines as an indispensable party. It alleges that petitioners sued the DOTC, MIAA and the DPWH in their own capacities or as implementors of the PIATCO Contracts and not as a contract party or as representatives of the Government of the Republic of the Philippines. It then leapfrogs to the conclusion that the "absence of an indispensable party renders ineffectual all the proceedings subsequent to the filing of the complaint including the judgment." [18]

PIATCO's allegations are inaccurate. The petitions clearly bear out that public respondents DOTC and MIAA were impleaded as parties to the PIATCO Contracts and not merely as their implementors. The separate petitions filed by the MIAA employees [19] and members of the House of Representatives [20] alleged that "public respondents are impleaded herein because they either executed the PIATCO Contracts or are undertaking acts which are related to the PIATCO Contracts. They are interested and indispensable parties to this Petition." [21] Thus, public respondents DOTC and MIAA were impleaded as parties to the case for having executed the

contracts.

More importantly, it is also too late in the day for PIATCO to raise this issue. If PIATCO seriously views the non-inclusion of the Republic of the Philippines as an indispensable party as fatal to the petitions at bar, it should have raised the issue at the onset of the proceedings as a ground to dismiss. PIATCO cannot litigate issues on a piecemeal basis, otherwise, litigations shall be like a shore that knows no end. In any event, the Solicitor General, the legal counsel of the Republic, appeared in the cases at bar in representation of the interest of the government.

II

Pre-qualification of PIATCO

The Implementing Rules provide for the unyielding standards the PBAC should apply to determine the financial capability of a bidder for pre-qualification purposes: (i) proof of the ability of the project proponent and/or the consortium to provide a minimum amount of equity to the project and (ii) a letter testimonial from reputable banks attesting that the project proponent and/or members of the consortium are banking with them, that they are in good financial standing, and that they have adequate resources.[22] The evident intent of these standards is to protect the integrity and insure the viability of the project by seeing to it that the proponent has the financial capability to carry it out. As a further measure to achieve this intent, it maintains a certain debt-to-equity ratio for the project.

At the pre-qualification stage, it is most important for a bidder to show that it has the financial capacity to undertake the project by proving that it can fulfill the requirement on minimum amount of equity. For this purpose, the Bid Documents require in no uncertain terms:

The minimum amount of equity to which the proponent's financial capability will be based shall be thirty percent (30%) of the project cost instead of the twenty percent (20%) specified in Section 3.6.4 of the Bid Documents. This is to correlate with the required debt-to-equity ratio of 70:30 in Section 2.01a of the draft concession agreement. The debt portion of the project financing should not exceed 70% of the actual project cost.[23]

In relation thereto, section 2.01 (a) of the ARCA provides:

Section 2.01 Project Scope.

The scope of the project shall include:

(a)

Financing the project at an actual Project cost of not less than Three Hundred Fifty Million United States Dollars (US\$350,000,000.00) while maintaining a debt-to-equity ratio of 70:30, provided that if the actual Project costs should exceed the aforesaid amount, Concessionaire shall ensure that the debt-to-equity ratio is maintained;[24]

Under the debt-to-equity restriction, a bidder may only seek financing of the NAIA IPT III Project up to 70% of the project cost. Thirty percent (30%) of the cost must come in the form of equity or investment by the bidder itself. It cannot be overly emphasized that the rules require a minimum amount of equity to ensure that a bidder is not merely an operator or implementor of the project but an investor with a substantial interest in its success. The minimum equity requirement also guarantees the Philippine government and the general public, who are the ultimate beneficiaries of the project, that a bidder will not be indifferent to the completion of the project. The discontinuance of the project will irreparably damage public interest more than private interest.

In the cases at bar, after applying the investment ceilings provided under the General Banking Act and considering the maximum amounts that each member of the consortium may validly invest in the project, it is daylight clear that the Paircargo Consortium, at the time of pre-qualification, had a net worth equivalent to only 6.08% of the total estimated project cost.[25] By any reckoning, a showing by a bidder that at the time of pre-qualification its maximum funds available for investment amount to only 6.08% of the project cost is insufficient to satisfy the requirement prescribed by the Implementing Rules that the project proponent must have the ability to provide at least 30% of the total estimated project cost. In peso and centavo terms, at the time of pre-qualification, the Paircargo Consortium had maximum funds available for investment to the NAIA IPT III Project only in the amount of P558,384,871.55, when it had to show that it had the ability to provide at least P2,755,095,000.00. The huge disparity cannot be dismissed as of de minimis importance considering the high public interest at stake in the project.

PIATCO nimbly tries to sidestep its failure by alleging that it submitted not only audited financial statements but also testimonial letters from reputable banks attesting to the good financial standing of the Paircargo Consortium. It contends that in adjudging whether the Paircargo Consortium is a pre-qualified bidder, the PBAC should have considered not only its financial statements but other factors showing its financial capability.

Anent this argument, the guidelines provided in the Bid Documents are instructive:

3.3.4 FINANCING AND FINANCIAL PREQUALIFICATIONS REQUIREMENTS

- Minimum Amount of Equity

Each member of the proponent entity is to provide evidence of networth in cash and assets representing the proportionate share in the proponent entity. Audited financial statements for the past five (5) years as a company for each member are to be provided.

- Project Loan Financing

Testimonial letters from reputable banks attesting that each of the members of the ownership entity are banking with them, in good financial standing and having adequate resources are to be provided.[26]

It is beyond refutation that Paircargo Consortium failed to prove its ability to provide the amount of at least P2,755,095,000.00, or 30% of the estimated project cost. Its submission of testimonial letters attesting to its good financial standing will not cure this failure. At best, the said letters merely establish its credit worthiness or its ability to obtain loans to finance the project. They do not, however, prove compliance with the aforesaid requirement of minimum amount of equity in relation to the prescribed debt-to-equity ratio. This equity cannot be satisfied through possible loans.

In sum, we again hold that given the glaring gap between the net worth of Paircargo and PAGS combined with the amount of maximum funds that Security Bank may invest by equity in a non-allied undertaking, Paircargo Consortium, at the time of pre-qualification, failed to show that it had the ability to provide 30% of the project cost and necessarily, its financial capability for the project cannot pass muster.

III

1997 Concession Agreement

Again, we brightline the principle that in public bidding, bids are submitted in accord with the prescribed terms, conditions and parameters laid down by government and pursuant to the requirements of the project bidden upon. In light of these parameters, bidders formulate competing proposals which are evaluated to determine the bid most

favorable to the government. Once the contract based on the bid most favorable to the government is awarded, all that is left to be done by the parties is to execute the necessary agreements and implement them. There can be no substantial or material change to the parameters of the project, including the essential terms and conditions of the contract bidden upon, after the contract award. If there were changes and the contracts end up unfavorable to government, the public bidding becomes a mockery and the modified contracts must be struck down.

Respondents insist that there were no substantial or material amendments in the 1997 Concession Agreement as to the technical aspects of the project, i.e., engineering design, technical soundness, operational and maintenance methods and procedures of the project or the technical proposal of PIATCO. Further, they maintain that there was no modification of the financial features of the project, i.e., minimum project cost, debt-to-equity ratio, the operations and maintenance budget, the schedule and amount of annual guaranteed payments, or the financial proposal of PIATCO. A discussion of some of these changes to determine whether they altered the terms and conditions upon which the bids were made is again in order.

a. Modification on Fees and
Charges to be collected by PIATCO

PIATCO clings to the contention that the removal of the groundhandling fees, airline office rentals and portorage fees from the category of fees subject to MIAA regulation in the 1997 Concession Agreement does not constitute a substantial amendment as these fees are not really public utility fees. In other words, PIATCO justifies the re-classification under the 1997 Concession Agreement on the ground that these fees are non-public utility revenues.

We disagree. The removal of groundhandling fees, airline office rentals and portorage fees from the category of “Public Utility Revenues” under the draft Concession Agreement and its re-classification to “Non-Public Utility Revenues” under the 1997 Concession Agreement is significant and has far reaching consequence. The 1997 Concession Agreement provides that with respect to Non-Public Utility Revenues, which include groundhandling fees, airline office rentals and portorage fees,[27] “[PIATCO] may make any adjustments it deems appropriate without need for the consent of GRP or any government agency.”[28] In contrast, the draft Concession Agreement specifies these fees as part of Public Utility Revenues and can be adjusted “only once every two years and in accordance with the Parametric Formula” and “the adjustments shall be made effective only after the written express approval of the MIAA.”[29] The Bid Documents themselves clearly provide:

4.2.3 Mechanism for Adjustment of Fees and Charges
4.2.3.1 Periodic Adjustment in Fees and Charges

Adjustments in the fees and charges enumerated hereunder, whether or not falling within the purview of public utility revenues, shall be allowed only once every two years in accordance with the parametric formula attached hereto as Annex 4.2f. Provided that the adjustments shall be made effective only after the written express approval of MIAA. Provided, further, that MIAA’s approval, shall be contingent only on conformity of the adjustments to the said parametric formula. ...

The fees and charges to be regulated in the above manner shall consist of the following:

....

c) groundhandling fees;

d) rentals on airline offices;

....

(f) portorage fees;

. . . .[30]

The plain purpose in re-classifying groundhandling fees, airline office rentals and portorage fees as non-public utility fees is to remove them from regulation by the MIAA. In excluding these fees from government regulation, the danger to public interest cannot be downplayed.

We are not impressed by the effort of PIATCO to depress this prejudice to public interest by its contention that in the 1997 Concession Agreement governing Non-Public Utility Revenues, it is provided that “[PIATCO] shall at all times be judicious in fixing fees and charges constituting Non-Public Utility Revenues in order to ensure that End Users are not unreasonably deprived of services.”[31] PIATCO then peddles the proposition that the said provision confers upon MIAA “full regulatory powers to ensure that PIATCO is charging non-public utility revenues at judicious rates.”[32] To the trained eye, the argument will not fly for it is obviously non sequitur. Fairly read, it is PIATCO that wields the power to determine the judiciousness of the said fees and charges. In the draft Concession Agreement the power was expressly lodged with the MIAA and any adjustment can only be done once every two years. The changes are not insignificant specks as interpreted by PIATCO.

PIATCO further argues that there is no substantial change in the 1997 Concession Agreement with respect to fees and charges PIATCO is allowed to impose which are not covered by Administrative Order No. 1, Series of 1993[33] as the “relevant provision of the 1997 Concession Agreement is practically identical with the draft Concession Agreement.”[34]

We are not persuaded. Under the draft Concession Agreement, PIATCO may impose fees and charges other than those fees and charges previously imposed or collected at the Ninoy Aquino International Airport Passenger Terminal I, subject to the written approval of MIAA.[35] Further, the draft Concession Agreement provides that MIAA reserves the right to regulate these new fees and charges if in its judgment the users of the airport shall be deprived of a free option for the services they cover.[36] In contrast, under the 1997 Concession Agreement, the MIAA merely retained the right to approve any imposition of new fees and charges which were not previously collected at the Ninoy Aquino International Airport Passenger Terminal I. The agreement did not contain an equivalent provision allowing MIAA to reserve the right to regulate the adjustments of these new fees and charges.[37] PIATCO justifies the amendment by arguing that MIAA can establish terms before approval of new fees and charges, inclusive of the mode for their adjustment.

PIATCO’s stance is again a strained one. There would have been no need for an amendment if there were no change in the power to regulate on the part of MIAA. The deletion of MIAA’s reservation of its right to regulate the price adjustments of new fees and charges can have no other purpose but to dilute the extent of MIAA’s regulation in the collection of these fees. Again, the amendment diminished the authority of MIAA to protect the public interest in case of abuse by PIATCO.

b. Assumption by the
Government of the liabilities
of PIATCO in the event of the latter’s
default

PIATCO posits the thesis that the new provisions in the 1997 Concession Agreement in case of default by PIATCO on its loans were merely meant to prescribe and limit the rights of PIATCO’s creditors with regard to the NAIA Terminal III. PIATCO alleges that Section 4.04 of the 1997 Concession Agreement simply provides that PIATCO’s creditors have no right to foreclose the NAIA Terminal III.

We cannot concur. The pertinent provisions of the 1997 Concession Agreement state:

Section 4.04 Assignment.

....

(b) In the event Concessionaire should default in the payment of an Attendant Liability, and the default has resulted in the acceleration of the payment due date of the Attendant Liability prior to its stated date of maturity, the Unpaid Creditors and Concessionaire shall immediately inform GRP in writing of such default. GRP shall, within one hundred eighty (180) Days from receipt of the joint written notice of the Unpaid Creditors and Concessionaire, either (i) take over the Development Facility and assume the Attendant Liabilities, or (ii) allow the Unpaid Creditors, if qualified, to be substituted as concessionaire and operator of the Development Facility in accordance with the terms and conditions hereof, or designate a qualified operator acceptable to GRP to operate the Development Facility, likewise under the terms and conditions of this Agreement; Provided that if at the end of the 180-day period GRP shall not have served the Unpaid Creditors and Concessionaire written notice of its choice, GRP shall be deemed to have elected to take over the Development Facility with the concomitant assumption of Attendant Liabilities.

(c) If GRP should, by written notice, allow the Unpaid Creditors to be substituted as concessionaire, the latter shall form and organize a concession company qualified to take over the operation of the Development Facility. If the concession company should elect to designate an operator for the Development Facility, the concession company shall in good faith identify and designate a qualified operator acceptable to GRP within one hundred eighty (180) days from receipt of GRP's written notice. If the concession company, acting in good faith and with due diligence, is unable to designate a qualified operator within the aforesaid period, then GRP shall at the end of the 180-day period take over the Development Facility and assume Attendant Liabilities.

A plain reading of the above provision shows that it spells out in limpid language the obligation of government in case of default by PIATCO on its loans. There can be no blinking from the fact that in case of PIATCO's default, the government will assume PIATCO's Attendant Liabilities as defined in the 1997 Concession Agreement.^[38] This obligation is not found in the draft Concession Agreement and the change runs roughshod to the spirit and policy of the BOT Law which was crafted precisely to prevent government from incurring financial risk.

In any event, PIATCO pleads that the entire agreement should not be struck down as the 1997 Concession Agreement contains a separability clause.

The plea is bereft of merit. The contracts at bar which made a mockery of the bidding process cannot be upheld and must be annulled in their entirety for violating law and public policy. As demonstrated, the contracts were substantially amended after their award to the successful bidder on terms more beneficial to PIATCO and prejudicial to public interest. If this flawed process would be allowed, public bidding will cease to be competitive and worse, government would not be favored with the best bid. Bidders will no longer bid on the basis of the prescribed terms and conditions in the bid documents but will formulate their bid in anticipation of the execution of a future contract containing new and better terms and conditions that were not previously available at the time of the bidding. Such a public bidding will not inure to the public good. The resulting contracts cannot be given half a life but must be struck down as totally lawless.

IV.

Direct Government Guarantee

The respondents further contend that the PIATCO Contracts do not contain direct government guarantee provisions. They assert that section 4.04 of the ARCA, which superseded sections 4.04(b) and (c), Article IV of

the 1997 Concession Agreement, is but a “clarification and explanation”[39] of the securities allowed in the bid documents. They allege that these provisions merely provide for “compensation to PIATCO”[40] in case of a government buy-out or takeover of NAIA IPT III. The respondents, particularly respondent PIATCO, also maintain that the guarantee contained in the contracts, if any, is an indirect guarantee allowed under the BOT Law, as amended.[41]

We do not agree. Section 4.04(c), Article IV[42] of the ARCA should be read in conjunction with section 1.06, Article I,[43] in the same manner that sections 4.04(b) and (c), Article IV of the 1997 Concession Agreement should be related to Article 1.06 of the same contract. Section 1.06, Article I of the ARCA and its counterpart provision in the 1997 Concession Agreement define in no uncertain terms the meaning of “attendant liabilities.” They tell us of the amounts that the Government has to pay in the event respondent PIATCO defaults in its loan payments to its Senior Lenders and no qualified transferee or nominee is chosen by the Senior Lenders or is willing to take over from respondent PIATCO.

A reasonable reading of all these relevant provisions would reveal that the ARCA made the Government liable to pay “all amounts ... from time to time owed or which may become owing by Concessionaire [PIATCO] to Senior Lenders or any other persons or entities who have provided, loaned, or advanced funds or provided financial facilities to Concessionaire [PIATCO] for the Project [NAIA Terminal 3].”[44] These amounts include “without limitation, all principal, interest, associated fees, charges, reimbursements, and other related expenses... whether payable at maturity, by acceleration or otherwise.”[45] They further include amounts owed by respondent PIATCO to its “professional consultants and advisers, suppliers, contractors and sub-contractors” as well as “fees, charges and expenses of any agents or trustees” of the Senior Lenders or any other persons or entities who have provided loans or financial facilities to respondent PIATCO in relation to NAIA IPT III.[46] The counterpart provision in the 1997 Concession Agreement specifying the attendant liabilities that the Government would be obligated to pay should PIATCO default in its loan obligations is equally onerous to the Government as those contained in the ARCA. According to the 1997 Concession Agreement, in the event the Government is forced to prematurely take over NAIA IPT III as a result of respondent PIATCO’s default in the payment of its loan obligations to its Senior Lenders, it would be liable to pay the following amounts as “attendant liabilities”:

Section 1.06. Attendant Liabilities

Attendant Liabilities refer to all amounts recorded and from time to time outstanding in the books of the Concessionaire as owing to Unpaid Creditors who have provided, loaned or advanced funds actually used for the Project, including all interests, penalties, associated fees, charges, surcharges, indemnities, reimbursements and other related expenses, and further including amounts owed by Concessionaire to its suppliers, contractors and sub-contractors.[47]

These provisions reject respondents’ contention that what the Government is obligated to pay, in the event that respondent PIATCO defaults in the payment of its loans, is merely termination payment or just compensation for its takeover of NAIA IPT III. It is clear from said section 1.06 that what the Government would pay is the sum total of all the debts, including all interest, fees and charges, that respondent PIATCO incurred in pursuance of the NAIA IPT III Project. This reading is consistent with section 4.04 of the ARCA itself which states that the Government “shall make a termination payment to Concessionaire [PIATCO] equal to the Appraised Value (as hereinafter defined) of the Development Facility [NAIA Terminal III] or the sum of the Attendant Liabilities, if greater.” For sure, respondent PIATCO will not receive any amount less than sufficient to cover its debts, regardless of whether or not the value of NAIA IPT III, at the time of its turn over to the Government, may actually be less than the amount of PIATCO’s debts. The scheme is a form of direct government guarantee for it is undeniable that it leaves the government no option but to pay the “attendant liabilities” in the event that the

Senior Lenders are unable or unwilling to appoint a qualified nominee or transferee as a result of PIATCO's default in the payment of its Senior Loans. As we stressed in our Decision, this Court cannot depart from the legal maxim that "those that cannot be done directly cannot be done indirectly."

This is not to hold, however, that indirect government guarantee is not allowed under the BOT Law, as amended. The intention to permit indirect government guarantee is evident from the Senate deliberations on the amendments to the BOT Law. The idea is to allow for reasonable government undertakings, such as to authorize the project proponent to undertake related ventures within the project area, in order to encourage private sector participation in development projects.[48] An example cited by then Senator Gloria Macapagal-Arroyo, one of the sponsors of R.A. No. 7718, is the Mandaluyong public market which was built under the Build-and-Transfer ("BT") scheme wherein instead of the government paying for the transfer, the project proponent was allowed to operate the upper floors of the structure as a commercial mall in order to recoup their investments.[49] It was repeatedly stressed in the deliberations that in allowing indirect government guarantee, the law seeks to encourage both the government and the private sector to formulate reasonable and innovative government undertakings in pursuance of BOT projects. In no way, however, can the government be made liable for the debts of the project proponent as this would be tantamount to a direct government guarantee which is prohibited by the law. Such liability would defeat the very purpose of the BOT Law which is to encourage the use of private sector resources in the construction, maintenance and/or operation of development projects with no, or at least minimal, capital outlay on the part of the government.

The respondents again urge that should this Court affirm its ruling that the PIATCO Contracts contain direct government guarantee provisions, the whole contract should not be nullified. They rely on the separability clause in the PIATCO Contracts.

We are not persuaded.

The BOT Law and its implementing rules provide that there are three (3) essential requisites for an unsolicited proposal to be accepted: (1) the project involves a new concept in technology and/or is not part of the list of priority projects, (2) no direct government guarantee, subsidy or equity is required, and (3) the government agency or local government unit has invited by publication other interested parties to a public bidding and conducted the same.[50] The failure to fulfill any of the requisites will result in the denial of the proposal. Indeed, it is further provided that a direct government guarantee, subsidy or equity provision will "necessarily disqualify a proposal from being treated and accepted as an unsolicited proposal." [51] In fine, the mere inclusion of a direct government guarantee in an unsolicited proposal is fatal to the proposal. There is more reason to invalidate a contract if a direct government guarantee provision is inserted later in the contract via a backdoor amendment. Such an amendment constitutes a crass circumvention of the BOT Law and renders the entire contract void.

Respondent PIATCO likewise claims that in view of the fact that other BOT contracts such as the JANCOM contract, the Manila Water contract and the MRT contract had been considered valid, the PIATCO contracts should be held valid as well.[52] There is no parity in the cited cases. For instance, a reading of *Metropolitan Manila Development Authority v. JANCOM Environmental Corporation*[53] will show that its issue is different from the issues in the cases at bar. In the JANCOM case, the main issue is whether there is a perfected contract between JANCOM and the Government. The resolution of the issue hinged on the following: (1) whether the conditions precedent to the perfection of the contract were complied with; (2) whether there is a valid notice of award; and (3) whether the signature of the Secretary of the Department of Environment and Natural Resources is sufficient to bind the Government. These issue and sub-issues are clearly distinguishable and different. For one, the issue of direct government guarantee was not considered by this Court when it held the JANCOM contract valid, yet, it is a key reason for invalidating the PIATCO Contracts. It is a basic principle in law that cases with

dissimilar facts cannot have similar disposition.

This Court, however, is not unmindful of the reality that the structures comprising the NAIA IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. For the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity for the government can not unjustly enrich itself at the expense of PIATCO and its investors.

II.

Temporary takeover of business affected with
public interest in times of national emergency

Section 17, Article XII of the 1987 Constitution grants the State in times of national emergency the right to temporarily take over the operation of any business affected with public interest. This right is an exercise of police power which is one of the inherent powers of the State.

Police power has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."^[54] It consists of two essential elements. First, it is an imposition of restraint upon liberty or property. Second, the power is exercised for the benefit of the common good. Its definition in elastic terms underscores its all-encompassing and comprehensive embrace.^[55] It is and still is the "most essential, insistent, and illimitable"^[56] of the State's powers. It is familiar knowledge that unlike the power of eminent domain, police power is exercised without provision for just compensation for its paramount consideration is public welfare.^[57]

It is also settled that public interest on the occasion of a national emergency is the primary consideration when the government decides to temporarily take over or direct the operation of a public utility or a business affected with public interest. The nature and extent of the emergency is the measure of the duration of the takeover as well as the terms thereof. It is the State that prescribes such reasonable terms which will guide the implementation of the temporary takeover as dictated by the exigencies of the time. As we ruled in our Decision, this power of the State can not be negated by any party nor should its exercise be a source of obligation for the State.

Section 5.10(c), Article V of the ARCA provides that respondent PIATCO "shall be entitled to reasonable compensation for the duration of the temporary takeover by GRP, which compensation shall take into account the reasonable cost for the use of the Terminal and/or Terminal Complex."^[58] It clearly obligates the government in the exercise of its police power to compensate respondent PIATCO and this obligation is offensive to the Constitution. Police power can not be diminished, let alone defeated by any contract for its paramount consideration is public welfare and interest.^[59]

Again, respondent PIATCO's reliance on the case of *Heirs of Suguitan v. City of Mandaluyong*^[60] to justify its claim for reasonable compensation for the Government's temporary takeover of NAIA IPT III in times of national emergency is erroneous. What was involved in *Heirs of Suguitan* is the exercise of the state's power of eminent domain and not of police power, hence, just compensation was awarded. The cases at bar will not involve the exercise of the power of eminent domain.

III.

Monopoly

Section 19, Article XII of the 1987 Constitution mandates that the State prohibit or regulate monopolies when

public interest so requires. Monopolies are not per se prohibited. Given its susceptibility to abuse, however, the State has the bounden duty to regulate monopolies to protect public interest. Such regulation may be called for, especially in sensitive areas such as the operation of the country's premier international airport, considering the public interest at stake.

By virtue of the PIATCO contracts, NAIA IPT III would be the only international passenger airport operating in the Island of Luzon, with the exception of those already operating in Subic Bay Freeport Special Economic Zone ("SBFSEZ"), Clark Special Economic Zone ("CSEZ") and in Laoag City. Undeniably, the contracts would create a monopoly in the operation of an international commercial passenger airport at the NAIA in favor of PIATCO.

The grant to respondent PIATCO of the exclusive right to operate NAIA IPT III should not exempt it from regulation by the government. The government has the right, indeed the duty, to protect the interest of the public. Part of this duty is to assure that respondent PIATCO's exercise of its right does not violate the legal rights of third parties. We reiterate our ruling that while the service providers presently operating at NAIA Terminals I and II do not have the right to demand for the renewal or extension of their contracts to continue their services in NAIA IPT III, those who have subsisting contracts beyond the In-Service Date of NAIA IPT III can not be arbitrarily or unreasonably treated.

Finally, the Respondent Congressmen assert that at least two (2) committee reports by the House of Representatives found the PIATCO contracts valid and contend that this Court, by taking cognizance of the cases at bar, reviewed an action of a co-equal body.[61] They insist that the Court must respect the findings of the said committees of the House of Representatives.[62] With due respect, we cannot subscribe to their submission. There is a fundamental difference between a case in court and an investigation of a congressional committee. The purpose of a judicial proceeding is to settle the dispute in controversy by adjudicating the legal rights and obligations of the parties to the case. On the other hand, a congressional investigation is conducted in aid of legislation.[63] Its aim is to assist and recommend to the legislature a possible action that the body may take with regard to a particular issue, specifically as to whether or not to enact a new law or amend an existing one. Consequently, this Court cannot treat the findings in a congressional committee report as binding because the facts elicited in congressional hearings are not subject to the rigors of the Rules of Court on admissibility of evidence. The Court in assuming jurisdiction over the petitions at bar simply performed its constitutional duty as the arbiter of legal disputes properly brought before it, especially in this instance when public interest requires nothing less.

WHEREFORE, the motions for reconsideration filed by the respondent PIATCO, respondent Congressmen and the respondents-in-intervention are DENIED with finality.

SO ORDERED.

Davide, Jr., C.J., Austria-Martinez, Corona, and Carpio-Morales, JJ., concur.

Vitug, J., maintains his separate opinion in the main ponencia, promulgated on 05 May 2003.

Panganiban, J., reiterate his separate opinion in the main case, promulgated on May 5, 2003.

Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, and Azcuna, JJ., joins J. Vitug's separate opinion.

Carpio, J., no part.

Callejo, Sr., J., joins J. Panganiban in his concurring opinion.

Tinga, J., no part. Did not participate in the previous deliberations.

[1] G.R. No. 155547.

[2] G.R. Nos. 155001, 155547, and 155661.

[3] Id.

[4] An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector.

[5] Ignacio v. Court of Appeals, G.R. Nos. L-49541-52164, March 28, 1980; 96 SCRA 648, 652-653.

[6] Rollo, G.R. No. 155001, pp. 3102-3103.

[7] Alger Electric, Inc. v. Court of Appeals, G.R. No. L-34298, February 28, 1985, 135 SCRA 37, 43.

[8] J.H. FRIEDENTHAL, M. K. KANE, A. R. MILLER, CIVIL PROCEDURE 328 (1985).

[9] Section 2, Rule 3.

[10] J. COUND, CIVIL PROCEDURE: CASES & MATERIALS, 523 (1980).

[11] Bayan v. Zamora, G.R. No. 138570, October 10, 2000; 342 SCRA 449, 478; Kilosbayan, Inc. v. Morato, G.R. No. 118910, July 17, 1995, 246 SCRA 540, 562-563, citing Baker v. Carr, 369 U.S. 186, 7 L. Ed. 633 (1962).

[12] Supra note 11.

[13] Section 3.02 (b), ARCA, November 26, 1998; Section 3.02(b) of the 1997 Concession Agreement, July 12, 1997.

[14] Section 3.01 (d), ARCA. Equivalent provision is similarly numbered in the 1997 Concession Agreement.

[15] Ferrer, et al. v. NLRC, G.R. No. 100898, July 5, 1993, 224 SCRA 410, 421 citing Callanta vs. Carnation Philippines, Inc., G.R. No. 70615. October 28, 1986, 145 SCRA 268.

[16] Rollo, G.R. No. 15501, pp. 3096-3097.

[17] Id. at p. 3098.

[18] Id. at pp. 3270-3271.

[19] G.R. No. 155661.

[20] G.R. No. 155547.

[21] Rollo, G.R. No. 155661, p. 17; Rollo, G.R. No. 155547, p. 14.

[22] Section 5.4 Pre-qualification Requirements.

....

c. Financial Capability: The project proponent must have adequate capability to sustain the financing requirements for the detailed engineering design, construction and/or operation and maintenance phases of the project, as the case may be. For purposes of pre-qualification, this capability shall be measured in terms of (i) proof of the ability of the project proponent and/or the consortium to provide a minimum amount of equity to the project, and (ii) a letter testimonial from reputable banks attesting that the project proponent and/or members of the consortium are banking with them, that they are in good financial standing, and that they have adequate resources. The government agency/LGU concerned shall determine on a project-to-project basis and before

pre-qualification, the minimum amount of equity needed. (emphasis supplied).

[23] Emphasis supplied.

[24] The equivalent provision in the 1997 Concession Agreement states:

Section 2.01 Project Scope.

The scope of the project shall include:

(a) Financing the project at an actual Project cost of not less than Three Hundred Fifty Million United States Dollars (US\$350,000,000.00) while maintaining a debt-to-equity ratio of 70:30, or ensuring that the debt portion of the project financing does not exceed 70% of the actual Project cost;

. . .

[25] Combined net worth of the Paircargo Consortium is P558,384,871.55 out of an estimated project cost of US\$350,000,000.00 or approximately P9,183,650,000.00.

[26] Rollo, G.R. No. 155547, p. 392. Emphasis supplied.

[27] Under section 1.33 of the 1997 Concession Agreement, fees classified as “Public Utility Revenues” are: (a) aircraft parking fees; (b) aircraft tacking fees; (c) check-in counter fees; and (d) Terminal Fees. Section 1.27 of the 1997 Concession Agreement provides that “Non-Public Utility Revenues” refer to all other income not classified as Public Utility Revenues derived within the Terminal and the Terminal Complex ...”

[28] Section 6.06, 1997 Concession Agreement.

[29] Section 6.03, Draft Concession Agreement.

[30] Rollo, G.R. No. 155547, pp. 417-418. Emphasis supplied.

[31] Section 6.03 (c), 1997 Concession Agreement.

[32] Rollo, G.R. No. 155001, p. 3211. Emphasis supplied.

[33] Administrative Order No. 1, Series of 1993 enumerates the fees and charges that may be imposed by MIAA pursuant to its Charter.

[34] Rollo, G. R. No. 155001, p. 3212.

[35] Par. 2, Section 6.01, Draft Concession Agreement.

[36] Par. 2, Section 6.03, Draft Concession Agreement. The pertinent portions provide:

Section 6.03. Periodic Adjustment in Fees and Charges. Adjustments in the aircraft parking fees, aircraft tacking fees, groundhandling fees, rentals and airline offices, check-in-counter rentals and portorage fees shall be allowed only once every two years and in accordance with the Parametric Formula attached hereto as Annex F. Provided that adjustments shall be made effective only after the written express approval of the MIAA. Provided, further, that such approval of the MIAA, shall be contingent only on the conformity of the adjustments with the above said parametric formula. The first adjustment shall be made prior to the In-Service Date of the Terminal.

The MIAA reserves the right to regulate under the foregoing terms and conditions the lobby and vehicular parking fees and other new fees and charges as contemplated in paragraph 2 of Section 6.01 if in its judgment the users of the airport shall be deprived of a free option for the services they cover. Emphasis supplied.

....

[37] Section 6.01 (b), 1997 Concession Agreement.

[38] The term “Attendant Liabilities” under the 1997 Concession Agreement is defined as:

Attendant Liabilities refer to all amounts recorded and from time to time outstanding in the books of the Concessionaire as owing to Unpaid Creditors who have provided, loaned or advanced funds actually used for the Project, including all interests, penalties, associated fees, charges, surcharges, indemnities, reimbursements and other related expenses, and further including amounts owed by Concessionaire to its suppliers, contractors and sub-contractors. (Section 1.06)

[39] Rollo, G.R. No. 15501, p. 3065.

[40] Id. at p. 3071.

[41] Id. at pp. 3069-3070.

[42] Amended and Restated Concession Agreement dated November 26, 1998.

Section 4.04 Security

....

(c) GRP agrees with Concessionaire (PIATCO) that it shall negotiate in good faith and enter into direct agreement with the Senior Lenders, or with an agent of such Senior Lenders (which agreement shall be subject to the approval of the Bangko Sentral ng Pilipinas), in such form as may be reasonably acceptable to both GRP and Senior Lenders, with regard, inter alia, to the following parameters:

....

(iv) If the Concessionaire [PIATCO] is in default under a payment obligation owed to the Senior Lenders, and as a result thereof the Senior Lenders have become entitled to accelerate the Senior Loans, the Senior Lenders shall have the right to notify GRP of the same, and without prejudice to any other rights of the Senior Lenders or any Senior Lenders' agent may have (including without limitation under security interests granted in favor of the Senior Lenders), to either in good faith identify and designate a nominee which is qualified under sub-clause (viii)(y) below to operate the Development Facility [NAIA Terminal 3] or transfer the Concessionaire's [PIATCO] rights and obligations under this Agreement to a transferee which is qualified under sub-clause (viii) below;

....

(vi) if the Senior Lenders, acting in good faith and using reasonable efforts, are unable to designate a nominee or effect a transfer in terms and conditions satisfactory to the Senior Lenders within one hundred eighty (180) days after giving GRP notice as referred to respectively in (iv) or (v) above, then GRP and the Senior Lenders shall endeavor in good faith to enter into any other arrangement relating to the Development Facility [NAIA Terminal 3] (other than a turnover of the Development Facility [NAIA Terminal 3] to GRP) within the following one hundred eighty (180) days. If no agreement relating to the Development Facility [NAIA Terminal 3] is arrived at by GRP and the Senior Lenders within the said 180-day period, then at the end thereof the Development Facility [NAIA Terminal 3] shall be transferred by the Concessionaire [PIATCO] to GRP or its designee and GRP shall make a termination payment to Concessionaire [PIATCO] equal to the Appraised Value (as hereinafter defined) of the Development Facility [NAIA Terminal 3] or the sum of the Attendant Liabilities, if greater. Notwithstanding Section 8.01(c) hereof, this Agreement shall be deemed terminated upon the transfer of the Development Facility [NAIA Terminal 3] to GRP pursuant hereto;

....

[43] Amended and Restated Concession Agreement (“ARCA”) dated November 26, 1998.

Section 1.06. Attendant Liabilities

Attendant Liabilities refer to all amounts in each case supported by verifiable evidence from time to time owed or which may become owing by Concessionaire [PIATCO] to Senior Lenders or any other persons or entities who have provided, loaned, or advanced funds or provided financial facilities to Concessionaire [PIATCO] for the Project [NAIA Terminal 3], including, without limitation, all principal, interest, associated fees, charges, reimbursements, and other related expenses (including the fees, charges and expenses of any agents or trustees of such persons or entities), whether payable at maturity, by acceleration or otherwise, and further including amounts owed by Concessionaire [PIATCO] to its professional consultants and advisers, suppliers, contractors and sub-contractors.

[44] Section 1.06, Article I, Amended and Restated Concession Agreement.

[45] *Id.* Emphasis supplied.

[46] *Id.* Emphasis supplied.

[47] Emphasis supplied.

[48] III Record of the Senate 598, 602.

[49] *Id.* at 455-456.

[50] Section 4-A, Republic Act No. 7718, as amended, May 5, 1994; Section 11.1, Rule 11, Implementing Rules and Regulations.

[51] Section 11.3, Rule 11, Implementing Rules and Regulations.

[52] Rollo, G.R. No. 15501, pp. 3073-3076.

[53] G.R. No. 147465, January 20, 2002; 375 SCRA 320.

[54] Philippine Association of Service Providers Co., Inc. v. Franklin M. Drilon, et al., G.R. No. L-81958, June 30, 1988 citing *Edu v. Ericta*, G.R. No. L-32096, October 24, 1970, 35 SCRA 481, 487.

[55] *Id.*

[56] *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government*, G.R. No. 75885; May 27, 1987 citing *Freund, The Police Power* (Chicago, 1904), cited by Cruz, I.A., *Constitutional Law*; 4th ed., p. 42, *Smith, Bell & Co. v. Natividad*, 40 Phil. 136, *U.S. v. Toribio*, 15 Phil. 85, *Churchill and Tait v. Rafferty*, 32 Phil. 580, and *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660; *Florentian A. Lozano v. Antonio M. Martinez*, G.R. No. L-63419, December 18, 1986; *Alejandro Melchor, Jr. v. Jose L. Moya, et al.*, G.R. No. L-35256, March 17, 1983; 206 Phil 1; *Ichong vs. Hernandez*, L-7995, May 31, 1957.

[57] *Jose D. Sangalang, et al., v. Intermediate Appellate Court, et al.*, G.R. Nos. 71169, 74376, 76394, 78182, 82281 and 60727, August 25, 1989.

[58] Section 5.10(c), Article V of the Amended and Restated Concession Agreement, November 26, 1998.

[59] *Taxicabs of Metro Manila, Inc., et al. v. Board of Transportation, et al.*, G.R. No. L-59234, September 30, 1982, 202 Phil. 925; *Ynot v. Intermediate Appellate Court*, G.R. No. 74457, March 20, 1987; *Presidential*

Commission on Good Government v. Pena, G.R. No. L-77663. April 12, 1988.

[60] 328 SCRA 137.

[61] Rollo, G.R.No. 155547, pp. 3018-3020.

[62] Id.

[63] Arnault v. Nazareno, G.R. No. L-3820, July 18, 1950.

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