

REVIEW CENTER ASSOCIATION OF THE PHILIPPINES, PETITIONER, VS. EXECUTIVE SECRETARY EDUARDO ERMITA AND COMMISSION ON HIGHER EDUCATION REPRESENTED BY ITS CHAIRMAN ROMULO L. NERI, R...

G.R. No. 180046. April 02, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for prohibition and mandamus assailing Executive Order No. 566 (EO 566)[1] and Commission on Higher Education (CHED) Memorandum Order No. 30, series of 2007 (RIRR).[2]

The Antecedent Facts

On 11 and 12 June 2006, the Professional Regulation Commission (PRC) conducted the Nursing Board Examinations nationwide. In June 2006, licensure applicants wrote the PRC to report that handwritten copies of two sets of examinations were circulated during the examination period among the examinees reviewing at the R.A. Gapuz Review Center and Inress Review Center. George Cordero, Inress Review Center's President, was then the incumbent President of the Philippine Nurses Association. The examinees were provided with a list of 500 questions and answers in two of the examinations' five subjects, particularly Tests III (Psychiatric Nursing) and V (Medical-Surgical Nursing). The PRC later admitted the leakage and traced it to two Board of Nursing members.[3] On 19 June 2006, the PRC released the results of the Nursing Board Examinations. On 18 August 2006, the Court of Appeals restrained the PRC from proceeding with the oath-taking of the successful examinees set on 22 August 2006.

Consequently, President Gloria Macapagal-Arroyo (President Arroyo) replaced all the members of the PRC's Board of Nursing. President Arroyo also ordered the examinees to re-take the Nursing Board Examinations.

On 8 September 2006, President Arroyo issued EO 566 which authorized the CHED to supervise the establishment and operation of all review centers and similar entities in the Philippines.

On 3 November 2006, the CHED, through its then Chairman Carlito S. Puno (Chairman Puno), approved CHED Memorandum Order No. 49, series of 2006 (IRR).[4]

In a letter dated 24 November 2006,[5] the Review Center Association of the Philippines (petitioner), an organization of independent review centers, asked the CHED to "amend, if not withdraw" the IRR arguing, among other things, that giving permits to operate a review center to Higher Education Institutions (HEIs) or consortia of HEIs and professional organizations will effectively abolish independent review centers.

In a letter dated 3 January 2007,[6] Chairman Puno wrote petitioner, through its President Jose Antonio Fudolig (Fudolig), that to suspend the implementation of the IRR would be inconsistent with the mandate of EO 566.

Chairman Puno wrote that the IRR was presented to the stakeholders during a consultation process prior to its finalization and publication on 13 November 2006. Chairman Puno also wrote that petitioner's comments and suggestions would be considered in the event of revisions to the IRR.

In view of petitioner's continuing request to suspend and re-evaluate the IRR, Chairman Puno, in a letter dated 9 February 2007,[7] invited petitioner's representatives to a dialogue on 14 March 2007. In accordance with what was agreed upon during the dialogue, petitioner submitted to the CHED its position paper on the IRR. Petitioner also requested the CHED to confirm in writing Chairman Puno's statements during the dialogue, particularly on lowering of the registration fee from P400,000 to P20,000 and the requirement for reviewers to have five years' teaching experience instead of five years' administrative experience. Petitioner likewise requested for a categorical answer to their request for the suspension of the IRR. The CHED did not reply to the letter.

On 7 May 2007, the CHED approved the RIRR. On 22 August 2007, petitioner filed before the CHED a Petition to Clarify/Amend Revised Implementing Rules and Regulations[8] praying for a ruling:

- Amending the RIRR by excluding independent review centers from the coverage of the CHED;
- Clarifying the meaning of the requirement for existing review centers to tie-up or be integrated with HEIs, consortium or HEIs and PRC-recognized professional associations with recognized programs, or in the alternative, to convert into schools; and
- Revising the rules to make it conform with Republic Act No. 7722 (RA 7722)[9] limiting the CHED's coverage to public and private institutions of higher education as well as degree-granting programs in post-secondary educational institutions.

On 8 October 2007, the CHED issued Resolution No. 718-2007[10] referring petitioner's request to exclude independent review centers from CHED's supervision and regulation to the Office of the President as the matter requires the amendment of EO 566. In a letter dated 17 October 2007,[11] then CHED Chairman Romulo L. Neri (Chairman Neri) wrote petitioner regarding its petition to be excluded from the coverage of the CHED in the RIRR. Chairman Neri stated:

While it may be true that regulation of review centers is not one of the mandates of CHED under Republic Act 7722, however, on September 8, 2006, Her Excellency, President Gloria Macapagal-Arroyo, issued Executive Order No. 566 directing the Commission on Higher Education to regulate the establishment and operation of review centers and similar entities in the entire country.

With the issuance of the aforesaid Executive Order, the CHED now is the agency that is mandated to regulate the establishment and operation of all review centers as provided for under Section 4 of the Executive Order which provides that "No review center or similar entities shall be established and/or operate review classes without the favorable expressed indorsement of the CHED and without the issuance of the necessary permits or authorizations to conduct review classes. x x x"

To exclude the operation of independent review centers from the coverage of CHED would clearly contradict the intention of the said Executive Order No. 566.

Considering that the requests requires the amendment of Executive Order No. 566, the Commission, during its 305[th] Commission Meeting, resolved that the said request be directly referred to the Office of the President for appropriate action.

As to the request to clarify what is meant by tie-up/be integrated with an HEI, as required under the Revised Implementing Rules and Regulations, tie-up/be integrated simply means, to be in partner with an HEI.[12] (Boldfacing and underscoring in the original)

On 26 October 2007, petitioner filed a petition for Prohibition and Mandamus before this Court praying for the annulment of the RIRR, the declaration of EO 566 as invalid and unconstitutional, and the prohibition against CHED from implementing the RIRR.

Dr. Freddie T. Bernal, Director III, Officer-In-Charge, Office of the Director IV of CHED, sent a letter^[13] to the President of Northcap Review Center, Inc., a member of petitioner, that it had until 27 November 2007 to comply with the RIRR.

On 15 February 2008,^[14] PIMSAT Colleges (respondent-intervenor) filed a Motion For Leave to Intervene and To Admit Comment-in-Intervention and a Comment-in-Intervention praying for the dismissal of the petition. Respondent-intervenor alleges that the Office of the President and the CHED did not commit any act of grave abuse of discretion in issuing EO 566 and the RIRR. Respondent-intervenor alleges that the requirements of the RIRR are reasonable, doable, and are not designed to deprive existing review centers of their review business. The Court granted the Motion for Leave to Intervene and to Admit Comment-in-Intervention in its 11 March 2008 Resolution.^[15]

On 23 April 2008, a Motion for Leave of Court for Intervention In Support of the Petition and a Petition In Intervention were filed by CPA Review School of the Philippines, Inc. (CPAR), Professional Review and Training Center, Inc. (PRTC), ReSA Review School, Inc. (ReSA), CRC-ACE Review School, Inc. (CRC-ACE), all independent CPA review centers operating in Manila (collectively, petitioners-intervenors). Petitioners-intervenors pray for the declaration of EO 566 and the RIRR as invalid on the ground that both constitute an unconstitutional exercise of legislative power. The Court granted the intervention in its 29 April 2008 Resolution.^[16]

On 21 May 2008, the CHED issued CHED Memorandum Order No. 21, Series of 2008 (CMO 21, s. 2008)^[17] extending the deadline for six months from 27 May 2008 for all existing independent review centers to tie-up or be integrated with HEIs in accordance with the RIRR.

In its 25 November 2008 Resolution, this Court resolved to require the parties to observe the status quo prevailing before the issuance of EO 566, the RIRR, and CMO 21, s. 2008.

The Assailed Executive Order and the RIRR

Executive Order No. 566 states in full:

EXECUTIVE ORDER NO. 566

DIRECTING THE COMMISSION ON HIGHER EDUCATION TO REGULATE THE ESTABLISHMENT AND OPERATION OF REVIEW CENTERS AND SIMILAR ENTITIES

WHEREAS, the State is mandated to protect the right of all citizens to quality education at all levels and shall take appropriate steps to make education accessible to all, pursuant to Section 1, Article XIV of the 1987 Constitution;

WHEREAS, the State has the obligation to ensure and promote quality education through the proper supervision and regulation of the licensure examinations given through the various Boards of Examiners under the Professional Regulation Commission;

WHEREAS, the lack of regulatory framework for the establishment and operation of review centers and similar entities, as shown in recent events, have adverse consequences and affect public interest and welfare;

WHEREAS, the overriding necessity to protect the public against substandard review centers and unethical

practices committed by some review centers demand that a regulatory framework for the establishment and operation of review centers and similar entities be immediately instituted;

WHEREAS, Republic Act No. 7722, otherwise known as the Higher Education Act of 1994, created the Commission on Higher Education, which is best equipped to carry out the provisions pertaining to the regulation of the establishment and operation of review centers and similar entities.

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, the President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Establishment of a System of Regulation for Review Centers and Similar Entities. The Commission on Higher Education (CHED), in consultation with other concerned government agencies, is hereby directed to formulate a framework for the regulation of review centers and similar entities, including but not limited to the development and institutionalization of policies, standards, guidelines for the establishment, operation and accreditation of review centers and similar entities; maintenance of a mechanism to monitor the adequacy, transparency and propriety of their operations; and reporting mechanisms to review performance and ethical practice.

SEC. 2. Coordination and Support. The Professional Regulation Commission (PRC), Technical Skills Development Authority (TESDA), Securities and Exchange Commission (SEC), the various Boards of Examiners under the PRC, as well as other concerned non-government organizations like professional societies, and various government agencies, such as the Department of Justice (DOJ), National Bureau of Investigation (NBI), Office of the Solicitor General (OSG), and others that may be tapped later, shall provide the necessary assistance and technical support to the CHED in the successful operationalization of the System of Regulation envisioned by this Executive Order.

SEC. 3. Permanent Office and Staff. To ensure the effective implementation of the System of Regulation, the CHED shall organize a permanent office under its supervision to be headed by an official with the rank of Director and to be composed of highly competent individuals with expertise in educational assessment, evaluation and testing; policies and standards development, monitoring, legal and enforcement; and statistics as well as curriculum and instructional materials development. The CHED shall submit the staffing pattern and budgetary requirements to the Department of Budget and Management (DBM) for approval.

SEC. 4. Indorsement Requirement. No review center or similar entities shall be established and/or operate review classes without the favorable expressed indorsement of the CHED and without the issuance of the necessary permits or authorizations to conduct review classes. After due consultation with the stakeholders, the concerned review centers and similar entities shall be given a reasonable period, at the discretion of the CHED, to comply with the policies and standards, within a period not exceeding three (3) years, after due publication of this Executive Order. The CHED shall see to it that the System of Regulation including the implementing mechanisms, policies, guidelines and other necessary procedures and documentation for the effective implementation of the System, are completed within sixty days (60) upon effectivity of this Executive Order.

SEC. 5. Funding. The initial amount necessary for the development and implementation of the System of Regulation shall be sourced from the CHED Higher Education Development Fund (HEDF), subject to the usual government accounting and auditing practices, or from any applicable funding source identified by the DBM. For the succeeding fiscal year, such amounts as may be necessary for the budgetary requirement of implementing the System of Regulation and the provisions of this Executive Order shall be provided for in the annual General Appropriations Act in the budget of the CHED. Whenever necessary, the CHED may tap its Development Funds as supplemental source of funding for the effective implementation of the regulatory system. In this connection, the CHED is hereby authorized to create special accounts in the HEDF exclusively for the purpose of implementing the provisions of this Executive Order.

SEC. 6. Review and Reporting. The CHED shall provide for the periodic review performance of review

centers and similar entities and shall make a report to the Office of the President of the results of such review, evaluation and monitoring.

SEC. 7. Separability. Any portion or provision of this Executive Order that may be declared unconstitutional shall not have the effect of nullifying other provisions hereof, as long as such remaining provisions can still subsist and be given effect in their entirety.

SEC. 8. Repeal. All rules and regulations, other issuances or parts thereof, which are inconsistent with this Executive Order, are hereby repealed or modified accordingly.

SEC. 9. Effectivity. This Executive Order shall take effect immediately upon its publication in a national newspaper of general circulation.

DONE in the City of Manila, this 8[th] day of September, in the year of Our Lord, Two Thousand and Six.

(Sgd.) Gloria Macapagal-Arroyo

By the President:

(Sgd.) Eduardo R. Ermita
Executive Secretary

The pertinent provisions of the RIRR affecting independent review centers are as follows:

Rule VII

IMPLEMENTING GUIDELINES AND PROCEDURES

Section 1. Authority to Establish and Operate - Only CHED recognized, accredited and reputable HEIs may be authorized to establish and operate review center/course by the CHED upon full compliance with the conditions and requirements provided herein and in other pertinent laws, rules and regulations. In addition, a consortium or consortia of qualified schools and/or entities may establish and operate review centers or conduct review classes upon compliance with the provisions of these Rules.

Rule XIV

TRANSITORY PROVISIONS

Section 1. Review centers that are existing upon the approval of Executive Order No. 566 shall be given a grace period of up to one (1) year, to tie-up/be integrated with existing HEIs[,] consortium of HEIs and PRC recognized Professional Associations with recognized programs under the conditions set forth in this Order and upon mutually acceptable covenants by the contracting parties. In the alternative, they may convert as a school and apply for the course covered by the review subject to rules and regulations of the CHED and the SEC with respect to the establishment of schools. In the meantime, no permit shall be issued if there is non-compliance with these conditions or non-compliance with the requirements set forth in these rules.

Section 2. Only after full compliance with the requirements shall a Permit be given by the CHED to review centers contemplated under this Rule.

Section 3. Failure of existing review centers to fully comply with the above shall bar them from existing as review centers and they shall be deemed as operating illegally as such. In addition, appropriate administrative and legal proceedings shall be commence[d] against the erring entities that continue to operate and appropriate sanctions shall be imposed after due process.

The Issues

The issues raised in this case are the following:

- Whether EO 566 is an unconstitutional exercise by the Executive of legislative power as it expands the CHED's jurisdiction; and
- Whether the RIRR is an invalid exercise of the Executive's rule-making power.

The Ruling of this Court

The petition has merit.

Violation of Judicial Hierarchy

The Office of the Solicitor General (OSG) prays for the dismissal of the petition. Among other grounds, the OSG alleges that petitioner violated the rule on judicial hierarchy in filing the petition directly with this Court.

This Court's original jurisdiction to issue a writ of certiorari, prohibition, mandamus, quo warranto, habeas corpus, and injunction is not exclusive but is concurrent with the Regional Trial Courts and the Court of Appeals in certain cases.[18] The Court has explained:

This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard of that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[19]

The Court has further explained:

The propensity of litigants and lawyers to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court must be put to a halt for two reasons: (1) it would be an imposition upon the precious time of this Court; and (2) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.[20]

The rule, however, is not absolute, as when exceptional and compelling circumstances justify the exercise of this Court of its primary jurisdiction. In this case, petitioner alleges that EO 566 expands the coverage of RA 7722 and in doing so, the Executive Department usurps the legislative powers of Congress. The issue in this case is not only the validity of the RIRR. Otherwise, the proper remedy of petitioner and petitioners-intervenors would have been an ordinary action for the nullification of the RIRR before the Regional Trial Court.[21] The alleged violation of the Constitution by the Executive Department when it issued EO 566 justifies the exercise by the Court of its primary jurisdiction over the case. The Court is not precluded from brushing aside technicalities and taking cognizance of an action due to its importance to the public and in keeping with its duty to determine whether the other branches of the Government have kept themselves within the limits of the Constitution.[22]

OSG's Technical Objections

The OSG alleges that the petition should be dismissed because the verification and certification of non-forum shopping were signed only by Fudolig without the express authority of any board resolution or power of attorney.

However, the records show that Fudolig was authorized under Board Resolution No. 3, series of 2007[23] to file a petition before this Court on behalf of petitioner and to execute any and all documents necessary to implement the resolution.

The OSG also alleges that the petition should be dismissed for violation of the 2004 Rules on Notarial Practice because Fudolig only presented his community tax certificate as competent proof of identity before the notary public. The Court would have required Fudolig to comply with the 2004 Rules on Notarial Practice except that Fudolig already presented his Philippine passport before the notary public when petitioner submitted its reply to the OSG's comment.

EO 566 Expands the Coverage of RA 7722

The OSG alleges that Section 3 of RA 7722 should be read in conjunction with Section 8, enumerating the CHED's powers and functions. In particular, the OSG alleges that the CHED has the power under paragraphs (e) and (n) of Section 8 to:

(e) monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school closure;

(n) promulgate such rules and regulations and exercise such other powers and functions as may be necessary to carry out effectively the purpose and objectives of this Act[.]

The OSG justifies its stand by claiming that the term "programs x x x of higher learning" is broad enough to include programs offered by review centers.

We do not agree.

Section 3 of RA 7722 provides:

Sec. 3. Creation of Commission on Higher Education. - In pursuance of the abovementioned policies, the Commission on Higher Education is hereby created, hereinafter referred to as the Commission.

The Commission shall be independent and separate from the Department of Education, Culture and Sports (DECS), and attached to the Office of the President for administrative purposes only. Its coverage shall be both public and private institutions of higher education as well as degree-granting programs in all post-secondary educational institutions, public and private. (Emphasis supplied)

Neither RA 7722 nor CHED Order No. 3, series of 1994 (Implementing Rules of RA 7722)[24] defines an institution of higher learning or a program of higher learning.

"Higher education," however, is defined as "education beyond the secondary level"[25] or "education provided by a college or university." [26] Under the "plain meaning" or verba legis rule in statutory construction, if the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without interpretation.[27] The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute.[28] Hence, the term "higher education" should be taken in its ordinary sense and should be read and interpreted together with the phrase "degree-granting programs in all post-secondary educational institutions, public and private." Higher education should be taken to mean tertiary education or that which grants a degree after its completion.

Further, Articles 6 and 7 of the Implementing Rules provide:

Article 6. Scope of Application. - The coverage of the Commission shall be both public and private institutions of higher education as well as degree granting programs in all post-secondary educational institutions, public and private.

These Rules shall apply to all public and private educational institutions offering tertiary degree programs.

The establishment, conversion, or elevation of degree-granting institutions shall be within the responsibility of the Commission.

Article 7. Jurisdiction. - Jurisdiction over institutions of higher learning primarily offering tertiary degree programs shall belong to the Commission. (Emphasis supplied)

Clearly, HEIs refer to degree-granting institutions, or those offering tertiary degree or post-secondary programs. In fact, Republic Act No. 8292 or the Higher Education Modernization Act of 1997 covers chartered state universities and colleges. State universities and colleges primarily offer degree courses and programs.

Sections 1 and 8, Rule IV of the RIRR define a review center and similar entities as follows:

Section 1. REVIEW CENTER. - refers to a center operated and owned by a duly authorized entity pursuant to these Rules intending to offer to the public and/or to specialized groups whether for a fee or for free a program or course of study that is intended to refresh and enhance the knowledge and competencies and skills of reviewees obtained in the formal school setting in preparation for the licensure examinations given by the Professional Regulations Commission (PRC). The term review center as understood in these rules shall also embrace the operation or conduct of review classes or courses provided by individuals whether for a fee or not in preparation for the licensure examinations given by the Professional Regulations Commission.

x x x

Section 8. SIMILAR ENTITIES - the term refer to other review centers providing review or tutorial services in areas not covered by licensure examinations given by the Professional Regulations Commission including but not limited to college entrance examinations, Civil Service examinations, tutorial services in specific fields like English, Mathematics and the like.

The same Rule defines a review course as follows:

Section 3. REVIEW COURSE - refers to the set of non-degree instructional program of study and/or instructional materials/module, offered by a school with a recognized course/program requiring licensure examination, that are intended merely to refresh and enhance the knowledge or competencies and skills of reviewees.

The scopes of EO 566 and the RIRR clearly expand the CHED's coverage under RA 7722. The CHED's coverage under RA 7722 is limited to public and private institutions of higher education and degree-granting programs in all public and private post-secondary educational institutions. EO 566 directed the CHED to formulate a framework for the regulation of review centers and similar entities.

The definition of a review center under EO 566 shows that it refers to one which offers "a program or course of study that is intended to refresh and enhance the knowledge or competencies and skills of reviewees obtained in the formal school setting in preparation for the licensure examinations" given by the PRC. It also covers the operation or conduct of review classes or courses provided by individuals whether for a fee or not in preparation for the licensure examinations given by the PRC.

A review center is not an institution of higher learning as contemplated by RA 7722. It does not offer a degree-granting program that would put it under the jurisdiction of the CHED. A review course is only intended to "refresh and enhance the knowledge or competencies and skills of reviewees." A reviewee is not even required

to enroll in a review center or to take a review course prior to taking an examination given by the PRC. Even if a reviewee enrolls in a review center, attendance in a review course is not mandatory. The reviewee is not required to attend each review class. He is not required to take or pass an examination, and neither is he given a grade. He is also not required to submit any thesis or dissertation. Thus, programs given by review centers could not be considered "programs x x x of higher learning" that would put them under the jurisdiction of the CHED.

Further, the "similar entities" in EO 566 cover centers providing "review or tutorial services" in areas not covered by licensure examinations given by the PRC, which include, although not limited to, college entrance examinations, Civil Services examinations, and tutorial services. These review and tutorial services hardly qualify as programs of higher learning.

Usurpation of Legislative Power

The OSG argues that President Arroyo was merely exercising her executive power to ensure that the laws are faithfully executed. The OSG further argues that President Arroyo was exercising her residual powers under Executive Order No. 292 (EO 292),^[29] particularly Section 20, Title I of Book III, thus:

Section 20. Residual Powers. - Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law. (Emphasis supplied)

Section 20, Title I of Book III of EO 292 speaks of other powers vested in the President under the law.^[30] The exercise of the President's residual powers under this provision requires legislation,^[31] as the provision clearly states that the exercise of the President's other powers and functions has to be "provided for under the law." There is no law granting the President the power to amend the functions of the CHED. The President may not amend RA 7722 through an Executive Order without a prior legislation granting her such power.

The President has no inherent or delegated legislative power to amend the functions of the CHED under RA 7722. Legislative power is the authority to make laws and to alter or repeal them,^[32] and this power is vested with the Congress under Section 1, Article VI of the 1987 Constitution which states:

Section 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

In *Ople v. Torres*,^[33] the Court declared void, as a usurpation of legislative power, Administrative Order No. 308 (AO 308) issued by the President to create a national identification system. AO 308 mandates the adoption of a national identification system even in the absence of an enabling legislation. The Court distinguished between Legislative and Executive powers, as follows:

The line that delineates Legislative and Executive power is not indistinct. Legislative power is "the authority, under the Constitution, to make laws, and to alter and repeal them." The Constitution, as the will of the people in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines. The grant of legislative power to Congress is broad, general and comprehensive. The legislative body possesses plenary power for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere. In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to matters of general concern or common interest.

While Congress is vested with the power to enact laws, the President executes the laws. The executive power is vested in the President. It is generally defined as the power to enforce and administer laws. It is the power of

carrying the laws into practical operation and enforcing their due observance.

As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted administrative power over bureaus and offices under his control to enable him to discharge his duties effectively.

Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations.

x x x. An administrative order is:

"Sec. 3. Administrative Orders. - Acts of the President which relate to particular aspects of governmental operation in pursuance of his duties as administrative head shall be promulgated in administrative orders."

An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy. x x x.[34]

Just like AO 308 in *Ople v. Torres*, EO 566 in this case is not supported by any enabling law. The Court further stated in *Ople*:

x x x. As well stated by Fisher: "x x x Many regulations however, bear directly on the public. It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the general policy-making that Congress enacts in the form of a public law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws." [35]

Since EO 566 is an invalid exercise of legislative power, the RIRR is also an invalid exercise of the CHED's quasi-legislative power.

Administrative agencies exercise their quasi-legislative or rule-making power through the promulgation of rules and regulations.[36] The CHED may only exercise its rule-making power within the confines of its jurisdiction under RA 7722. The RIRR covers review centers and similar entities which are neither institutions of higher education nor institutions offering degree-granting programs.

Exercise of Police Power

Police power to prescribe regulations to promote the health, morals, education, good order or safety, and the general welfare of the people flows from the recognition that *salus populi est suprema lex* - the welfare of the people is the supreme law.[37] Police power primarily rests with the legislature although it may be exercised by the President and administrative boards by virtue of a valid delegation.[38] Here, no delegation of police power exists under RA 7722 authorizing the President to regulate the operations of non-degree granting review centers.

Republic Act No. 8981 is Not the Appropriate Law

It is argued that the President of the Philippines has adequate powers under the law to regulate review centers and this could have been done under an existing validly delegated authority, and that the appropriate law is Republic Act No. 8981[39] (RA 8981). Under Section 5 of RA 8981, the PRC is mandated to "establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of

all licensure examinations." Section 7 of RA 8981 further states that the PRC shall adopt "measures to preserve the integrity and inviolability of licensure examinations."

There is no doubt that a principal mandate of the PRC is to preserve the integrity of licensure examinations. The PRC has the power to adopt measures to preserve the integrity and inviolability of licensure examinations. However, this power should properly be interpreted to refer to the conduct of the examinations. The enumeration of PRC's powers under Section 7(e) includes among others, the fixing of dates and places of the examinations and the appointment of supervisors and watchers. The power to preserve the integrity and inviolability of licensure examinations should be read together with these functions. These powers of the PRC have nothing to do at all with the regulation of review centers.

The PRC has the power to investigate any of the members of the Professional Regulatory Boards (PRB) for "commission of any irregularities in the licensure examinations which taint or impugn the integrity and authenticity of the results of the said examinations." [40] This is an administrative power which the PRC exercises over members of the PRB. However, this power has nothing to do with the regulation of review centers. The PRC has the power to bar PRB members from conducting review classes in review centers. However, to interpret this power to extend to the power to regulate review centers is clearly an unwarranted interpretation of RA 8981. The PRC may prohibit the members of the PRB from conducting review classes at review centers because the PRC has administrative supervision over the members of the PRB. However, such power does not extend to the regulation of review centers.

Section 7(y) of RA 8981 giving the PRC the power to perform "such other functions and duties as may be necessary to carry out the provisions" of RA 8981 does not extend to the regulation of review centers. There is absolutely nothing in RA 8981 that mentions regulation by the PRC of review centers.

The Court cannot likewise interpret the fact that RA 8981 penalizes "any person who manipulates or rigs licensure examination results, secretly informs or makes known licensure examination questions prior to the conduct of the examination or tampers with the grades in the professional licensure examinations" [41] as a grant of power to regulate review centers. The provision simply provides for the penalties for manipulation and other corrupt practices in the conduct of the professional examinations.

The assailed EO 566 seeks to regulate not only review centers but also "similar entities." The questioned CHED RIRR defines "similar entities" as referring to "other review centers providing review or tutorial services in areas not covered by licensure examinations given by the PRC including but not limited to college entrance examinations, Civil Service examinations, tutorial services in specific fields like English, Mathematics and the like." [42] The PRC has no mandate to supervise review centers that give courses or lectures intended to prepare examinees for licensure examinations given by the PRC. It is like the Court regulating bar review centers just because the Court conducts the bar examinations. Similarly, the PRC has no mandate to regulate similar entities whose reviewees will not even take any licensure examination given by the PRC.

WHEREFORE, we GRANT the petition and the petition-in-intervention. We DECLARE Executive Order No. 566 and Commission on Higher Education Memorandum Order No. 30, series of 2007 VOID for being unconstitutional.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio Morales, Tinga, Chico-Nazario, and Peralta, JJ., concur.

Austria-Martinez, J., concur with J. Carpio.

Corna, Velasco, Jr., Nachura, and Leonardo-De Castro, JJ., join the concurring opinion of J. Brion.

Brion, J., with separate opinion.

[1] Rollo, pp. 35-37. Directing the Commission on Higher Education to Regulate the Establishment and Operation of Review Centers and Similar Entities. Signed on 8 September 2006.

[2] Id. at 38-55. Revised Implementing Rules and Regulations Governing The Establishment and Operation of Review Centers And Similar Entities In The Philippines Pursuant To Executive Order No. 566. Approved on 7 May 2007.

[3] Virginia Madeja and Anesia Dionisio were eventually charged with violation of Republic Act No. 8981 (An Act Modernizing the Professional Regulation Commission) and Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act).

[4] Rollo, pp. 105-121. CMO 49, s. 2006 is otherwise known as the Implementing Rules and Regulations Governing the Establishment and Operation of Review Centers and Similar Entities in the Philippines.

[5] Id. at 75-77.

[6] Id. at 79.

[7] Id. at 80.

[8] Id. at 58-69.

[9] An Act Creating the Commission on Higher Education, Appropriating Funds Therefor and For Other Purposes.

[10] Rollo, p. 180.

[11] Id. at 181-182.

[12] Id. at 181-182.

[13] Id. at 92.

[14] Not 14 February 2008 as stated in the 11 March 2008 Resolution.

[15] Rollo, p. 184.

[16] Id. at 230.

[17] Id. at 257.

[18] LPBS Commercial, Inc. v. Amila, G.R. No. 147443, 11 February 2008, 544 SCRA 199.

[19] Liga ng mga Barangay National v. City Mayor of Manila, 465 Phil. 529, 542-543 (2004), citing People v. Cuaresma, G.R. No. 67787, 18 April 1989, 172 SCRA 415.

[20] LPBS Commercial, Inc. v. Amila, supra note 18 at 205, citing Santiago v. Vasquez, G.R. Nos. 99289-90, 27 January 1993, 217 SCRA 633.

[21] Holy Spirit Homeowners Association, Inc. v. Defensor, G.R. No. 163980, 3 August 2006, 497 SCRA 581.

[22] Executive Secretary v. Southwing Heavy Industries, Inc., G.R. No. 164171, 20 February 2006, 482 SCRA 673.

- [23] Rollo, p. 104.
- [24] Rules and Regulations Implementing RA 7722, as amended.
- [25] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 1986 ed., p. 1068.
- [26] Id.
- [27] Republic v. Lacap, G.R. No. 158253, 2 March 2007, 517 SCRA 255.
- [28] Id.
- [29] The Administrative Code of 1987.
- [30] See *Larin v. Executive Secretary*, 345 Phil. 962 (1997).
- [31] See *Kilusang Mayo Uno v. Director-General, National Economic Development Authority*, G.R. No. 167798, 19 April 2006, 487 SCRA 623.
- [32] Id.
- [33] 354 Phil. 948 (1998).
- [34] Id. at 966-968.
- [35] Id. at 970.
- [36] *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, 6 February 2007, 514 SCRA 346.
- [37] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, G.R. No. 170656, 15 August 2007, 530 SCRA 341.
- [38] Id.
- [39] Otherwise known as the Philippine Regulation Commission Modernization Act of 2000.
- [40] Section 7(s).
- [41] Section 15.
- [42] Section 8, RIRR.

SEPARATE CONCURRING OPINION

BRION, J.:

I concur with the ponencia that EO 566 and the instruments derived from this EO should be declared invalid. At the same time, I maintain that the President of the Philippines has adequate powers under the law to regulate review centers. EO 566 is invalid as a regulatory measure over review centers because an executive order of this tenor cannot be issued under R.A. 7722 (The Higher Education Act of 1994). The appropriate existing law to regulate review centers is R.A. 8981, otherwise known as The PRC Modernization Act of 2000.

A holistic reading of R.A. 8981 shows that it attempts to provide the blue print for a credible and effective Philippine licensure examination system and process. Under this law, the Professional Regulation Commission (an entity under the Executive Department together with the Commission on Higher Education) was given -

among other powers related with its primary mandate to establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examinations - the full authority to promulgate rules and regulation to implement its mandate. To be sure, R.A.8981 does not narrowly or restrictively concern itself with the conduct of actual examinations alone as the ponencia discussed; it covers and relates as well to the various integral and/or institutional components of the licensure examination process or system.

I find it unfortunate that R.A. 7722 was made the basis for the regulation of review centers, when R.A. 8981 could have provided opportunities, appropriate to the PRC, to achieve the same end. This is unfortunate under the circumstances since the invalidity of using R.A. 7722 as the legal basis, without saying more on what can be a viable alternative, can leave a major player in the Philippine licensure examination process immune, even for a time, from regulation. It is for this compelling reason that I have tackled in this Separate Concurring Opinion the alternative and (while not fully determinative of the issue of the validity of EO 566) the related issues of: (1) whether the business of review centers can be the subject of regulation; (2) if so, on what legal basis; and (3) again, if so, which governmental authority has been vested with jurisdiction by law.

The Background Facts

The Office of the Solicitor General (OSG) objects to the filing of the present petition directly with this Court, based on the principle of hierarchy of courts. The principle, as a rule, can be invoked where no compelling reason exists for a direct resort to this Court.[1] However, a compelling reason does exist as the ponencia properly noted. Likewise, there are no major issues of fact that are essentially for the trial or lower courts to handle as triers of facts;[2] hence, direct resort to this Court is justified. In this regard, at the petitioners' urging and based on the implicit stance of all other parties to take judicial notice of the background facts,[3] I am providing a fuller account of the background of the case based on parallel official developments, all of them related to the root of the present issue - the nursing exam scandal of 2006. This background - albeit footnoted because they do not all directly affect the present case - may lead to a fuller appreciation of the case and the view I am putting forward, and is offered in the spirit of George Santayana's advice to remember the past to avoid being condemned to its repetition.[4]

The President Has Legal Basis to Regulate,
but under R.A. 8981, not R.A. 7722

I hold the view that the President has sufficient legal basis to regulate review centers and could have done so under an existing validly delegated authority. This authority, however, is not based on the charter of the CHED, R.A. 7722; hence, the issuance of EO 566 on the basis of R.A. 7722 was an illegal act of subordinate legislation undertaken without statutory basis.

The law dealing with leakage and manipulation of licensure examinations is Republic Act No. 8981 (the PRC Law).[5] Section 5 of this law defines the PRC's primary mandate, which is to establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examinations. Some of the PRC's powers, functions and responsibilities under Section 7 of the law include:

Section 7. Powers, Functions and Responsibilities of the Commission. - The powers, functions, and responsibilities of the Commission are as follows:

x x x x

(d) To administer and conduct the licensure examinations of the various regulatory boards in accordance with

the rules and regulations promulgated by the Commission; determine and fix the places and dates of examinations; use publicly or privately-owned buildings and facilities for examination purposes; conduct more than one (1) licensure examination: Provided, That, when there are two (2) or more examinations given in a year, at least one (1) examination shall be held on weekdays (Monday to Friday): Provided, further, That, if only one (1) examination is given in a year, this shall be held only on weekdays: Provided, finally, That, the Commission is also authorized to require the completion of a refresher course where the examinee has failed to pass three (3) times, except as otherwise provided by law; approve the results of examinations and the release of the same; adopt measures to preserve the integrity and inviolability of licensure examinations; appoint supervisors and room watchers from among the employees of the government and/or private individuals with baccalaureate degrees, who have been trained by the Commission for the purpose and who shall be entitled to a reasonable daily allowance for every examination day actually attended, to be determined and fixed by the Commission; publish the list of successful examinees; provide schools, colleges and universities, public and private, offering courses for licensure examinations, with copies of sample test questions on examinations recently conducted by the Commission and copies of the syllabi or terms of specifications of subjects for licensure examinations; and impose the penalty of suspension or prohibition from taking licensure examinations to any examinee charged and found guilty of violating the rules and regulations governing the conduct of licensure examinations promulgated by the Commission;

x x x x

(s) To investigate *motu proprio* or upon the filing of a verified complaint, any member of the Professional Regulatory Boards for neglect of duty, incompetence, unprofessional, unethical, immoral or dishonorable conduct, commission of irregularities in the licensure examinations which taint or impugn the integrity and authenticity of the results of the said examinations and, if found guilty, to revoke or suspend their certificates of registration and professional licenses/identification cards and to recommend to the President of the Philippines their suspension or removal from office as the case may be;

x x x x

(y) To perform such other functions and duties as may be necessary to carry out the provisions of this Act, the various professional regulatory laws, decrees, executive orders and other administrative issuance

Complementing these mandates are the penal provisions giving teeth to the PRC's regulatory powers. Section 15 of the PRC Law provides:

Section 15. Penalties for Manipulation and Other Corrupt Practices in the Conduct of Professional Examinations. -

(a) Any person who manipulates or rigs licensure examination results, secretly informs or makes known licensure examination questions prior to the conduct of the examination or tampers with the grades in professional licensure examinations shall, upon conviction, be punished by imprisonment of not less than six (6) years and one (1) day to not more than twelve (12) years or a fine of not less than Fifty thousand pesos (P50,000.00) to not more than One hundred thousand pesos (P100,000.00) or both such imprisonment and fine at the discretion of the court.

Another critical power under Section 17 of the law is the authority to promulgate the necessary rules and regulations needed to implement its provisions.

Section 17. Implementing rules and Regulations. Within ninety (90) days after the approval of this Act, the Professional Regulation Commission, together with the representatives of the various Professional Regulatory Boards and accredited professional organizations, the DBM, and the CHED shall prepare and promulgate the necessary rules and regulations needed to implement the provisions of this Act.

To be valid, this authority must be exercised on the basis of a policy that the law wishes to enforce and of sufficient standards that mark the limits of the legislature's delegation of authority. The completeness of this delegation is evidenced by the PRC Law's policy statement which provides:

Section 2. Statement of Policy. The State recognizes the important role of professionals in nation-building and, towards this end, promotes the sustained development of a sustained reservoir of professionals whose competence has been determined by honest and credible licensure examinations and whose standards of professional service and practice are internationally recognized and considered world-class brought by the regulatory measures, programs and activities that foster professional growth and advancement.

Read together with the grant of powers and functions under Section 5 (particularly the statement that - "the Commission shall establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examinations"), both policy and standards are therefore present as required by law and jurisprudence.[6]

Whether review centers can be the legitimate subjects of PRC regulation, given the above-described experience with the nursing board examination leakage and the terms of the PRC Law, is not a hard question to answer. Review centers, because of the role they have assumed and the reliance on them by examinees, have become active participants in the licensure examination process, and their involvement can neither be downplayed nor ignored. Board examinees now undergo review preparatory to licensure examinations as a matter of accepted practice, and pay considerable sums to avail themselves of the services review centers offer. These services include the provision of review materials; lectures on examination methods; practice examinations to simulate the actual exam environment; and final coaching just before the actual examination date. To some exam candidates, these services have become security blankets that, whether true or not, boost their confidence come examination time. Not the least of the considerations, of course, is that the review center industry has now become a billion-peso industry with sufficient means and resources for the corrupt elements of the industry to subvert the integrity and reputation of the licensure examinations. PRC experiences in the last few years attest to this reality.[7] Thus, the integrity and effectiveness of review centers are now basic considerations in ensuring an honest and credible licensure examination system. In these lights, the regulation of review centers is a must for the PRC, given its duty to adopt measures that will preserve the integrity and inviolability of licensure examinations.

Thus, unlike the CHED, the PRC has the requisite authority or mandate under the PRC Modernization Law to regulate the establishment and operation of review centers.

Can the President transfer the power of regulation granted the PRC to CHED?

This question essentially arises under the premise that review centers fall under the PRC's mandate so that there is no gap in the law, and the President, in the exercise of her power of control, can regulate review centers. Can this presidential authority be now cited as basis to argue for the validity of EO 566?

The short and quick answer is no, because the disputed EO does not even invoke the PRC Law as its legal basis. Nor can the EO be revived by simply re-issuing it, citing the PRC Law and the authority of the President of the Philippines to issue regulations. To regulate review centers under the PRC law, another EO - appropriate to the PRC and its structure under the PRC law - will have to be prepared and issued.

The President, as Chief Executive, has the power of control over all the executive departments, bureaus, and offices.[8] The power of control refers to the power of an officer to alter, modify, nullify, or set aside what a subordinate officer has done in the performance of his duties, and to substitute the judgment of the former for that of the latter.[9] Under this power, the President may directly exercise a power statutorily given to any of his

subordinates, as what happened in the old case of *Araneta v. Gatmaitan*,^[10] where President Ramon Magsaysay himself directly exercised the authority granted by Congress to the Secretary of Agriculture and Natural Resources to promulgate rules and regulations concerning trawl fishing. We similarly ruled in *Bermudez v. Torres* when we said that the President, being the head of the Executive Department, can very well disregard or do away with the action of the departments, bureaus or offices even in the exercise of discretionary authority; in so opting, he cannot be said to be acting beyond the scope of his authority.^[11]

The statutory support for this authority is provided under Section 31 (2), Chapter 10, Title III, Book III of Executive Order No. 292, otherwise known as the Administrative Code of 1987 (EO 292), which states:

Sec. 31. Continuing Authority of the President to Reorganize his Office. - The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

- (1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;
- (2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and
- (3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.

The President's direct exercise of the power of subordinate legislation is done via the issuance of an executive or administrative order, defined under Section 2, Chapter 2, Book III of EO 292, as an ordinance issued by the President providing for rules of a general or permanent character in the implementation or execution of constitutional or statutory powers.

The valid grant of the authority to issue subordinate legislation to the PRC and the exercise of this power by the President as the head of the executive department of government, however, do not extend to the authority of the President to take control of the PRC's powers under the PRC Law, and to assign these to another agency within the executive branch.

Effectively, this was what happened in the present case; the President, through EO 566, took control of the PRC's authority to issue subordinate legislation to regulate review centers, and transferred this power to the CHED. This is an illegal sub-delegation of delegated power. What has once been delegated by Congress can no longer be further delegated by the original delegate to another, expressed in the Latin maxim - *potestas delegata non delegare potest*.^[12] When the PRC Law granted the power of subordinate legislation to the PRC, the mandate was given to this agency (and under the control powers of the President, to the President by necessary implication) as the original delegate; the faithful fulfillment of this mandate is a duty that the PRC itself, as the delegate, must perform using its own judgment and not the intervening mind of another.^[13]

Additionally, EO 566 placed entities subject to the jurisdiction of a particular agency (in this case, the PRC) under the jurisdiction of another (the CHED). As the cited reorganization powers of the President show, the statutorily-allowed transfer of functions refers to those from the Office of the President to the departments and agencies, or from the departments and agencies to the Office of the President. This proceeds from the power of control the Constitution grants to the President. No general statutory nor constitutional authority exists, however, allowing the President to transfer the functions of one department or agency to another. The reason for this is obvious - the jurisdiction of a particular department or agency is provided for by law and this jurisdiction may not

be modified, reduced or increased, via a mere executive order except to the extent that the law allows. Thus, only the President, based on her constitutionally-provided control powers, can assume the functions of any of the departments or agencies under the Executive Department. Even then, the President cannot transfer these functions to another agency without transgressing the legislative prerogatives of Congress. This conclusion necessarily impacts on the validity of the CHED's issuance of the RIRR and other instruments which must similarly be invalid since they sprang from an invalid and impermissible sub-delegation of power.

I therefore vote to invalidate EO 566 and the issuances arising from this EO.

[1] See: *Rubenito, et al. v. Lagata, et al.*, G.R. No. 140959, December 21, 2004, 447 SCRA 417.

[2] *Far East Bank & Trust Company v. Court of Appeals*, G.R. No. 123569, April 1, 1996, 256 SCRA 15; *Antiporda, Jr. v. Sandiganbayan*, G.R. No. 116941, May 31, 2001, 358 SCRA 335.

[3] *Rollo*, p. 4.

[4] On June 11-12, 2006, the Professional Regulations Commission (PRC), in coordination with the Board of Nursing (BON), administered the Philippine Nurse Licensure Examination covering five (5) nursing subjects. After computing the grades of the examinees pursuant to the established rule under the Philippine Nursing Act of 2002 (R.A. 9173, specifically, Sections 14 & 15 thereof) giving equal weight to all the examinable subjects, 41.24% of the total number of examinees passed, including 1,186 examinees who were purportedly "borderline cases."

Allegations of leakage in two (2) tests - Tests III and IV - however plagued the licensure examination. This prompted the PRC to constitute a committee to investigate the reported leakage. The PRC investigating body found that leakages occurred in Tests III and V; 20 of the 100 questions in Test III and 90 of the 100 questions in Test V were found to have been leaked to the examinees by certain nursing review centers days prior to the scheduled exam. The investigating body recommended, among others, the filing of criminal charges against the examiners - BON members Madeja (for Test III) and Dionisio (for Test V). The National Bureau of Investigation (NBI) conducted a parallel investigation; the Senate, on the other hand, conducted a legislative inquiry on the leakage controversy.

The PRC approved the report of the investigating body. To address the leakage problem, the PRC approved Resolution No. 31 (Resolution 31) of the BON that: (1) invalidated 20 of the 100 questions in Test III, while ruling that the remaining 80 questions are sufficient to measure the examinees' competency for the subject covered by Test III; and (2) ordered the re-computation of the grades in Test V under a statistical treatment to tone down the upward pull of the leakage. As a result of the re-computation, the original passing rate of 41.24% rose to 42.42%; the 1,186 previously "borderline cases" became flunkers; while 1,687 examinees who flunked under the original computation became passers as "borderline cases."

Various groups, concerned about the integrity and reputation of the professional nursing examination, expressed their opposition against the manner the PRC addressed the leakage and asked the PRC to reconsider Resolution 31. The PRC nevertheless scheduled and started administering the oaths for the 17,821 purportedly successful examinees; some were even issued licenses.

To prevent the PRC from further administering the oaths and issuing professional licenses to the purported successful examinees, Rene Luis M. Tadla, Earl Francis R. Sumile, and Michael Angelo S. Brant (all from the University of Santo Tomas; hereinafter "Tadla, et al.") filed on August 16, 2006 with the Court of Appeals (CA) a petition for prohibition (docketed CA-G.R. SP NO. 95709) asking the appellate court to enjoin the

implementation of Resolution 31 and the oath-taking of the declared passers. Tadle, et al. anchored their petition on the ground that the PRC and the BON reneged on their ministerial duty under the law to compute the grades of examinees based on the actual results from each of the five test subjects; that based on the combined application of Sections 14 and 15 of the Philippine Nursing ACT of 2002, the PRC and the BON has the duty to compute the scores of the examinees based on the actual results of the tests for the five areas; the PRC and the BON however based the ratings of examinees for Test V not on the result of an actual, true, and honest examination in Test V. To the petitioners, "the PRC - BON changed the rules of computing the ratings for passing examinees, in a manner of speaking, after the game has been played." The importance also of the subject area covered by Test V was allegedly disregarded when it was given a weight lesser than the others. As additional ground, the petitioners drew a distinction between the 2003 bar examination controversy and the nursing leakage issue.

Tadle, et al. asked the appellate court to issue a temporary restraining order (TRO) and a preliminary injunction. The appellate court issued on August 18, 2006 a TRO directing the PRC and the BON to CEASE and DESIST from enforcing Resolution 31 and from proceeding with the oath-taking scheduled on August 22, 2006 of those who purportedly passed the June x x x examinations for nursing licensure.

The case drew several interventions - both for and against the petition for prohibition. The Presidential Task Force on National Licensure Examination (NCLEX) for Nurses in the Philippines (the Task Force) joined the petition and additionally asked for a writ of certiorari to: annul Resolution 31; invalidate Tests III and V and conduct a new examination for these subjects; nullify the declaration of the passing examinees for lack of basis; and nullify and set aside the oath administered or caused to be administered by the PRC on supposed passing examinees. Various groups of examinees who alleged to have honestly passed the exam, on the other hand, filed their respective motions for intervention to oppose the petition for prohibition.

The case followed its usual course - the filing of comments, hearings on the merits, and the filing of the parties' memoranda. During the pendency of the case, the President promulgated Executive Order No. 565 (EO 565) which transferred the oversight functions of the Office of the President over the PRC to the Department of Labor and Employment (DOLE) by attaching the PRC to the DOLE for general direction and coordination (This was later superseded by Executive Order No. 565-A defining the extent of the DOLE's authority over the PRC). At almost the same time, the President promulgated Executive Order No. 566 (EO 566) - whose constitutionality is now assailed in the present petition - directing the Commission on Higher Education (CHED) to regulate the establishment and operation of review centers and similar entities. Under Section 1 of EO 566, the CHED, in consultation with other concerned government agencies, was directed to formulate a framework for the regulation of review centers and similar entities, including but not limited to the development and institutionalization of policies, standards, and guidelines for the establishment, operation, and accreditation of review centers and similar entities; maintenance of a mechanism to monitor the adequacy, transparency, and propriety of their operations; and reporting mechanisms to review performance and ethical practice. Under the EO 566, too, no review center or similar entity shall be established and/or operate review classes without the favorable expressed indorsement of the CHED and without the issuance of the necessary permits or authorizations to conduct review classes.

The President at almost the same time undertook a total overhaul of the BON's membership.

In the meantime, the NBI concluded its investigation and found, among others, that the leakage occurred only in Manila and Baguio and that the leakage of the test questions was perpetrated by the Gapuz, Inress, and Royal Pentagon Review Centers through the final coaching sessions these centers conducted two days prior to the scheduled exam.

The CA rendered its decision in CA-G.R. SP NO. 95709 on October 13, 2006. Its dispositive portion reads:

WHEREFORE, the petition is GRANTED. Declaring Resolution No. 31, Series of 2006 as null and void, a Writ of Prohibition is hereby issued permanently enjoining the respondents from implementing said resolution. Granting further the incidental reliefs required under the premises, the respondents are hereby directed:

- 1) To conduct a selective retaking in Tests III and V among the 1,687 examinees whose names were merely added to the unaltered list of 41.24% of successful examinees;
- 2) To restore the names of the 1,186 successful examinees and include them again in the list of 41.24% who actually passed the June 11 and 12, 2006 Nursing Licensure Examination; and
- 3) To cause the oath taking and issuance of licenses to all of the 41.24% successful examinees as herein reconstituted.

This disquisition is without prejudice to respondents' and the executive branch's revoking the licenses issued to examinees who may eventually be identified as among those who attended the final coaching sessions at Gapuz, Inress and Pentagon review centers.

SO ORDERED.

The CA thus annulled Resolution 31 for having been issued with grave abuse of discretion; to the appellate court, the effect of the leakage was insignificant so that the resolution should not have been in the first place issued. The CA at the same time prohibited the implementation of Resolution 31. It added that the applicable rule on computation should be the pre-Resolution 31 formulae, and on this basis and as incidental relief, ordered the PRC to cause the oath-taking and issuance of licenses to all of the 41.24% successful examinees. It likewise found no basis for a wholesale retake of Tests III and V of the licensure examination. Finally, the appellate court, taking into account the findings of the NBI, ruled that the licenses of those who attended the final coaching sessions at Gapuz, Inress, and Pentagon review centers may be revoked by the PRC, BON or the executive branch.

On October 16 2006, the petitioners filed a motion for reconsideration of the appellate court's October 13 Decision. A DOLE-initiated attempt at conciliation failed. At the conciliation hearing, however, CA Justice Vicente Veloso verbally indicated that execution of the CA decision can take place and that the PRC may be held in contempt of court for not administering the oaths to the successful examinees. Thus, the next day - October 27, 2006 - the PRC started administering the oaths and issuing the license to those who passed as defined by the CA decision.

Tadle, et al. filed a petition for certiorari with the Supreme Court assailing: (1) the act of the CA in allegedly "improperly allowing its ponente to compel the PRC and the BON into letting the supposedly successful examinees take their oaths and their licenses although the decision in their favor has not yet become final"; and (2) the CA's October 13, 2006 decision. The petition for certiorari, however, was dismissed by the Court on a technicality. The Court thereafter denied with finality the Tadle, et al.'s motion for reconsideration of the dismissal of their SC petition.

On November 3, 2006, the CHED issued MEMORANDUM ORDER No. 49, Series of 2006 (CMO 49). Under Rule 7.2 of CMO 49, an applicant for authority to establish and operate a review center must either be: (a) schools, colleges or universities established/created by the State, or by operation of law, or private HEIs granted recognition by the CHED; or (b) Consortium/consortia of qualified HEIs and PRC-recognized Professional Association. Under Rule 15 of CMO 49, existing review centers are given a grace period of one (1) year to tie-up/be integrated with existing HEIs, consortium of HEIs and PRC-recognized Professional Association or convert as a school and apply for the course covered by the review. Otherwise, no permit - as required by CMO 49 - for operation and establishment will ever be given them and this will bar them from existing as review centers, and be deemed as operating illegally as such. The CHED revised CMO 49 when it issued CMO 30, Series

of 2007, on May 7, 2007 (the RIRR).

It was at this point that the petitioner association of independent review centers came to us, via the present petition, to assail the constitutionality of the EO 566 and the RIRR.

Meanwhile, the conclusion of the legal battle did not write finis to the hurdles the June 2006 nursing board examinees had to surpass. On February 14, 2007, the Commission on Graduate of Foreign Nursing Schools (CGFNS) of the United States of America issued a press release/statement essentially saying that the Philippine nurses sworn in as licensed nurses in the Philippines following their passing the compromised licensure exam of June 2006 shall not be eligible for VisaScreen Certificate (a requirement in order that a Philippine nurse may engage in her profession in the United States of America). The CGFNS noted in its statement though that the June 2006 passers may overcome this bar and qualify for a Visa Screen Certificate by taking the equivalent of Tests 3 and 5 on a future licensing examination administered by Philippine regulatory authorities and obtaining a passing score; and, in this connection, it urged the Philippine authorities to provide an opportunity for re-take of tests without surrender of license.

The President reacted by promulgating Executive Order No. 609 (EO 609) on March 12, 2007. Under EO 609, the June 2006 nursing board passers were given - to enhance their employability - the option of voluntarily retaking the equivalent of Tests III and V of the nurse licensure examination, without the risk of revocation of their professional licenses. The government assistance given to those who shall opt to voluntarily retake Tests III and V are as follows: (1) the PRC was directed to waive the collection of the usual examination fees; and (2) the designation throughout the country of special review centers to be conducted by centers of excellence in nursing or nursing schools with high passing rates where the voluntary retakers may avail themselves of free nursing board review.

The CHED extended the 1-year grace period provided under the RIRR for the existing review centers' compliance for six (6) months under CMO 55, Series of 2007, issued on November 19, 2007. Subsequently, the CHED - under CMO 21, Series of 2008 - extended the deadline for another six (6) months. We issued a Resolution requiring the parties to observe the status quo prevailing before the issuance of EO 566, the RIRR and CMO 21, s. 2008.

[5] An Act Modernizing the Professional Regulation Commission, Repealing for the Purpose Presidential Decree Number Two Hundred and Twenty-Three, entitled "Creating the Professional Regulation Commission, and Prescribing its Powers and Functions," and for Other Purposes.

[6] See: *Tatad v. Secretary of the Department of Energy*, G.R. No. 124360, November 5, 1997, 281 SCRA 330, on the tests for a valid delegation of legislative powers.

[7] The PRC acted on the anomalies that allegedly marred the following licensure examinations for: Physicians (February 1993), Marine Deck Officers (June 2002), Teachers (August 2004), and Civil Engineers (November 2007).

[8] CONSTITUTION, Article VII, Section 17.

[9] See *Ang-Angco v. Castillo*, G.R. No. L-17169, November 30, 1963, 9 SCRA 619, citing *Hebron v. Reyes*, 104 Phil. 175 (1958).

[10] 101 Phil. 328 (1957).

[11] G.R. No. 131429. August 4, 1999, 311 SCRA 733.

[12] *United States v. Barrias*, 11 Phil 327 (1908).

[13] See Cruz, Philippine Political Law (2002), p. 91.

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