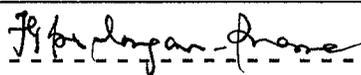


G.R. No. 207246 - (Jose M. Roy III, petitioner, v. Chairperson Teresita J. Herbosa, The Securities and Exchange Commission, Philippine Long Distance Telephone Company, and the Philippine Stock Exchange, respondents; Wilson C. Gamboa, Jr., Daniel V. Cartagena, John Warren P. Gabinete, Antonio V. Pesina, Jr., Modesto Martin Y. Manon III, and Gerardo C. Erebaren, petitioners-in-intervention; Philippine Stock Exchange and Shareholders' Association of the Philippines, Inc., respondents-in-intervention)

Promulgated:

November 22, 2016



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CONCURRING OPINION

SERENO, CJ:

The Petition for Certiorari before this Court assails the validity of Memorandum Circular No. 8, Series of 2013, issued by respondent Securities and Exchange Commission (SEC).

The SEC circular provides for the guidelines on compliance with the Filipino-foreign ownership requirements prescribed in the Constitution and/or existing laws by corporations engaged in nationalized and partly nationalized activities. The specific provision that operationalizes the ownership requirements reads:

Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to **BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.** (Emphasis supplied)

Evidently, the circular limits the application of the ownership requirement only to the *number* of stocks in a corporation. It does not take into consideration the *par value*, which, in turn, affects the *dividends* or earnings of the shares.

The par value of shares is not always equal. The par value of common shares may be lower than that of preferred shares. The latter take any of a variety of forms — they may be cumulative, noncumulative, participating, nonparticipating, or convertible. Their par values tend to differ depending on their features and entitlement to dividends.



The number **and** the par value of the permutation of shares definitely affect the issue of the stockholding of a corporation. As illustrated by Justice Antonio T. Carpio, preferred shares having higher par values and higher dividend declarations result in higher earnings than those of common shares. In his example, even if Filipinos own 120 shares (100 common, 20 preferred), which outnumber the 80 preferred shares of foreigners, it is possible that the latter would have higher earnings. This possibility would arise if preferred shares — although less in number — have greater par values and dividend earnings.

Thus, compliance on the basis of the number of shares alone, does not necessarily result in keeping the required degree of beneficial ownership in favor of Filipinos. The different combinations of shares with respect to the number, par value, and dividend earnings must also be taken into account.

For this reason, I reiterate our directive in *Gamboa* for the SEC to comply with its duty to ascertain the factual issues surrounding the ownership of the PLDT shares. The dispositive portion of our ruling in that case reads:

Respondent Chairperson of the Securities and Exchange Commission is **DIRECTED** to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law. (Emphasis in the original)

From that determination, the SEC may be able to gather the necessary information to correctly classify various kinds of shares in different combinations of numbers, par values, and dividends. However, with the SEC considering only the matter of the number of shares under the assailed circular, and absent any deeper analysis of PLDT equity structure, any disposition in this case would be premature.

I would even venture that in the case of a company where 60% of stocks are voting and 40% are preferred, with each stock having the same par value, and which complies with the 60% Filipino voting share rule by requiring that all voting stocks be purely in the hands of Filipinos, the minority formula that would impose upon such companies another layer of nationality requirement by demanding that at least 60% of each category of shares be in Filipino hands would effectively drive up the nationality requirement to at least 84%. That this was not the intention of the Constitution is quite obvious.

The parties have pleaded with this Court to settle what is or is not doctrine in *Gamboa v. Teves*.¹ The discussion on the various permutations possible not only in this case but in many other cases drives home my point that the present case as pleaded by petitioners has prematurely attempted to

¹ *Gamboa v. Teves*, 668 Phil. 1 (2011) and *Heirs of Gamboa v. Teves*, 696 Phil. 276-485 (2012).



make out a case of grave abuse of discretion by the SEC. Moreover, should we decide to grant a petition that could have such far-reaching consequences as this case appears to have, it is a threshold requirement that the shareholders be allowed to plead their cause.

WHEREFORE, I vote to **DENY** the petition.



MARIA LOURDES P. A. SERENO
Chief Justice