

NEPTALI A. GONZALES, ERNESTO M. MACEDA, ALBERTO G. ROMULO, HEHERSON T. ALVAREZ, EDGARDO J. ANGARA, AGAPITO A. AQUINO, TEOFISTO T. GUINGONA, JR., ERNESTO F. HERRERA, JOSE D. LINA...

G.R. No. 87636. November 19, 1990

Ponente: MELENCIO-HERRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-87636/>

MELENCIO-HERRERA, J.:

This constitutional controversy between the legislative and executive departments of government stemmed from Senate Resolution No. 381, adopted on 2 February 1989.

"Authorizing and Directing the Committee on Finance to Bring in the Name of the Senate of the Philippines the Proper Suit with the Supreme Court of the Philippines contesting the Constitutionality of the Veto by the President of Special and General Provisions, particularly Section 55, of the General Appropriation Bill of 1989 (H.B No. 19186) and For Other Purposes."

Petitioners are thus before us as members and ex-officio members of the Committee on Finance of the Senate and as "substantial taxpayers whose vital interests may be affected by this case."

Respondents are members of the Cabinet tasked with the implementation of the General Appropriations Act of 1989 and 1990, some of them incumbents, while others have already been replaced, and include the National Treasurer and the Commission on Audit Chairman, all of whom are being sued in their official capacities.

The Background Facts

On 16 December 1988, Congress passed House Bill No. 19186, or the General Appropriations Bill for the Fiscal Year 1989. As passed, it eliminated or decreased certain items included in the proposed budget submitted by the President.

Pursuant to the constitutional provision on the passage of bills, Congress presented the said Bill to the President for consideration and approval.

On 29 December 1988, the President signed the Bill into law, and declared the same to have become Rep. Act No. 6688. In the process, seven (7) Special Provisions and Section 55, a "General Provision," were vetoed.

On 2 February 1989, the Senate, in the same Resolution No. 381 mentioned at the outset, further expressed:

"WHEREAS, Be it Resolved, as it is hereby Resolved. That the Senate express its sense that the veto by the President of Section 55 of the GENERAL PROVISIONS of the General Appropriation Bill of 1989 (H.B. No. 19186) is unconstitutional and, therefore, void and without any force and effect; hence, the aforesaid Section 55 remains;

" x x x x x x x x x x"

Thus it is that, on 11 April 1989, this Petition for Prohibition/Mandamus was filed, with a prayer for the issuance of a Writ of Preliminary Injunction and Restraining Order, assailing mainly the constitutionality or legality of the Presidential veto of Section 55, and seeking to enjoin respondents from implementing Rep. Act No. 6688. No Restraining Order was issued by the Court.

The Comment, submitted by the Solicitor General on 25 August 1989 (after several extensions granted), was considered as the Answer to the Petition and, on 7 September 1989, the Court Resolved to give due course to the Petition and to require the parties to submit their respective Memoranda. Petitioners filed their Memorandum on 12 December 1989. But, on 19 January 1990, they filed a Motion for Leave to File and to Admit Supplemental Petition, which was granted, basically raising the same issue as in the original Petition, this time questioning the President's veto of certain provisions, particularly Section 16, of House Bill 26934, or the General Appropriations Bill for Fiscal Year 1990, which the President declared to have become Rep. Act No. 6831.

The Solicitor General's Comment on the Supplemental Petition, on behalf of respondent public officials, was submitted on 24 April 1990. On 15 May 1990, the Court required the parties to file simultaneously their consolidated memoranda, to include the Supplemental Petition, within an inextendible period of thirty (30) days from notice. However, because the original Resolution of 15 May 1990 merely required the filing of a memorandum on the Supplemental Petition, a revised Resolution requiring consolidated memoranda, within thirty (30) days from notice, was released on 28 June 1990.

The Consolidated Memoranda were respectively filed on 26 June 1990 by petitioners, and on 1 August 1990 by respondents. On 14 August 1990, both Memoranda were Noted and the case was deemed submitted for deliberation.

On 11 September 1990, the Court heard the case on oral argument and required the submittal of supplemental Memoranda, the last of which was filed on 26 September 1990.

The Vetoed Provisions and Reasons Therefor

Section 55 of the Appropriations Act of 1989 (Section 55 [FY '89] hereinafter), which was vetoed by the President, reads:

"SEC. 55. Prohibition Against the Restoration or Increase of Recommended Appropriations Disapproved and/or Reduced by Congress: No item of appropriation recommended by the President in the Budget submitted to Congress pursuant to Article VII, Section 22 of the Constitution which has been disapproved or reduced in this Act shall be restored or increased by the use of appropriations authorized for other purposes by augmentation. An item of appropriation for any purpose recommended by the President in the Budget shall be deemed to have been disapproved by Congress if no corresponding appropriation for the specific purpose is provided in this Act."

We quote below the reason for the Presidential veto:

"The provision violates Section 25(5) of Article VI of the Constitution. If allowed, this Section would nullify not only the constitutional and statutory authority of the President, but also that of the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and Heads of Constitutional Commissions, to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations. A careful review of the legislative action on the budget as submitted shows that in almost all cases, the budgets of agencies as recommended by the President, as well as those of the Senate, the House of Representatives, and the Constitutional Commissions, have been reduced. An unwanted consequence of this provision is the inability of the President, the President of the Senate, Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of

Constitutional Commissions to augment any item of appropriation of their respective offices from savings in other items of their respective appropriations even in cases of calamity or in the event of urgent need to accelerate the implementation of essential public services and infrastructure projects.

"Furthermore, this provision is inconsistent with Section 12 and other similar provisions of this General Appropriations Act."

A substantially similar provision as the vetoed Section 55 appears in the Appropriations Act of 1990, this time crafted as follows:

"B. GENERAL PROVISIONS

"Sec. 16. Use of Savings. - The President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions under Article IX of the Constitution and the Ombudsman are hereby authorized to augment any item in this Act for their respective offices from savings in other items of their appropriations: PROVIDED, THAT NO ITEM OF APPROPRIATION RECOMMENDED BY THE PRESIDENT IN THE BUDGET SUBMITTED TO CONGRESS PURSUANT TO ARTICLE VII, SECTION 22 OF THE CONSTITUTION WHICH HAS BEEN DISAPPROVED OR REDUCED BY CONGRESS SHALL BE RESTORED OR INCREASED BY THE USE OF APPROPRIATIONS AUTHORIZED FOR OTHER PURPOSES IN THIS ACT BY AUGMENTATION. AN ITEM OF APPROPRIATION FOR ANY PURPOSE RECOMMENDED BY THE PRESIDENT IN THE BUDGET SHALL BE DEEMED TO HAVE BEEN DISAPPROVED BY CONGRESS IF NO CORRESPONDING APPROPRIATION FOR THE SPECIFIC PURPOSE IS PROVIDED IN THIS ACT."

It should be noted that in the 1989 Appropriations Act, the "Use of Savings" appears in Section 12, separate and apart from Section 55; whereas in the 1990 Appropriations Act, the "Use of Savings" and the vetoed provision have been commingled in Section 16 only, with the vetoed provision made to appear as a condition or restriction.

Essentially the same reason was given for the veto of Section 16 (FY '90), thus:

"I am vetoing this provision for the reason that it violates Section 25(5) of Article VI of the Constitution in relation to Sections 44 and 45 of P.D. No. 1177 as amended by R.A. No. 6670 which authorizes the President to use savings to augment any item of appropriations in the Executive Branch of the Government.

"Parenthetically, there is a case pending in the Supreme Court relative to the validity of the President's veto on Section 55 of the General Provisions of Republic Act No. 6688 upon which the amendment on this Section was based. Inclusion, therefore, of the proviso in the last sentence of this section might prejudice the Executive Branch's position in the case.

"Moreover, if allowed, this Section would nullify not only the constitutional and statutory authority of the President, but also that of the officials enumerated under Section 25(5) of Article VI of the Constitution, to augment any item in the general appropriations law for their respective appropriations.

"An unwanted consequence of this provision would be the inability of the President, the President of the Senate, Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and heads of Constitutional Commissions to augment any item of appropriation of their respective offices from savings in other items of their respective appropriations even in cases of national emergency or in the event of urgent need to accelerate the implementation of essential public services and infrastructure projects."

The fundamental issue raised is whether or not the veto by the President of Section 55 of the 1989 Appropriations Bill (Section 55 FY '89), and subsequently of its counterpart Section 16 of the 1990 Appropriations Bill (Section 16 FY '90), is unconstitutional and without effect.

The Contending Views

In essence, petitioners' cause is anchored on the following grounds: (1) the President's line-veto power as regards appropriation bills is limited to item/s and does not cover provision/s; therefore, she exceeded her authority when she vetoed Section 55 (FY '89) and Section 16 (FY '90) which are provisions; (2) when the President objects to a provision of an appropriation bill, she cannot exercise the item-veto power but should veto the entire bill; (3) the item-veto power does not carry with it the power to strike out conditions or restrictions for that would be legislation, in violation of the doctrine of separation of powers; and (4) the power of augmentation in Article VI, Section 25[5] of the 1987 Constitution, has to be provided for by law and, therefore, Congress is also vested with the prerogative to impose restrictions on the exercise of that power.

The Solicitor General, as counsel for public respondents, counters that the issue at bar is a political question beyond the power of this Court to determine; that petitioners had a political remedy, which was to override the veto; that Section 55 is a "rider" because it is extraneous to the Appropriations Act and, therefore, merits the President's veto; that the power of the President to augment items in the appropriations for the executive branches had already been provided for in the Budget Law, specifically Sections 44 and 45 of Pres. Decree No. 1177, as amended by Rep. Act No. 6670 (4 August 1988); and that the President is empowered by the Constitution to veto provisions or other "distinct and severable parts" of an Appropriations Bill.

Judicial Determination

With the Senate maintaining that the President's veto is unconstitutional, and that charge being controverted, there is an actual case or justiciable controversy between the Upper House of Congress and the executive department that may be taken cognizance of by this Court.

"Indeed, where the legislature or the executive branch is acting within the limits of its authority, the judiciary cannot and ought not to interfere with the former. But where the legislature or the executive acts beyond the scope of its constitutional powers, it becomes the duty of the judiciary, to declare what the other branches of the government had assumed to do as void. This is the essence of judicial power conferred by the Constitution 'in one Supreme Court and in such lower courts as may be established by law' [Art. VIII, Section 1 of the 1935 Constitution; Art. X, Section 1 of the 1973 Constitution and which was adopted as part of the Freedom Constitution, and Art. VIII, Section 1 of the 1987 Constitution] and which power this Court has exercised in many instances" (Demetria vs. Alba, G. R. No. 71977, 27 February 1987, 148 SCRA 209).

We take note as well of what petitioners stress as the "imperative need for a definitive ruling by this Court as to the exact parameters of the exercise of the item-veto power of the President as regards appropriation bills x x x in order to obviate the recurrence of a similar problem whenever a general appropriations bill is passed by Congress." Indeed, the contextual reiteration of Section 55 (FY 89) in Section 16 (FY '90) and again, its veto by the President, underscore the need for judicial arbitrament. The Court does not thereby assert its superiority over or exhibit lack of respect due the other co-ordinate departments but discharges a solemn and sacred duty to determine essentially the scope of intersecting powers in regard which the Executive and the Senate are in dispute.

Petitioners have also brought this suit as taxpayers. As ruled in *Sanidad v. COMELEC* (No. L-44640, 12 October 1976, 73 SCRA 333), this Court enjoys the open discretion to entertain taxpayers suits or not. In *Tolentino v. COMELEC* (No. L-34150, 16 October 1961, 41 SCRA 702), it was also held that a member of the Senate has the requisite personality to bring a suit where a constitutional issue is raised.

The political question doctrine neither interposed an obstacle to judicial determination of the rival claims. The jurisdiction to delimit constitutional boundaries has been given to this Court. It cannot abdicate that obligation mandated by the 1987 Constitution, although said provision by no means does away with the applicability of the

principle in appropriate cases.

"SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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

Nor is this the first time that the constitutionality of a Presidential veto is raised to the Court. The two oft-cited cases are *Bengson v. Secretary of Justice* (62 Phil. 912 [1936]), penned by Justice George A. Malcolm, which upheld the veto questioned before it, but which decision was reversed by the U.S. Supreme Court in the same entitled case in 292, U.S. 410, *infra*, essentially on the ground that an Appropriations Bill was not involved. The second case is *Bolinao Electronics v. Valencia* (G. R. No. L-20740, 30 June 1964, 11 SCRA 486), *infra*, which rejected the President's veto of a condition or restriction in an Appropriations Bill.

The Extent of the President's Item-veto Power

The focal issue for resolution is whether or not the President exceeded the item-veto power accorded by the Constitution. Or differently put, has the President the power to veto "provisions" of an Appropriations Bill?

Petitioners contend that Section 55 (FY '89) and Section 16 (FY '90) are provisions and not items and are, therefore, outside the scope of the item-veto power of the President.

The veto power of the President is expressed in Article VI, Section 27 of the 1987 Constitution reading, in full, as follows:

"Sec. 27. (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

"(2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object."

Paragraph (1) refers to the general veto power of the President and if exercised would result in the veto of the entire bill, as a general rule. Paragraph (2) is what is referred to as the item-veto power or the line-veto power. It allows the exercise of the veto over a particular item or items in an appropriation, revenue, or tariff bill. As specified, the President may not veto less than all of an item of an Appropriations Bill. In other words, the power given the executive to disapprove any item or items in an Appropriations Bill does not grant the authority to veto a part of an item and to approve the remaining portion of the same item.

Originally, item veto exclusively referred to veto of items of appropriation bills and first came into being in the former Organic Act, the Act of Congress of 29 August 1916. This was followed by the 1935 Constitution, which contained a similar provision in its Section 11(2), Article VI, except that the veto power was made more expansive by the inclusion of this sentence:

“x x x When a provision of an appropriation bill affects one or more items of the same, the President can not veto the provision without at the same time vetoing the particular item or items to which it relates x x x.”

The 1935 Constitution further broadened the President's veto power to include the veto of item of items of revenue and tariff bills.

With the advent of the 1973 Constitution, the section took a more simple and compact form, thus:

“Section 20 (2). The Prime Minister shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto not affect the item or items to which he does not object.”

It is to be noted that the counterpart provision in the 1987 Constitution (Article VI, Section 27[2], *supra*), is a verbatim reproduction except for the public official concerned. In other words, also eliminated has been any reference to the veto of a provision. The vital question is: should this exclusion be interpreted to mean as a disallowance of the power to veto a provision, as petitioners urge?

The terms item and provision in budgetary legislation and practice are concededly different. An item in a bill refers to the particulars, the details, the distinct and severable parts x x x of the bill (Bengzon, *supra*, at 916). It is an indivisible sum of money dedicated to a stated purpose (*Commonwealth v. Dodson*, 11 S.E.. 2d 120, 124, 125, etc., 176 Va. 281). The United States Supreme Court, in the case of *Bengzon v. Secretary of Justice* (299 U.S. 410, 414, 57 S.Ct 252, 81 L. Ed., 312) declared "that an 'item' of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law, which happens to be put into an appropriation bill."

It is our considered opinion that, notwithstanding the elimination in Article VI, Section 27(2) of the 1987 Constitution of any reference to the veto of a provision, the extent of the President's veto power as previously defined by the 1935 Constitution has not changed. This is because the eliminated proviso merely pronounces the basic principle that a distinct and severable part of a bill may be the subject of a separate veto (*Bengzon v. Secretary of Justice*, 62 Phil., 912, 916 (1926); 2 BERNAS, Joaquin, S.J., *The Constitution of the Republic of the Philippines*, 1st ed., 154-155, [1988]).

The restrictive interpretation urged by petitioners that the President may not veto a provision without vetoing the entire bill not only disregards the basic principle that a distinct and severable part of a bill may be the subject of a separate veto but also overlooks the Constitutional mandate that any provision in the general appropriations bill shall relate specifically to some particular appropriation therein and that any such provision shall be limited in its operation to the appropriation to which it relates (1987 Constitution, Article VI, Section 25 [2]). In other words, in the true sense of the term, a provision in an Appropriations Bill is limited in its operation to some particular appropriation to which it relates, and does not relate to the entire bill.

Petitioners' further submission that, since the exercise of the veto power by the President partakes of the nature of legislative powers it should be strictly construed, is negated by the following dictum in *Bengzon, supra*, reading:

"The Constitution is a limitation upon the power of the legislative department of the government, but in this respect it is a grant of power to the executive department. The Legislature has the affirmative power to enact laws; the Chief Executive has the negative power by the constitutional exercise of which he may defeat the will of the Legislature. It follows that the Chief Executive must find his authority in the Constitution. But in exercising that authority he may not be confined to rules of strict construction or hampered by the unwise interference of the judiciary. The courts will indulge every intendment in favor of the constitutionality of a veto the same as they will presume the constitutionality of an act as originally passed by the Legislature" (*Commonwealth v. Barnett* [1901], 199 Pa., 161; 55 L.R.A., 882; *People v. Board of Councilmen* [1892], 20 N.Y.S., 52; *Fulmore v. Lane* [1911], 104 Tex., 499; *Texas Co v. State* [1927], 53 A.L.R., 258 [at 917]).

Inappropriateness of the so-called "Provisions"

But even assuming arguendo that provisions are beyond the executive power to veto, we are of the opinion that Section 55 (FY '89) and Section 16 (FY '90) are not provisions in the budgetary sense of the term. Article VI, Section 25(2) of the 1987 Constitution provides:

"Sec. 25(2) No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates."

Explicit is the requirement that a provision in the Appropriations Bill should relate specifically to some "particular appropriation" therein. The challenged "provisions" fall short of this requirement. Firstly, the vetoed "provisions" do not relate to any particular or distinctive appropriation. They apply generally to all items disapproved or reduced by Congress in the Appropriations Bill. Secondly, the disapproved or reduced items are nowhere to be found on the face of the Bill. To discover them, resort will have to be made to the original recommendations made by the President and to the source indicated by petitioners themselves, i.e., the "Legislative Budget Research and Monitoring Office" (Annex B-1 and B-2, Petition). Thirdly, the vetoed Sections are more of an expression of Congressional policy in respect of augmentation from savings rather than a budgetary appropriation. Consequently, Section 55 (FY '89) and Section 16 (FY '90) although labelled as "provisions," are actually inappropriate provisions that should be treated as items for the purpose of the President's veto power (*Henry v. Edwards* [1977] 346 S Rep. 2d, 157-158).

"Just as the President may not use his item-veto to usurp constitutional powers conferred on the legislature, neither can the legislature deprive the Governor of the constitutional powers conferred on him as chief executive officer of the state by including in a general appropriation bill matters more properly enacted in separate legislation. The Governor's constitutional power to veto bills of general legislation. . . cannot be abridged by the careful placement of such measures in a general appropriation bill, thereby forcing the Governor to choose between approving unacceptable substantive legislation or vetoing 'items' of expenditure essential to the operation of government. The legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power over substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation. Otherwise, the legislature would be permitted to impair the constitutional responsibilities and functions of a co-equal branch of government in contravention of the separation of powers doctrine . . . We are no more willing to allow the legislature to use its appropriation power to infringe on the Governor's constitutional right to veto matters of substantive legislation than we are to allow the Governor to encroach on the constitutional powers of the legislature. In order to avoid this result, we hold that, when the legislature inserts inappropriate provisions in a general appropriation bill, such provisions must be treated as 'items' for purposes of the Governor's item veto power over general appropriation bills.

x x x x x x x x

"x x x Legislative control cannot be exercised in such a manner as to encumber the general appropriation bill with veto-proof 'logrolling measure,' special interest provisions which could not succeed if separately enacted, or 'riders,' substantive pieces of legislation incorporated in a bill to insure passage without veto. x x x "
(Underscoring supplied)

Inappropriateness of the so-called "Conditions/Restrictions"

Petitioners maintain, however, that Congress is free to impose conditions in an Appropriations Bill and where conditions are attached, the veto power does not carry with it the power to strike them out, citing *Commonwealth v. Dodson* (11 SE, 2d 130, supra) and *Bolinao Electronics Corporation v. Valencia* (No. L-20740, June 30, 1964,

11 SCRA 486). In other words, their theory is that Section 55 (FY '89) and Section 16 (FY '90) are such conditions/restrictions and thus beyond the veto power.

There can be no denying that inherent in the power of appropriation is the power to specify how money shall be spent; and that in addition to distinct "items" of appropriation, the Legislature may include in Appropriation Bills qualifications, conditions, limitations or restrictions on expenditure of funds. Settled also is the rule that the Executive is not allowed to veto a condition or proviso of an appropriation, while allowing the appropriation itself to stand (*Fairfield v. Foster*, supra, at 320). That was also the ruling in *Bolinao supra*, which held that the veto of a condition in an Appropriations Bill which did not include a veto of the items to which the condition related was deemed invalid and without effect whatsoever.

However, for the rule to apply, restrictions should be such in the real sense of the term, not some matters which are more properly dealt with in a separate legislation (*Henry v. Edwards*, La, 346, So 2d 153). Restrictions or conditions in an Appropriations Bill must exhibit a connection with money items in a budgetary sense in the schedule of expenditures. Again, the test is appropriateness.

"It is not enough that a provision be related to the institution or agency to which funds are appropriated. Conditions and limitations properly included in an appropriation bill must exhibit such a connexity with money items of appropriation that they logically belong in a schedule of expenditures. . . the ultimate test is one of appropriateness" (*Henry v. Edwards*, supra, at 158).

Tested by these criteria. Section 55 (FY '89) and Section 16 (FY '90) must also be held to be inappropriate "conditions." While they, particularly, Section 16 (FY '90), have been "artfully drafted" to appear as true conditions or limitations, they are actually general law measures more appropriate for substantive and, therefore, separate legislation.

Further, neither of them shows the necessary connection with a schedule of expenditures. The reason, as explained earlier, is that items reduced or disapproved by Congress would not appear on the face of the enrolled bill or Appropriations Act itself. They can only be detected when compared with the original budgetary submittals of the President. In fact, Sections 55 (FY '89) and 16 (FY '90) themselves provide that an item "shall be deemed to have been disapproved by Congress if no corresponding appropriation for the specific purpose is provided in this Act."

Considering that the vetoed provisions are not, in the budgetary sense of the term, conditions or restrictions, the case of *Bolinao Electronics Corporation v. Valencia* (supra), invoked by petitioners, becomes inapplicable. In that case, a public works bill contained an item appropriating a certain sum for assistance to television stations, subject to the condition that the amount would not be available to places where there were commercial television stations. Then President Macapagal approved the appropriation but vetoed the condition. When challenged before this Court, it was held that the veto was ineffectual and that the approval of the item carried with it the approval of the condition attached to it. In contrast with the case at bar, there is no condition, in the budgetary sense of the term, attached to an appropriation or item in the appropriation bill which was struck out. For obviously, Sections 55 (FY '89) and 16 (FY '90) partake more of a curtailment on the power to augment from savings; in other words, "a general provision of law, which happens to be put in an appropriation bill" (*Bengzon v. Secretary of Justice*, supra).

The Power of Augmentation and The Validity of the Veto

The President promptly vetoed Section 55 (FY '89) and Section 16 (FY '90) because they nullify the authority of the Chief Executive and heads of different branches of government to augment any item in the General Appropriations Law for their respective offices from savings in other items of their respective appropriations, as

guaranteed by Article VI, Section 25(5) of the Constitution. Said provision reads:

"Sec. 25. (5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations" (Underscoring ours).

Noteworthy is the fact that the power to augment from savings lies dormant until authorized by law.

This Court upheld the validity of the power of augmentation from savings in *Demetria v. Alba*, which ruled:

"x x x to afford the heads of the different branches of the government and those of the constitutional commissions considerable flexibility in the use of public funds and resources, the constitution allowed the enactment of a law authorizing the transfer of funds for the purpose of augmenting an item from savings in another item in the appropriation of the government branch or constitutional body concerned. The leeway granted was thus limited. The purpose and conditions for which funds may be transferred were specified, i.e., transfer may be allowed for the purpose of augmenting an item and such transfer may be made only if there are savings from another item in the appropriation of the government branch or constitutional body" (G. R. No. 71977, 27 February 1987, 148 SCRA 214).

The 1973 Constitution contained an identical authority to augment from savings in its Article VIII, Section 16(5), except for mention of the Prime Minister among the officials vested with that power.[1]

In 1977, the statutory authority of the President to augment any appropriation of the executive department in the General Appropriations Act from savings was specifically provided for in Section 44 of Presidential Decree No. 1177, as amended (RA 6670, 4 August 1988), otherwise known as the "Budget Reform Decree of 1977." It reads:

"Sec. 44. x x x

"The President shall, likewise, have the authority to augment any appropriation of the Executive Department in the General Appropriations Act, from savings in the appropriations of another department, bureau, office or agency within the Executive Branch, pursuant to the provisions of Art. VIII, Sec. 16(5) of the Constitution (now Sec. 25(5), Art. VI)" (Emphasis ours). (N.B.: The first paragraph declared void in *Demetria v. Alba*, *supra*, has been deleted).

Similarly, the use by the President of savings to cover deficits is specifically authorized in the same Decree. Thus:

"Sec. 45. Authority to Use Savings in Appropriations to Cover Deficits. Except as otherwise provided in the General Appropriations Act, any savings in the regular appropriations authorized in the General Appropriations Act for programs and projects of any department, office or agency, may, with the approval of the President be used to cover a deficit in any other item of the regular appropriations:" x x x

A more recent grant is found in Section 12 of the General Appropriations Act of 1989, the text of which is repeated in the first paragraph of Section 16 (FY '90), Section 12 reads:

"Sec. 12. Use of Savings. - The President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the heads of the Constitutional Commissions, and the Ombudsman are hereby authorized to augment any item in this Act for their respective offices from savings in other items of their respective appropriations."

There should be no question, therefore, that statutory authority has, in fact, been granted. And once given, the heads of the different branches of the Government and those of the Constitutional Commissions are afforded considerable flexibility in the use of public funds and resources (*Demetria v. Alba*, *supra*). The doctrine of

separation of powers is in no way endangered because the transfer is made within a department (or branch of government) and not from one department (branch) to another (CRUZ, Isagani A., Philippine Political Law [1989] p. 155).

When Sections 55 (FY '89) and 16 (FY '90), therefore, prohibit the restoration or increase by augmentation of appropriations disapproved or reduced by Congress, they impair the constitutional and statutory authority of the President and other key officials to augment any item or any appropriation from savings in the interest of expediency and efficiency. The exercise of such authority in respect of disapproved or reduced items by no means vests in the Executive the power to rewrite the entire budget, as petitioners contend, the leeway granted being delimited to transfers within the department or branch concerned, the sourcing to come only from savings.

More importantly, it strikes us, too, that for such a special power as that of augmentation from savings, the same is merely incorporated in the General Appropriations Bill. An Appropriations Bill is "one the primary and specific aim of which is to make appropriation of money from the public treasury" (Bengzon v. Secretary of Justice, 292 U.S., 410, 57 S.Ct. 252). It is a legislative authorization of receipts and expenditures. The power of augmentation from savings, on the other hand, can by no means be considered a specific appropriation of money. It is a non-appropriation item inserted in an appropriation measure.

The same thing must be said of Section 55 (FY '89), taken in conjunction with Section 12, and Section 16 (FY '90), which prohibit the restoration or increase by augmentation of appropriations disapproved and or reduced by Congress. They are non-appropriation items, an appropriation being a setting apart by law of a certain sum from the public revenue for a specified purpose (Bengzon v. Secretary of Justice, 62 Phil. 912, 916 [1936]). It bears repeating that they are more of a substantive expression of a legislative objective to restrict the power of augmentation granted to the President and other key officials. They are actually matters of general law and more properly the subject of a separate legislation that will embody, define and delimit the scope of the special power of augmentation from savings instead of being inappropriately incorporated annually in the Appropriation Act. To sanction this practice would be to give the Legislature the freedom to grant or withhold the power from the Executive and other officials, and thus put in yearly jeopardy the exercise of that power.

If, indeed, by the later enactments of Section 55 (FY '89) and Section 16 (FY '90), Congress, as petitioners argue, intended to amend or repeal Pres. Decree No. 1177, with all the more reason should it have so provided in a separate enactment, it being basic that implied repeals are not favored. For the same reason, we cannot subscribe to petitioners' allegation that Pres. Decree No. 1177 has been revoked by the 1987 Constitution. The 1987 Constitution itself provides for the continuance of laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with the Constitution until amended, repealed or revoked (1987 Constitution, Article XVIII, Section 3).

If, indeed, the legislature believed that the exercise of the veto powers by the executive were unconstitutional, the remedy laid down by the Constitution is crystal clear. A Presidential veto may be overridden by the votes of two-thirds of members of Congress (1987 Constitution, Article VI, Section 27[1], *supra*). But Congress made no attempt to override the Presidential veto. Petitioners' argument that the veto is ineffectual so that there is "nothing to override" (citing Bolinao) has lost force and effect with the executive veto having been herein upheld.

As we see it, there need be no future conflict if the legislative and executive branches of government adhere to the spirit of the Constitution, each exercising its respective powers with due deference to the constitutional responsibilities and functions of the other. Thereby, the delicate equilibrium of governmental powers remains on even keel.

WHEREFORE, the constitutionality of the assailed Presidential veto is UPHOLD and this Petition is hereby

DISMISSED. No costs.

SO ORDERED.

Narvasa, Gancayco, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr., Cruz, Paras, and Padilla, JJ., see dissenting opinion.

Feliciano, J., on leave.

Fernan, C.J., no part. Formerly counsel for one petitioner and one respondent.

[1] Sec. 16 (5) - No law shall be passed authorizing any transfer of appropriations; however, the President, the Prime Minister, the Speaker, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may by law be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

Print Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

CRUZ, J.:

Mme. Justice Herrera has written another opinion that commends itself for its logic and lucidity. Regrettably, there are certain conclusions in the ponencia that I cannot share.

In justifying her veto, the President says that "the provision violates Section 25(5) of Article VI of the Constitution," as if to suggest that she derives her power of augmentation directly from this section. She does not, of course. This is not a self-executing provision. The said section states that she and the other officials mentioned therein "may, by law, be authorized to augment any item in the general appropriations law for their respective offices..." This means she needs statutory authority before she can augment.

The President says nevertheless that she has that authority and points to Section 44 of PD No. 1177, otherwise known as the Budget Reform Decree of 1977, as amended. Significantly, the provision she invokes is precisely the section modified by Congress in the General Appropriations Act of 1989 (and also of 1990). In vetoing Section 55 of that law, the President is in effect saying that the authorization earlier given her cannot be revoked.

The authority to augment is not such an extraordinary endowment that, once given, becomes sacrosanct and irrevocable. What the Legislature has conferred in its discretion, it can also recall in the exercise of that same discretion. The only exception I know to the principle that Congress cannot pass irrepealable laws is the impairment clause, and even that is fast losing ground.

I am not persuaded that Section 55 of the General Appropriations Law of 1989 is a rider as contended by the respondents. A rider is a provision not germane to the subject or purpose of the bill where it is included. Section 55 is not irrelevant to the General Appropriations Act of 1989 as it deals, quite obviously, with appropriations. Its purpose is in fact to limit the powers of the President in the disposition of the funds appropriated in that measure.

I suggest it is Section 44 of the Budget Reform Decree and not Section 55 of the General Appropriations Act of

1989 that is the rider. Section 44 is extraneous to the subject and purpose of PD No. 1177, which deals only with "the form, content and manner of preparation of the budget" that are required to "be prescribed by law" under Article VI, Sec. 25(1) of the Constitution. The budget is only a recommendation of appropriations, not the appropriation itself. The authority to augment given by Section 44 of PD No. 1177 belongs in the General Appropriations Act and has no place in the Budget Reform Decree.

The ponencia says that to sanction the inclusion of Section 55 in the General Appropriations Act "would be to give the Legislature the freedom to grant or withhold the power from the Executive and other officials and thus put in yearly jeopardy the exercise of that power" to augment. I respectfully submit that the freedom is not ours to give. It was vested in Congress by the Constitution itself, and we ourselves have no authority to grant or withhold it.

It is needless to debate whatever distinction there may be between the item and the provision. The important consideration is that, whatever its nature, Section 55 of the General Appropriations Act cannot be vetoed in any case because it seeks to withdraw a delegated power.

The power of the purse belongs to Congress and has been traditionally recognized in the constitutional provision that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." The transfer of funds from one item to another in the General Appropriations Act is part of that power, except that the Constitution allows Congress to delegate it by law to the President, the Senate President, the Speaker of the House of Representatives, the Chief Justice and the heads of the Constitutional Commissions. When exercising this authority, the aforementioned officials act not by virtue of their own competence but only as agents of Congress.

There should be no question that the agency conferred on these officials can be revoked by Congress at any time and for any reason it sees fit. The delegates cannot challenge this withdrawal and insist on holding on to the authorization that the legislature had the discretion to withhold from them in the first place. The authority to augment involves the element of confidence. Should Congress choose to withdraw it, a becoming respect for the doctrine of separation of powers, if not anything else, should persuade the delegates to yield to the wish of the principal.

The challenge to the validity of Section 55 is to me plain quibbling. To argue that no recall has been made is to ignore the obvious. What matters is the intention of Congress, which should be clear enough if only the respondents would not muddy the waters. The plain and unmistakable intention of Congress is to withdraw from the President, for its own reasons, the delegated power to augment.

The following observations in the Emergency Power Cases, 92 Phil. 603, are appropriate:

Although House Bill No. 727 had been vetoed by the President and did not thereby become a regular statute, it may at least be considered as a concurrent resolution of the Congress formally declaring the termination of the emergency powers. To contend that the Bill needed presidential acquiescence to produce effect would lead to the anomalous, if not absurd, situation that, while Congress might delegate its powers by a simple majority, it might not be able to recall them except by two-thirds vote. In other words, it would be easier for Congress to delegate its powers than to take them back. This is not right and is not, and ought not, to be the law.

I think it would have been more characteristic of the President if she had graciously respected the will of the Legislature and so again recognized her role in the constitutional scheme of the Republic.

Print Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */
table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0;

mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

GUTIERREZ, JR., J.:

I regretfully dissent from the Court's opinion in this case because fundamental principles underlying doctrine of separation of powers were violated when the President vetoed certain provisions of the 1989 and 1990 Appropriation Bills.

I am disturbed by the consequences of the Court's act of legitimization, among them the following:

(1) The traditional power of Congress over the public purse is negated if functions or offices it has abolished or reduced are restored through the grant of carte blanche authority to shift savings from one department or agency to another. What the Court is sustaining is no longer augmentation within the purview of the Constitution. It is already fund juggling against the express command of the body in whom fiscal power is vested.

(2) The Court is, in effect, allowing a modified lump sum appropriation for the entire Executive Branch. The Executive is annually given appropriations ranging from Two Hundred Billion Pesos to Two Hundred Fifty Billion Pesos. Whenever the President calls on all Departments to effect ten percent (10%) savings, compliance immediately follows. There is thus a built in excess of Two Billion Pesos. This tremendous amount can now be used to finance projects which Congress declares improvident or of low priority. Secretaries of executive departments can thumb their noses at the legislature and, by asking for the President's largesse, implement even that which has been interdicted.

(3) The Constitution does not grant fiscal autonomy to the Executive Branch. There is no comparison between the appropriations for the Judiciary and other constitutional offices on one hand and for the Executive Branch on the other. There is reason to give flexibility in the use of funds for the Judiciary and other constitutional creatures. However, tight congressional control over the way executive programs of government are funded is part of a responsible presidential system of government.

(4) The power to augment is intended for functions, projects, and offices where both Congress and the President expressly or impliedly concur, not where one specifically exercises its constitutional power to regulate or modify the expenditures of the other. In the same way that Congress cannot increase the budgetary proposals of the Executive, neither should the Executive restore that which Congress has expressly abolished or reduced.

(5) The Constitution grants the President power to veto any particular item or items of an appropriation bill. The Constitution withholds the power to veto provisions from the President. We are rewriting the Constitution to restore what the framers have eliminated when we ignore the difference between an item and a provision.

The Court is interpreting the power to augment under Section 25 (5), Article VI of the Constitution as a grant of near untrammelled authority to shift savings from appropriated funds for functions and projects never intended by the lawmakers to be funded and worse, for functions and projects which Congress has expressly stated should not be beneficiaries of public funds for a specific year.

With a budget of over Two Hundred Billion Pesos (P200,000,000,000.00) annually given to the Executive Department, the implications of the Court's ruling are extremely serious, to say the least. The Court's interpretation of the power of augmentation effectively corrodes the power of Congress over a function which by

its nature is inherently legislative. I don't believe the Constitution ever intended to give carte blanche authority to the President to suppress certain activities in the Executive Department already agreed upon with Congress and from the funds thus saved, transfer various amounts to projects and offices which Congress declares must be abolished or reduced. Why not simply give the President a lump sum allocation of P250 Billion and let it be spent as the Executive wills?

The raising of funds for the expenses of Government is a legislative prerogative. The legislative power also determines through Appropriation Acts how the revenues collected shall be spent and for what purpose. Congress alone has the power to give the President the necessary funds to implement Government programs. This vested power of Congress over the financial affairs of Government underlies and colors all interpretations of budgetary provisions and appropriation laws.

Because of the high profile of Malacanang in the disbursement of funds for public needs, people tend to forget that it is only implementing the law as passed by Congress. The President has no power to enact or amend statutes, most specifically appropriation statutes. The Executive merely proposes and submits recommendations. It is Congress which decides.

In the same way that Congress creates public offices, it can also abolish them whenever, in its opinion, bona fide simplicity, economy, and efficiency would be achieved. By allowing the President through augmentation to re-create public offices abolished or reduced by Congress, the Court is treading upon time-tested doctrines, the effects of which may, in the future, be regretted.

It is misleading for the respondents to tie up the President's augmentation authority with the same authority given to the Chief Justice and the heads of Constitutional Commissions. The Judiciary and these Commissions enjoy fiscal autonomy. Their roles in the constitutional scheme call for independence and flexibility in the use of appropriated funds. Most of their expenditures are fixed and recurring. The Department of Budget and Management (DBM) prunes their requests for funds to the bone such that when the budget is presented to Congress, there is nothing more to abolish or reduce. The Judiciary and Commissions are usually neglected if not forgotten when the financial pie is sliced. Thus the Judiciary with around 23,000 Justices, Judges, Clerks of Court, lawyers, and other supporting personnel is generally allocated a miniscule one (1%) percent of the national budget by DBM proposals. In the aborted 1991 proposals, the percentage was lowered to 00.67 percent or a little over one-half percent. Any savings are quite modest and usually result from non-filling of judicial positions. The Constitutional Commissions have the same problems. The Court now validates the free use of savings by the Executive against the express will of Congress. Since these could easily amount not to one percent but to ten percent or more of the gargantuan budget for the Executive Branch, the implications are extremely disturbing.

As for the power given to the Senate President and Speaker, it is Congress which enacts the law and the need for augmentation is not really significant.

The same is not true for the President where the amount from which savings are generated is always beyond P200 Billion. The argument that the leeway granted is delimited to transfers within the department or branch overlooks the fact that almost the entire budget of the Government is eaten up by the Executive Branch. It is relatively easy for the Office of the President, for example, to get P100 Million from funds allocated as assistance to local governments or construction of major public works and augment another item anywhere in the entire Executive Branch. This is indeed the power to rewrite the entire budget. It is not the legislative power over the public purse which alone is denigrated. The power to fiscalize government expenses is equally diminished.

The constitutional history of the President's item veto power shows that it should not be interpreted to include the vetoing of provisions. It must be limited to items.

The 1935 Constitution granted the power to veto "provisions" provided the particular item or items to which the provision relates are also vetoed.

The 1973 Constitution removed the power to veto "provisions." The Chief Executive was given the power to veto only "any particular item or items" in an appropriation, revenue, or tariff bill.

The 1987 Constitution follows the 1973 formula. The President may veto any particular item or items in an appropriation, revenue, or tariff bill but the veto shall not affect the item or items to which he does not object.

The majority opinion correctly concedes that the terms item and provision in budgetary legislation and practice are different.

If that is so, I fail to see how we can rule that the power of the President under the 1935 Constitution to veto "provisions" remains even if it was expressly eliminated from both the 1973 and 1987 Constitutions. Where the Constitution says "items", the veto power must be limited to "item." It cannot include "provisions" which was expressly stricken out.

As a general rule, laws passed by Congress can be vetoed by the President only in their entirety or none at all. She cannot select provisions and sections she does not like and veto them while approving the rest of the statute. The Constitution allows a limited power of veto only when it comes to appropriation, revenue or tariff bills. The power is limited to items. It should not be interpreted by this Court to mean the expanded power to also veto "provisions."

To state it in another way, the President may veto a distinct and severable part of a bill only - (1) if that severable part is an item and not a provision, and (2) if that severable part belongs to an appropriation, revenue or tariff bill. All other must be vetoed in their entirety.

Regarding the citation from *Bengzon v. Secretary of Justice* (299 U. S. 410, 414 [1936]) for a liberal construction, the veto power is interpreted in favor of validity only when it is limited to the items it covers. No amount of liberal interpretation, for instance, can allow the President to veto any item, part, or section of a bill which has nothing to do with appropriations, revenues, or tariffs.

I must emphasize that the provisions vetoed by the President are not inappropriate and definitely are not riders.

There can be no dispute that Congress has the power to reduce the budgetary proposals prepared by the Executive.

If Congress abolishes, removes, or reduces a project, function, or activity by cutting the funds proposed for it, a provision enforcing that abolition, removal, or reduction is appropriate and germane to the part thus stricken out. It would be absurd to require that it should appear in separate legislation.

A rider is a provision which is alien to the bill to which it is attached. An example is the Spooner Amendment which transferred government powers over the Philippines in 1901 from the military to the civil government, from the Executive to Congress. This section had nothing to do with the Army Appropriation Bill in which it was included. On the other hand, the vetoed provisions in the instant case specifically refer to appropriations which were disapproved or reduced in those very same bills.

In fact, the vetoed provisions of the 1989 and 1990 Appropriation Acts are not only germane to these Acts but are precisely authorized under Section 25 (5) of Article VI of the Constitution. Under Section 25 (5), the President, Senate President, Speaker, Chief Justice and heads of Constitutional Commissions are by law authorized to augment items in the general appropriations law for their respective offices from savings in other items. As stated by the majority opinion, the power to augment from savings lies dormant until authorized by law. When Congress exercises that dormant power and by law authorizes these officials to augment items, certainly it has the power to

also state what items may not be augmented. I fail to see how the exercise of this power can be termed an inappropriate rider.

The grant of the power to augment includes the authority to specify what matters are not part of the granted power. I cannot agree that the 1977 authority to augment appropriations from savings can prevail over 1989 and 1990 provisions to the contrary. The 1989 grant of the power to augment in Section 12 of the 1989 Appropriations Acts is necessarily circumscribed by the withholding of that power in the provisions illegally vetoed. One part cannot remain if a related part is vetoed.

In closing, I repeat that the Court's opinion allows the President to denigrate and render ineffective a clear and positive expression of legislative policy on how the funds of Government shall be spent. Where Congress expressly states that our limited funds should not be spent on a particular function or office, we should not give the President the power to appropriate through transfers of funds the money to maintain the abolished or greatly reduced function or office. The power of augmentation is intended to save programs or projects agreed upon by both the President and Congress where the funds allocated turn out to be inadequate. It was never conceived to render inutile the legislative power over the purse. The power to determine how public funds should be spent should remain lodged where it rightfully belongs.

Print Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:.*{behavior:url(#ieooui) } /* Style Definitions */
table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

PADILLA, J.:

I dissent mainly for two (2) reasons:

First: the questioned veto has no constitutional basis.

Article VI, Section 27 of the 1987 Constitution provides:

"Sec. 27. (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journals. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

(2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object."

Section 27 (1) refers to a general veto where the President objects to an entire bill approved by Congress and returns it to Congress for its reconsideration. The situation at bar is admittedly not a general veto of the appropriation acts for 1989 and 1990, Section 27 (1) does not, therefore, apply.

The majority opinion positions the veto questioned in this case within the scope of Section 27 (2) above-quoted. I do not see how this can be done without doing violence to the constitutional design. The distinction between an item-veto and a provision-veto has been traditionally recognized in constitutional litigation and budgetary practice. As stated by Mr. Justice Sutherland, speaking for the U.S. Supreme Court in *Bengzon vs. Secretary of Justice*, 299 U.S. 410-416:

"x x x. An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provisions of law which happens to be put into an appropriation bill. x x x."

When the Constitution in Section 27 (2) empowers the President to veto any particular item or items in the appropriation act, it does not confer - in fact, it excludes - the power to veto any particular provision or provisions in said act.

In an earlier case, *Sarmiento vs. Mison, et al.*, 156 SCRA 549, this Court referred to its duty to construe the Constitution, not in accordance with how the executive or the legislative would want it construed, but in accordance with what it says and provides. When the Constitution states that the President has the power to veto any particular item or items in the appropriation act, this must be taken as a component of that delicate balance of power between the executive and the legislative, so that, for this Court to construe Sec. 27 (2) of the Constitution as also empowering the President to veto any particular provision or provisions in the appropriation act, is to load the scale in favor of the executive, at the expense of that delicate balance of power.

Stated differently, to stretch the power of the President to veto any item in the appropriation act so as to include the power to veto any particular provision in the same act, without any conclusive indication that the same was the intent of the constitutional framers and the people who adopted the 1987 Constitution, is for the Court to indulge in spatial constitutional aerobics simply to justify what, to my mind, is an indefensible presidential veto.

Second: Section 55 (FY 1989) and Section 16 (FY 1990) are founded on principles of sound reason and public policy; the attempt to "veto" them is a grave abuse of discretion amounting to lack or excess of jurisdiction.

To begin with, Article VI, Section 25, par. 5 of the 1987 Constitution provides:

"(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations."

It will be at once noted that the fundamental policy of the Constitution is against transfer of appropriations even by law, since this "juggling" of funds is often a rich source of unbridled patronage, abuse and interminable corruption.

However, the same provision allows the enactment of a law that would authorize the President of the Philippines, the President of the Senate, the Speaker of the House, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions to augment from savings realized from any appropriations for their respective offices, any other item of appropriation also for their offices. In accordance with this Constitutional leave, Section 12 of the appropriation act of 1989 (also Section 16 (1st part) of the appropriation act of 1990) provides:

"Sec. 12. Use of Savings. - The President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of the Constitutional Commissions, and the Ombudsman are hereby authorized to augment any item in this Act for their respective offices from savings in other items of their respective appropriations."

Thus, a transfer from savings is allowed to augment any appropriation pertaining to the office which effects the

savings.

And yet, Congress as the appropriating and funding department of the Government has seen fit to place a condition or a qualification in the authority to augment, from savings, any appropriation in the offices concerned. It requires that no such savings can be used to augment an appropriation previously disapproved by Congress or to restore an appropriation previously reduced by Congress.

I can see no valid reason, in logic or in sound management, why such a condition can not be accepted. It only makes certain that congressional action disapproving an appropriation or reducing the amount of an appropriation, is not rendered inutile or meaningless by a transfer of savings in an appropriation to such other items already disapproved or reduced by Congress.

It can hardly be disputed that the condition, restriction or qualification embodied in Sections 55 and 16, here discussed, was enacted by Congress in the exercise of its legislative power to appropriate funds for government operations. The exercise of that legislative power, in the first instance, should be accorded due respect and, as I see it, the veto of the said condition is an undue encroachment by the executive on a properly exercised legislative power. This Court, in delineating power boundaries between the different departments of government, sadly expands, in this case, the bounds of an already too-powerful executive, at the expense of legislative prerogative. The majority appear to have overlooked that the power to appropriate and set reasonable conditions incidental thereto is a function entrusted by the Constitution in the legislature and only in the legislature.

In *Bolinao vs. Valencia*, G.R. No. L-20740, 30 June 1964, 11 SCRA 486, this Court already had occasion to uphold a condition laid down by the legislative in an appropriation measure, to the extent of declaring a presidential veto of such condition as illegal if made separately from the appropriation itself. This Court held:

"It may be observed from the wordings of the Appropriations Act that the amount appropriated for the operation of the Philippine Broadcasting Service was made subject to the condition that the same shall not be used or expended for operation of television stations in Luzon, where there are already existing commercial television stations. This gives rise to the question of whether the President may legally veto a condition attached to an appropriation or item in the appropriation bill. But this is not a novel question. A little effort to research on the subject would have yielded enough authority to guide action on the matter. For, in the leading case of *State v. Holder*, it was already declared that such action by the Chief Executive was illegal. This ruling, that the executive's veto power does not carry with it the power to strike out conditions or restrictions, has been adhered to in subsequent cases. If the veto is unconstitutional, it follows that the same produced no effect whatsoever, and the restriction imposed by the appropriation bill, therefore, remains. Any expenditure made by the intervenor PBS, for the purpose of installing or operating a television station in Manila, where there are already television stations in operation, would be in violation of the express condition for the release of the appropriation and, consequently, null and void. x x x."

By clear analogy, the President could not veto Sections 55 (FY 1989) and 16 (FY 1990) as conditions, without vetoing the items or appropriations which are affected by said conditions, meaning, the entire appropriation bills.

ACCORDINGLY, I vote to GRANT the petition and to declare the presidential veto of Section 55 (FY 1989) and Section 16 (FY 1990) as null and void and of no effect whatsoever, for being clearly unconstitutional. It follows that Sections 55 (FY 1989) and 16 (FY 1990) remain as binding conditions in the disposition of savings in appropriations covered by the appropriation acts for 1989 and 1990.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.