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[G.R. No. 177130, June 07, 2011]

HON. EDUARDO ERMITA IN HIS OFFICIAL CAPACITY AS THE EXECUTIVE SECRETARY, PETITIONER, VS. HON. JENNY LIND R. ALDECOA-DELORINO, PRESIDING JUDGE, BRANCH 137, REGIONAL TRIAL COURT, MAKATI CITY, ASSOCIATION OF PETROCHEMICAL MANUFACTURERS OF THE PHILIPPINES, REPRESENTING JG SUMMIT PETROCHEMICAL CORPORATION, ET AL., RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Then Executive Secretary petitioner Eduardo Ermita assailed via certiorari the writ of preliminary injunction granted by public respondent Judge Jenny Lind R. Aldecoa Delorino, then Presiding Judge of the Regional Trial Court of Makati City, Branch 137, by Omnibus Order [1] dated February 6, 2007 in favor of private respondent Association of Petrochemical Manufacturers of the Philippines (APMP or private respondent) denying petitioner's Motion to Dismiss and enjoining the government from implementing Executive Order No. 486.

Executive Order No. 486 (E.O. 486) issued on January 12, 2006 by then President Gloria Macapagal-Arroyo reads:

> **LIFTING THE SUSPENSION OF THE APPLICATION OF THE TARIFF REDUCTION SCHEDULE ON PETROCHEMICALS AND CERTAIN PLASTIC PRODUCTS UNDER THE COMMON EFFECTIVE PREFERENTIAL TARIFF (CEPT) SCHEME FOR THE ASEAN FREE TRADE AREA (AFTA)**
>
> **WHEREAS**, Executive Order 234 dated 27 April 2000, which implemented the 2000-2003 Philippine schedule of tariff reduction

of products transferred from the Temporary Exclusion List and the Sensitive List to the Inclusion List of the accelerated CEPT Scheme for the AFTA, provided that **the CEPT rates on petrochemicals and certain plastic products will be reduced to 5% on 01 January 2003;**

WHEREAS, Executive Order 161 issued on 9 January 2003 provides for the suspension of the application of the tariff reduction schedule on petrochemicals and certain products in 2003 and 2004 only;

WHEREAS, the government recognizes the need to provide an enabling environment for the naphtha cracker plant to attain international competitiveness;

WHEREAS, the NEDA Board approved the **lifting of the suspension of the aforesaid tariff reduction schedule on petrochemicals and certain plastic products and the reversion of the CEPT rates on these products to EO 161 (s.2003) levels once the naphtha cracker plant is in commercial operation;**

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, pursuant to the powers vested in me under Section 402 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), as amended, do hereby order:

SECTION 1. The articles specifically listed in *Annex "A"* (Articles Granted Concession under the CEPT Scheme for the AFTA) hereof, as classified under Section 104 of the Tariff and Customs Code of 1978, as amended, shall be subject to the ASEAN CEPT rates in accordance with the schedule indicated in Column 4 of *Annex "A"*. The ASEAN CEPT rates so indicated shall be accorded to imports coming from ASEAN Member States applying CEPT concession to the same product pursuant to Article 4 of the CEPT Agreement and Its Interpretative Notes.

SECTION 2. In the event that any subsequent change is made in the basic (MFN) Philippine rate of duty on any of the article listed in *Annex "A"* to a rate lower than the rate prescribed in Column 4 of *Annex ""A*, such article shall automatically be accorded the corresponding reduced duty.

SECTION 3. From the date of effectivity of this Executive Order, all articles listed in *Annex "A"* entered into or withdrawn from warehouses in the Philippines for consumption shall be imposed the rates of duty therein prescribed subject to qualification under the Rules of Origin as provided for in the Agreement on the CEPT Scheme for the AFTA signed on 28 January 1992.

SECTION 4. The Department of Trade and Industry, in coordination with National Economic and Development Authority, the Department of Finance, the Tariff Commission and the Bureau of Customs, shall promulgate the implementing rules and regulations that will govern the reversion of the CEPT rates on petrochemicals and plastic products to EO 161 (s.2003) levels once the naphtha cracker plant is in commercial operation.

SECTION 5. All presidential issuances, administrative rules and regulations, or parts thereof, which are contrary to or inconsistent with this Executive Order are hereby revoked or modified accordingly.

SECTION 6. This Executive Order shall take effect immediately following its complete publication in two (2) newspapers of general circulation in the Philippines.

Done in the City of Manila, this 12th day of January in the year of Our Lord Two Thousand and Six. (emphasis supplied)

The above issuance in effect reduces protective tariff rates from 10% to 5% on the entry of inexpensive products, particularly plastic food packaging, from ASEAN Free Trade (AFTA) member countries into the Philippines.

APMP, an organization composed of manufacturers of petrochemical and resin products, opposed the implementation of E.O. 486. Contending that the E.O. would affect local manufacturers, it filed a petition before the RTC of Makati, docketed as Civil Case No. 06-2004, seeking the declaration of its unconstitutionality for being violative of Sec. 4 of Republic Act No. 6647 which prohibits the President from increasing or reducing taxes while Congress is in session [2] and Sec. 402(e) [3] of the Tariff and Customs Code. It thereupon prayed for the issuance of a writ of preliminary injunction to enjoin its implementation.

Petitioner contends that public respondent gravely abused her discretion in assuming

jurisdiction over the petition for prohibition and granting the writ of preliminary injunction as the exercise of the quasi-legislative functions of the President cannot be enjoined. He avers that writs of prohibition lie only against those persons exercising judicial, quasi-judicial or ministerial functions.

By granting injunctive relief, petitioner contends that public respondent effectively preempted the trial of and pre-judged the case, given that what private respondent seeks is to stop the implementation of E.O. 486. Further, petitioner contends that the grant of injunctive relief was not supported by fact and law, for what APMP sought to be protected was "future economic benefits" which may be affected by the implementation of the E.O. – benefits which its members have no right to since protective tariff rates are government privileges wherein no one can claim any vested right to.

On the merits, petitioner maintains that E.O. 486 is not constitutionally infirm, it having been issued under the authority of Secs. 401 and 402 of the Tariff and Customs Code which set no limitations on the President's power to adjust tariff rate and serve as the government's response to its AFTA commitment on Common Effective Preferential Tariff (CEPT).

Since it is only the Omnibus Order denying the Motion to Dismiss and granting a writ of preliminary injunction that is being assailed, the Court will not pass on the constitutionality of E.O. 486 which is still pending before the trial court.

Private respondent prays in its Comment for the denial of the present petition, alleging that, among other things, the petition is premature as petitioner failed to file a Motion for Reconsideration of the assailed Omnibus Order of public respondent, and maintaining the propriety of the remedy of prohibition which it filed to assail the E.O.

The issues then are:

1. Whether public respondent erred in assuming jurisdiction over the petition for prohibition and not granting petitioner's motion to dismiss the petition;

2. Whether a motion for reconsideration should have been filed by petitioner; and

3. Whether public respondent erred in granting the writ of preliminary injunction in favor of APMP.

On the issue of jurisdiction

Rule 65, Sec. 2 of the Rules of Court provides:

> Sec. 2. *Petition for Prohibition.* - When **the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions**, are without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and **praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therei**n, or otherwise granting such incidental reliefs as law and justice may require. (emphasis supplied)

Holy Spirit Homeowners' Association v. Defensor [4] expounds on prohibition as a remedy to assail executive issuances:

> **A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-legislative function.** Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. **Prohibition lies against judicial or ministerial functions, but <u>not against legislative or quasi-legislative functions</u>**. Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained. Where the principal relief sought is to invalidate an IRR, petitioners' remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court. In any case, petitioners' allegation that "respondents are performing or threatening to perform functions without or in excess of their jurisdiction" may appropriately be enjoined by the trial court through a writ of injunction or a temporary restraining order. (emphasis supplied)

Be that as it may, it is settled that **what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought**. [5] A perusal of the petition of APMP before the trial court readily shows that it is not a mere petition for prohibition with application for the issuance of a writ of preliminary injunction. For it is also one for certiorari as it specifically alleges that E.O. 486 is invalid for being unconstitutional, it having been issued in contravention of Sec. 4 of R.A. 6647 and Sec. 402(e) of the Tariff and Customs Code, hence, its enforcement should be enjoined and petitioner prohibited from implementing the same.

Petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials. [6] Thus, even if the petition was denominated as one for prohibition, public respondent did not err in treating it also as one for certiorari and taking cognizance of the controversy.

On the propriety of filing a motion for reconsideration

Ordinarily, certiorari as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors. [7] This rule, however, is not without exceptions.

> The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court a quo had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) **where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government** or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were ex parte, or in which the petitioner had no opportunity to object; and (i) **where the issue raised is one purely of law or where public interest is involved**. [8] (emphasis supplied)

The present case involves the constitutionality and implementation of an executive

issuance involving tariff rates and, as alleged by petitioner, the Government's commitments under the AFTA. Clearly, the filing of a motion for reconsideration may be dispensed with following exceptions (c) and (i) in the above enumeration in *Siok Ping Tang*.

On the grant of the writ of preliminary injunction

APMP alleges that it is composed of manufacturers of petrochemical products and that the implementation of the assailed E.O. reducing tariff rates on certain petroleum-based products will result in the local market being flooded with lower-priced imported goods which will, consequently, adversely affect their sales profits. In granting the assailed writ, public respondent held that, based on the initial evidence presented, the APMP stands to lose "substantial revenues" and some of its members "may eventually have to close up or stop ongoing works on their Naphtha Cracker plants" if E.O. 486 is implemented. Public respondent thus ruled that the APMP was entitled to the writ as it has a "valuable stake in the petrochemical industry" and the enforcement of E.O. 486 will adversely affect its members; and that petitioner violated APMP's right on the strength of an invalid executive issuance.

Public respondent noted that the *Southern Cross* case cited by petitioner which ruled that no court is allowed to grant injunction to restrain the collection of taxes is inapplicable in the present case, since restraining the implementation of E.O. 486 will not deprive the Government of revenues; instead, it will result in more revenues as the proposed reduction of rates will be enjoined.

Public respondent thus concluded that there is sufficient basis for the issuance of a writ of preliminary injunction in favor of APMP.

It is well to emphasize that the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance thereof. [9] In the present case, however, where it is the Government which is being enjoined from implementing an issuance which enjoys the presumption of validity, such discretion must be exercised with utmost caution. *Executive Secretary v. Court of Appeals,* [10] enlightens:

> In *Social Security Commission v. Judge Bayona*, we ruled that a law is presumed constitutional until otherwise declared by judicial interpretation. **The suspension of the operation of the law is a matter of extreme delicacy because it is an interference with the official acts not only of the duly elected representatives of the people but also of the highest magistrate of the land.**

In *Younger v. Harris, Jr.*, the Supreme Court of the United States emphasized, thus:

> **Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional.** No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and, hence, unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. 752 Beal v. Missouri Pacific Railroad Corp., 312 U.S. 45, 49, 61 S.Ct. 418, 420, 85 L.Ed. 577.
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> And similarly, in Douglas, supra, we made clear, after reaffirming this rule, that:
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> "It does not appear from the record that petitioners have been threatened with any injury other than that incidental to every criminal proceeding brought lawfully and in good faith . . ." 319 U.S., at 164, 63 S.Ct., at 881.
>
> **The possible unconstitutionality of a statute, on its face, does not of itself justify an injunction against good faith attempts to enforce it, unless there is a showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief.** The "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort," and is generally disfavored.
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> **To be entitled to a preliminary injunction to enjoin the enforcement of a law assailed to be unconstitutional, the party must establish that it will suffer irreparable harm in the absence of injunctive relief and must demonstrate that it is likely to succeed on the merits, or that there are sufficiently serious questions going to the merits and the balance of hardships tips decidedly in its favor.** The higher standard reflects judicial deference toward "legislation or regulations developed through presumptively reasoned democratic processes." Moreover, an

> injunction will alter, rather than maintain, the status quo, or will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits. Considering that injunction is an exercise of equitable relief and authority, in assessing whether to issue a preliminary injunction, the courts must sensitively assess all the equities of the situation, including the public interest. **In litigations between governmental and private parties, courts go much further both to give and withhold relief in furtherance of public interest than they are accustomed to go when only private interests are involved. Before the plaintiff may be entitled to injunction against future enforcement, he is burdened to show some substantial hardship.** (emphasis supplied)

Indeed, a writ of preliminary injunction is issued precisely to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied or adjudicated – to preserve the *status quo* until the merits of the case can be heard fully. Still, even if it is a temporary and ancillary remedy, its issuance should not be trifled with, and an applicant must convincingly show its entitlement to the relief. *St. James College of Paranaque v. Equitable PCI Bank*, [11] explains:

> Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established, thus: virtual law library
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> (a) **That the applicant is entitled to the relief demanded, and the whole or part of such relief** consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
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> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.
>
> And following jurisprudence, these requisites must be proved before a writ of

> preliminary injunction, be it mandatory or prohibitory, will issue:
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> (1) **The applicant must have a clear and unmistakable right to be protected, that is a right in *esse*;**
>
> (2) **There is a material and substantial invasion of such right;**
>
> (3) **There is an urgent need for the writ to prevent irreparable injury** to the applicant; and
>
> (4) **No other ordinary, speedy, and adequate remedy exists** to prevent the infliction of irreparable injury. (emphasis supplied)

It is thus ineluctable that for it to be entitled to the writ, the APMP must show that it has a **clear and unmistakable right that is violated and that there is an urgent necessity for its issuance.** [12] That APMP had cause of action and the standing to interpose the action for prohibition did not *ipso facto* call for the grant of injunctive relief in its favor without it proving its entitlement thereto.

Transfield Philippines, Inc. v. Luzon Hydro Corporation, [13] illuminates on the right of a party to injunctive relief:

> Before a writ of preliminary injunction may be issued, there must be a clear showing by the complaint that **there exists a right to be protected and that the acts against which the writ is to be directed are violative of the said right. It must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage. Moreover, an injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation**. (emphasis supplied)

Contrary to public respondent's ruling, APMP failed to adduce any evidence to prove that it had a clear and unmistakable right which was or would be violated by the enforcement of E.O. 486. The filing of the petition at the court *a quo* was anchored on APMP and its members' **fear of loss or reduction of their income** once E.O. 486 is implemented and imported plastic and similar products flood the domestic market due to reduced tariff rates. As correctly posited by petitioner, APMP was seeking protection over "*future* economic

benefits" which, at best, it had an inchoate right to.

More importantly, tariff protection is not a right, but a privilege granted by the government and, therefore, APMP cannot claim redress for alleged violation thereof. In a similar case wherein the validity of R.A. 9337 with respect to provisions authorizing the President to increase the value-added tax (VAT) rates, the Court held:

> The input tax is not a property or a property right within the constitutional purview of the due process clause. **A VAT-registered person's entitlement to the creditable input tax is a mere statutory privilege.**
>
> **The distinction between statutory privileges and vested rights must be borne in mind for persons have no vested rights in statutory privileges. The state may change or take away rights, which were created by the law of the state**, although it may not take away property, which was vested by virtue of such rights. [14] (emphasis supplied)

Assuming arguendo that it was upon the government's assurances that the members of APMP allegedly "invested hundred of millions of dollars in putting up the necessary infrastructure," that does not vest upon APMP a right which must be protected.

Respecting the element of "irreparable injury," the landmark case of *Social Security Commission v. Bayona* [15] teaches:

> **Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy** (Crouc v. Central Labor Council, 83 ALR, 193). **"An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement"** (Phipps v. Rogue River Valley Canal Co., 7 ALR, 741). An irreparable injury to authorize an injunction consists of "a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof" (Dunker v. Field and Tub Club, 92 P., 502). (emphasis supplied)

As does the more recent case of *Philippine Air Lines v. National Labor Relations Commission*: [16]

> **An injury is considered irreparable if it is of such constant and frequent recurrence that no fair and reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy**, that is, it is not susceptible of mathematical computation. It is considered irreparable injury when it cannot be adequately compensated in damages due to the nature of the injury itself or the nature of the right or property injured or when there exists no certain pecuniary standard for the measurement of damages. (emphasis supplied)

In the present case, aside from APMP's allegations that the reduced tariff rates will adversely affect its members' business and may lead to closure, there is no showing what "irreparable injury" it stood to suffer with the implementation of E.O. 486.

In fine, not only is there no showing of a clear right on the part of APMP which was violated; the injury sought to be protected is prospective in nature, hence, the injunctive relief should not have been granted.

WHEREFORE, the petition is **PARTLY GRANTED**. The Omnibus Order dated February 6, 2007 issued by public respondent Hon. Judge Jenny Lind R. Aldecoa-Delorino is **REVERSED** insofar as it granted a Writ of Preliminary Injunction in favor of private respondent, Association of Petrochemical Manufacturers of the Philippines (APMP). Accordingly, the Writ is **DISSOLVED**, and the case **REMANDED** to the court of origin for further appropriate proceedings.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, *JJ.,* concur.
Sereno, J., no part.

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[1] *Rollo*, pp. 50-58.

[2] Sec. 4. The ad valorem rates herein of import duties indicated hereof shall be subject to modification by Congress after review and recommendation by the National Economic and Development Authority after one (1) year from the effectivity of the rates prescribed:

Provided, **That before any recommendation is submitted to Congress pursuant to this Section, the Tariff Commission shall conduct an investigation in the course of which shall hold public hearings wherein interested parties shall be afforded reasonable opportunity to be present, produce evidence and to be heard**. The Tariff Commission shall also hear the views and recommendations of any government office, agency or instrumentality concerned. chan robles virtual law library.

Subject to the provisions of the preceding paragraph, the National Economic and Development Authority shall recommend to Congress the necessary adjustment in such specific rates of import duties indicates thereof after six (6) months from their effectivity: **Provided, finally, That the President may not increase or decrease any ad valorem or specific duty rates herein provided when Congress is in session**. (emphasis supplied)

[3] Sec. 402.

x x x x

e. **Nothing in this section shall be construed to give any authority to cancel or reduce in any manner any of the indebtedness of any foreign country to the Philippines or any claim of the Philippines against any foreign country.** (emphasis supplied)

[4] G.R. No. 163980, August 3, 2006, 497 SCRA 581.

[5] *Vide Fernando v. Spouses Lim,* G.R. No. 176282, August 22, 2008, 563 SCRA 147.

[6] *Francisco v. Toll Regulatory Board*, G.R. No. 166910, October 19, 2010.

[7] *People v. Duca*, G.R. No. 171175, October 30, 2009.

[8] *Siok Ping Tang v. Subic Bay Distribution*, G.R. No. 162575, December 15, 2010.

[9] *Bustamante v. Court of Appeals*, 430 Phil. 797 (2002).

[10] G.R. No. 131719, 473 Phil. 27 (2004).

[11] G.R. No. 179441, August 9, 2010, 627 SCRA 328.

[12] *Vide First Global Realty and Dev't. Corp. v. San Agustin*, 427 Phil. 593 (2002).

[13] G.R. No. 146717, 485 Phil. 699 (2004).

[14] *Abakada Guro Party List, Inc. v. Hon. Exec. Sec. Ermita,* 506 Phil. 1 (2005).

[15] G.R. No. L-13555, May 30, 1962, 5 SCRA 126.

[16] G.R. No. 120567, March 20, 1998, 287 SCRA 672.
