

**LAWYERS AGAINST MONOPOLY AND POVERTY (LAMP),
REPRESENTED BY ITS CHAIRMAN AND COUNSEL, CEFERINO PADUA,
MEMBERS, ALBERTO ABELEDA, JR., ELEAZAR ANGELES, GREGELY
FULTON ACOSTA, VICT...**

G.R. No. 164987. April 24, 2012

Ponente: MENDOZA, J.

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MENDOZA, J.:

For consideration of the Court is an original action for certiorari assailing the constitutionality and legality of the implementation of the Priority Development Assistance Fund (PDAF) as provided for in Republic Act (R.A.) 9206 or the General Appropriations Act for 2004 (GAA of 2004). Petitioner Lawyers Against Monopoly and Poverty (LAMP), a group of lawyers who have banded together with a mission of dismantling all forms of political, economic or social monopoly in the country,[1] also sought the issuance of a writ of preliminary injunction or temporary restraining order to enjoin respondent Secretary of the Department of Budget and Management (DBM) from making, and, thereafter, releasing budgetary allocations to individual members of Congress as “pork barrel” funds out of PDAF. LAMP likewise aimed to stop the National Treasurer and the Commission on Audit (COA) from enforcing the questioned provision.

On September 14, 2004, the Court required respondents, including the President of the Senate and the Speaker of the House of Representatives, to comment on the petition. On April 7, 2005, petitioner filed a Reply thereto.[2] On April 26, 2005, both parties were required to submit their respective memoranda.

The GAA of 2004 contains the following provision subject of this petition:

PRIORITY DEVELOPMENT ASSISTANCE FUND

For fund requirements of priority development programs and projects, as indicated hereunder –
P8,327,000,000.00

X x x x x

Special Provision

1. Use and Release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects or to fund the required counterpart for foreign-assisted programs and projects: PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned: PROVIDED, FURTHER, That the allocations authorized herein may be realigned to any expense class, if deemed necessary: PROVIDED FURTHERMORE, That a maximum of ten percent (10%) of the authorized allocations by district may be used for procurement of rice and other basic commodities which shall be purchased from the National Food Authority.

Petitioner’s Position

According to LAMP, the above provision is silent and, therefore, prohibits an automatic or direct allocation of lump sums to individual senators and congressmen for the funding of projects. It does not empower individual Members of Congress to propose, select and identify programs and projects to be funded out of PDAF. “In previous GAAs, said allocation and identification of projects were the main features of the ‘pork barrel’ system technically known as Countrywide Development Fund (CDF). Nothing of the sort is now seen in the present law (R.A. No. 9206 of CY 2004).”[3] In its memorandum, LAMP insists that “[t]he silence in the law of direct or even indirect participation by members of Congress betrays a deliberate intent on the part of the Executive and the Congress to scrap and do away with the ‘pork barrel’ system.”[4] In other words, “[t]he omission of the PDAF provision to specify sums as ‘allocations’ to individual Members of Congress is a ‘casus omissus’ signifying an omission intentionally made by Congress that this Court is forbidden to supply.”[5] Hence, LAMP is of the conclusion that “the pork barrel has become legally defunct under the present state of GAA 2004.”[6]

LAMP further decries the supposed flaws in the implementation of the provision, namely: 1) the DBM illegally made and directly released budgetary allocations out of PDAF in favor of individual Members of Congress; and 2) the latter do not possess the power to propose, select and identify which projects are to be actually funded by PDAF.

For LAMP, this situation runs afoul against the principle of separation of powers because in receiving and, thereafter, spending funds for their chosen projects, the Members of Congress in effect intrude into an executive function. In other words, they cannot directly spend the funds, the appropriation for which was made by them. In their individual capacities, the Members of Congress cannot “virtually tell or dictate upon the Executive Department how to spend taxpayer’s money.”[7] Further, the authority to propose and select projects does not pertain to legislation. “It is, in fact, a non-legislative function devoid of constitutional sanction,”[8] and, therefore, impermissible and must be considered nothing less than malfeasance. The proposal and identification of the projects do not involve the making of laws or the repeal and amendment thereof, which is the only function given to the Congress by the Constitution. Verily, the power of appropriation granted to Congress as a collegial body, “does not include the power of the Members thereof to individually propose, select and identify which projects are to be actually implemented and funded - a function which essentially and exclusively pertains to the Executive Department.”[9] By allowing the Members of Congress to receive direct allotment from the fund, to propose and identify projects to be funded and to perform the actual spending of the fund, the implementation of the PDAF provision becomes legally infirm and constitutionally repugnant.

Respondents’ Position

For their part, the respondents[10] contend that the petition miserably lacks legal and factual grounds. Although they admit that PDAF traced its roots to CDF,[11] they argue that the former should not be equated with “pork barrel,” which has gained a derogatory meaning referring “to government projects affording political opportunism.”[12] In the petition, no proof of this was offered. It cannot be gainsaid then that the petition cannot stand on inconclusive media reports, assumptions and conjectures alone. Without probative value, media reports cited by the petitioner deserve scant consideration especially the accusation that corrupt legislators have allegedly proposed cuts or slashes from their pork barrel. Hence, the Court should decline the petitioner’s plea to take judicial notice of the supposed iniquity of PDAF because there is no concrete proof that PDAF, in the guise of “pork barrel,” is a source of “dirty money” for unscrupulous lawmakers and other officials who tend to misuse their allocations. These “facts” have no attributes of sufficient notoriety or general recognition accepted by the public without qualification, to be subjected to judicial notice. This applies, a fortiori, to the claim that Members of Congress are beneficiaries of commissions (kickbacks) taken out of the PDAF allocations and releases and preferred by favored contractors representing from 20% to 50% of the approved budget for a particular project.

[13] Suffice it to say, the perceptions of LAMP on the implementation of PDAF must not be based on mere speculations circulated in the news media preaching the evils of pork barrel. Failing to present even an iota of proof that the DBM Secretary has been releasing lump sums from PDAF directly or indirectly to individual Members of Congress, the petition falls short of its cause.

Likewise admitting that CDF and PDAF are “appropriations for substantially similar, if not the same, beneficial purposes,” [14] the respondents invoke *Philconsa v. Enriquez*, [15] where CDF was described as an imaginative and innovative process or mechanism of implementing priority programs/projects specified in the law. In *Philconsa*, the Court upheld the authority of individual Members of Congress to propose and identify priority projects because this was merely recommendatory in nature. In said case, it was also recognized that individual members of Congress far more than the President and their congressional colleagues were likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project.

The Issues

The respondents urge the Court to dismiss the petition for its failure to establish factual and legal basis to support its claims, thereby lacking an essential requisite of judicial review—an actual case or controversy.

The Court’s Ruling

To the Court, the case boils down to these issues: 1) whether or not the mandatory requisites for the exercise of judicial review are met in this case; and 2) whether or not the implementation of PDAF by the Members of Congress is unconstitutional and illegal.

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[16]

An aspect of the “case-or-controversy” requirement is the requisite of “ripeness.” In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another concern is the evaluation of the twofold aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.[17]

In this case, the petitioner contested the implementation of an alleged unconstitutional statute, as citizens and taxpayers. According to LAMP, the practice of direct allocation and release of funds to the Members of Congress and the authority given to them to propose and select projects is the core of the law’s flawed execution resulting in a serious constitutional transgression involving the expenditure of public funds. Undeniably, as taxpayers, LAMP would somehow be adversely affected by this. A finding of unconstitutionality would necessarily be tantamount to a misapplication of public funds which, in turn, cause injury or hardship to taxpayers. This affords “ripeness” to the present controversy.

Further, the allegations in the petition do not aim to obtain sheer legal opinion in the nature of advice concerning legislative or executive action. The possibility of constitutional violations in the implementation of PDAF surely involves the interplay of legal rights susceptible of judicial resolution. For LAMP, this is the right to recover

public funds possibly misapplied by no less than the Members of Congress. Hence, without prejudice to other recourse against erring public officials, allegations of illegal expenditure of public funds reflect a concrete injury that may have been committed by other branches of government before the court intervenes. The possibility that this injury was indeed committed cannot be discounted. The petition complains of illegal disbursement of public funds derived from taxation and this is sufficient reason to say that there indeed exists a definite, concrete, real or substantial controversy before the Court.

Anent locus standi, “the rule is that the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustained, direct injury as a result of its enforcement.[18] The gist of the question of standing is whether a party alleges “such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.”[19] In public suits, the plaintiff, representing the general public, asserts a “public right” in assailing an allegedly illegal official action. The plaintiff may be a person who is affected no differently from any other person, and could be suing as a “stranger,” or as a “citizen” or “taxpayer.”[20] Thus, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law.[21] Of greater import than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute.[22]

Here, the sufficient interest preventing the illegal expenditure of money raised by taxation required in taxpayers’ suits is established. Thus, in the claim that PDAF funds have been illegally disbursed and wasted through the enforcement of an invalid or unconstitutional law, LAMP should be allowed to sue. The case of Pascual v. Secretary of Public Works[23] is authority in support of the petitioner:

In the determination of the degree of interest essential to give the requisite standing to attack the constitutionality of a statute, the general rule is that not only persons individually affected, but also taxpayers have sufficient interest in preventing the illegal expenditures of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditure of public moneys. [11 Am. Jur. 761, Emphasis supplied.]

Lastly, the Court is of the view that the petition poses issues impressed with paramount public interest. The ramification of issues involving the unconstitutional spending of PDAF deserves the consideration of the Court, warranting the assumption of jurisdiction over the petition.

Now, on the substantive issue.

The powers of government are generally divided into three branches: the Legislative, the Executive and the Judiciary. Each branch is supreme within its own sphere being independent from one another and it is this supremacy which enables the courts to determine whether a law is constitutional or unconstitutional.[24] The Judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.[25]

With these long-established precepts in mind, the Court now goes to the crucial question: In allowing the direct allocation and release of PDAF funds to the Members of Congress based on their own list of proposed projects, did the implementation of the PDAF provision under the GAA of 2004 violate the Constitution or the laws?

The Court rules in the negative.

In determining whether or not a statute is unconstitutional, the Court does not lose sight of the presumption of validity accorded to statutory acts of Congress. In *Fariñas v. The Executive Secretary*,^[26] the Court held that:

Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. Every presumption should be indulged in favor of the constitutionality and the burden of proof is on the party alleging that there is a clear and unequivocal breach of the Constitution.

To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because “to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.”^[27] This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.^[28]

The petition is miserably wanting in this regard. LAMP would have the Court declare the unconstitutionality of the PDAF’s enforcement based on the absence of express provision in the GAA allocating PDAF funds to the Members of Congress and the latter’s encroachment on executive power in proposing and selecting projects to be funded by PDAF. Regrettably, these allegations lack substantiation. No convincing proof was presented showing that, indeed, there were direct releases of funds to the Members of Congress, who actually spend them according to their sole discretion. Not even a documentation of the disbursement of funds by the DBM in favor of the Members of Congress was presented by the petitioner to convince the Court to probe into the truth of their claims. Devoid of any pertinent evidentiary support that illegal misuse of PDAF in the form of kickbacks has become a common exercise of unscrupulous Members of Congress, the Court cannot indulge the petitioner’s request for rejection of a law which is outwardly legal and capable of lawful enforcement. In a case like this, the Court’s hands are tied in deference to the presumption of constitutionality lest the Court commits unpardonable judicial legislation. The Court is not endowed with the power of clairvoyance to divine from scanty allegations in pleadings where justice and truth lie.^[29] Again, newspaper or electronic reports showing the appalling effects of PDAF cannot be appreciated by the Court, “not because of any issue as to their truth, accuracy, or impartiality, but for the simple reason that facts must be established in accordance with the rules of evidence.”^[30]

Hence, absent a clear showing that an offense to the principle of separation of powers was committed, much less tolerated by both the Legislative and Executive, the Court is constrained to hold that a lawful and regular government budgeting and appropriation process ensued during the enactment and all throughout the implementation of the GAA of 2004. The process was explained in this wise, in *Guingona v. Carague*:^[31]

1. Budget preparation. The first step is essentially tasked upon the Executive Branch and covers the estimation of government revenues, the determination of budgetary priorities and activities within the constraints imposed by available revenues and by borrowing limits, and the translation of desired priorities and activities into expenditure levels.

Budget preparation starts with the budget call issued by the Department of Budget and Management. Each agency is required to submit agency budget estimates in line with the requirements consistent with the general ceilings set by the Development Budget Coordinating Council (DBCC).

With regard to debt servicing, the DBCC staff, based on the macro-economic projections of interest rates (e.g. LIBOR rate) and estimated sources of domestic and foreign financing, estimates debt service levels. Upon issuance of budget call, the Bureau of Treasury computes for the interest and principal payments for the year for all direct national government borrowings and other liabilities assumed by the same.

2. Legislative authorization. — At this stage, Congress enters the picture and deliberates or acts on the budget proposals of the President, and Congress in the exercise of its own judgment and wisdom formulates an appropriation act precisely following the process established by the Constitution, which specifies that no money may be paid from the Treasury except in accordance with an appropriation made by law.

x x x

3. Budget Execution. Tasked on the Executive, the third phase of the budget process covers the various operational aspects of budgeting. The establishment of obligation authority ceilings, the evaluation of work and financial plans for individual activities, the continuing review of government fiscal position, the regulation of funds releases, the implementation of cash payment schedules, and other related activities comprise this phase of the budget cycle.

4. Budget accountability. The fourth phase refers to the evaluation of actual performance and initially approved work targets, obligations incurred, personnel hired and work accomplished are compared with the targets set at the time the agency budgets were approved.

Under the Constitution, the power of appropriation is vested in the Legislature, subject to the requirement that appropriation bills originate exclusively in the House of Representatives with the option of the Senate to propose or concur with amendments.[32] While the budgetary process commences from the proposal submitted by the President to Congress, it is the latter which concludes the exercise by crafting an appropriation act it may deem beneficial to the nation, based on its own judgment, wisdom and purposes. Like any other piece of legislation, the appropriation act may then be susceptible to objection from the branch tasked to implement it, by way of a Presidential veto. Thereafter, budget execution comes under the domain of the Executive branch which deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects. Simply put, from the regulation of fund releases, the implementation of payment schedules and up to the actual spending of the funds specified in the law, the Executive takes the wheel. “The DBM lays down the guidelines for the disbursement of the fund. The Members of Congress are then requested by the President to recommend projects and programs which may be funded from the PDAF. The list submitted by the Members of Congress is endorsed by the Speaker of the House of Representatives to the DBM, which reviews and determines whether such list of projects submitted are consistent with the guidelines and the priorities set by the Executive.”[33] This demonstrates the power given to the President to execute appropriation laws and therefore, to exercise the spending per se of the budget.

As applied to this case, the petition is seriously wanting in establishing that individual Members of Congress receive and thereafter spend funds out of PDAF. Although the possibility of this unscrupulous practice cannot be entirely discounted, surmises and conjectures are not sufficient bases for the Court to strike down the practice for being offensive to the Constitution. Moreover, the authority granted the Members of Congress to propose and select projects was already upheld in *Philconsa*. This remains as valid case law. The Court sees no need to review or reverse the standing pronouncements in the said case. So long as there is no showing of a direct participation of legislators in the actual spending of the budget, the constitutional boundaries between the Executive and the Legislative in the budgetary process remain intact.

While the Court is not unaware of the yoke caused by graft and corruption, the evils propagated by a piece of valid legislation cannot be used as a tool to overstep constitutional limits and arbitrarily annul acts of Congress. Again, “all presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom,

justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted.”[34]

There can be no question as to the patriotism and good motive of the petitioner in filing this petition. Unfortunately, the petition must fail based on the foregoing reasons.

WHEREFORE, the petition is DISMISSED without pronouncement as to costs.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.

[1] Rollo, p. 7.

[2] Id. at 113-117.

[3] Id. at 9.

[4] Id. at 10.

[5] Id. at 163.

[6] Id. at 152.

[7] Id. at 154.

[8] Id.

[9] Id. at 156.

[10] The Office of the Solicitor General entered its appearance and filed a Comment for the Secretary of the Department of Budget and Management, Treasurer of the Philippines and Commission on Audit, while then Speaker of the House of Representatives, Jose De Venecia Jr. filed his separate Comment dated January 6, 2005.

[11] Rollo, p. 66.

[12] Id. at 62.

[13] Id. at 149.

[14] Id. at 67.

[15] G.R. No. 113888, August 19, 1994, 235 SCRA 506.

[16] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35.

[17] *Lozano v. Nograles*, G.R. Nos. 187883, and 187910, June 16, 2009, 589 SCRA 356, 358, citing *Guingona Jr. v. Court of Appeals*, 354 Phil. 415, 427-428.

[18] *People v. Vera*, 65 Phil. 56, 89 (1937).

[19] *Navarro v. Ermita*, G.R. No. 180050, April 12, 2011, 648 SCRA 400, 434.

[20] *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 and 171424, May 3, 2006, 489 SCRA 160.

- [21] Public Interest Center, Inc. v. Honorable Vicente Q. Roxas, in his capacity as Presiding Judge, RTC of Quezon City, Branch 227, G.R. No. 125509, January 31, 2007, 513 SCRA 457, 470.
- [22] People v. Vera, 65 Phil. 56, 89 (1937).
- [23] 110 Phil. 331, 342-343 (1960).
- [24] Separate Opinion, Joker P. Arroyo v. HRET and Augusto I. Syjuco, Jr., 316 Phil. 464 (1995).
- [25] Tanada v. Angara, 338 Phil. 546, 575 (1997).
- [26] 463 Phil. 179, 197 (2003).
- [27] Abakada Guro Party List v. Purisima, G.R. No. 166715, August 14, 2008, 562 SCRA 251.
- [28] Drilon v. Lim, G.R. No. 112497, August 4, 1994, 235 SCRA 135.
- [29] Dissenting Opinion, The Board of Election Inspectors et al. v. Edmundo S. Piccio Judge of First Instance of Leyte at Tacloban, and Cesario R. Colasito, G.R. No. L-1852, October 14, 1948/ September 30, 1948.
- [30] Lim v. Hon. Executive Secretary, 430 Phil. 555, 580 (2002).
- [31] 273 Phil. 443, 460, (1991).
- [32] 1987 Constitution, Article 6 Sections 24 and 29 (1).
- [33] Rollo, p. 98.
- [34] Victoriano v. Elizalde Rope Workers' Union, 158 Phil. 60 (1974).

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