

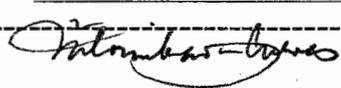
EN BANC

G.R. No. 213212 – RENE C. FIGUEROA, *petitioner*, v. COMMISSION ON AUDIT, *respondent*.

G.R. No. 213497 – PHILIP G. LO, et al., *petitioners* v. COMMISSION ON AUDIT, *respondent*.

G.R. No. 213655 – EFRAIM C. GENUINO, *petitioner* v. COMMISSION ON AUDIT, *respondent*.

Promulgated:
April 27, 2021

X-----X


SEPARATE CONCURRING OPINION

LEONEN, J.:

I *concur* with the *ponencia* that the Commission on Audit's jurisdiction over the Philippine Amusement and Gaming Corporation (PAGCOR) funds is limited to the 5% franchise tax and 50% government's share of gross earnings. This is expressly provided in Section 15 of Presidential Decree No. 1869, as amended by Republic Act No. 9847. Since the Baler movie tickets amounting to ₱26,700,000.00 was not sourced from the 5% franchise tax or the 50% government share, but from PAGCOR's private corporate funds, it is beyond the Commission's audit jurisdiction. Hence, the Commission on Audit committed a grave abuse of discretion in disallowing the expenditure.

I

PAGCOR was created and organized in 1977 under Presidential Decree No. 1067-A¹ "to *centralize and integrate all games of chance* not heretofore authorized by existing franchises or permitted by laws[.]"² It was authorized to establish and operate gambling casinos and other amusement and recreation facilities, specifically to achieve the following objectives:

- (1) generate sources of additional revenue to fund infrastructure and socio-civic projects, such as flood control programs, beautification, sewerage and sewage projects, Tulungan ng Bayan Centers/Nutritional Programs, Population Control and such other essential public services;

¹ Creating the Philippine Amusements and Gaming Corporation (January 1, 1977).

² Presidential Decree No. 1067-A, sec. 1.

- (2) expand and improve the country's existing tourist attractions;
- (3) minimize, if not totally eradicate, the evils, mal-practices and corruptions that normally are found prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement.³

From the 1,000,000 authorized capital stock of PAGCOR, 600,000 shares were initially subscribed and paid for by the Government, while the remaining 400,000 shares were for persons or entities acceptable to the Board of Directors.⁴ The corporation was governed by a Board of Directors composed of five *ex officio* members,⁵ two of whom were to be appointed by the President. Section 3 of Presidential Decree No. 1067-A expressly confers corporate powers upon PAGCOR.⁶

In line with state policies and objectives, PAGCOR was granted a franchise to operate and maintain gambling casinos, clubs, and other recreation or amusement places under Presidential Decree No. 1067-B.⁷ The

³ Presidential Decree No. 1067-A, Section 1.

⁴ Presidential Decree No. 1067-A, Section 4.

⁵ Presidential Decree No. 1067-A, sec. 5 provides:

SECTION 5. *Board of Directors.* — The Corporation shall be governed and its activities be directed, controlled and managed by a Board of Directors that shall be composed of five (5) *ex-officio* members, namely: (1) The Chairman of the National Development Corporation, who shall act as Chairman; (2) The Secretary of Public Works; (3) The Secretary of the Department of Social Welfare; and two other members to be appointed by the President of the Philippines.

The two appointive directors shall each serve for a term of two (2) years or until their successors shall have been appointed and qualified.

⁶ Presidential Decree No. 1067-A, sec. 3 provides:

SECTION 3. *Corporate Powers.* — The Corporation shall have the power:

- (a) to prescribe its by-laws;
- (b) to adopt, alter and use a corporate seal;
- (c) to make contracts and to sue and be sued;
- (d) to own real or personal property and to sell, mortgage or otherwise dispose of the same;
- (e) to employ such officers and personnel as may be necessary to carry on its business;
- (f) to acquire, lease or maintain, whether on land, water, or air, personal property and such other equipment and facilities as may be necessary to carry out its purposes;
- (g) to import, buy, sell, or otherwise trade or deal in merchandise, goods, wares and objects of all kinds and descriptions that may be necessary to carry out the purposes for which it has been created;
- (h) to enter into, make, perform, and carry out contracts tracts of every kind and for any lawful purpose pertaining to the business of the corporation, or in any manner incident thereto, as principal agent or otherwise, with any person, firm, association, or corporation;
- (i) to do anything and everything necessary, desirable, convenient, appropriate, suitable or proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers herein stated, either alone, or in association with other corporations, firms or individuals, and to do every other act or thing incidental or pertaining to, or growing out of, or connected with the aforesaid purposes, objects, or powers, or any part thereof;
- (j) to borrow money from local, or foreign sources as may be necessary for its operation;
- (k) to invest its funds as the corporation may deem proper and necessary in any activity related to its principal operations, including in any bonds or securities issued and guaranteed by the Government of the Philippines;
- (l) to establish and maintain clubs, casinos, branches agencies or subsidiaries, or other units anywhere in the Philippines as may be needed by the Corporation and reorganize or abolish the same as it may deem proper;
- (m) to perform such other functions as may be provided by law.

⁷ Granting PAGCOR of Franchise to Establish, etc. Gambling Casinos (January 1, 1977).

franchise was for a period of 25 years, renewable for another 25 years.⁸ PAGCOR was also authorized to enter into operator's and/or management contracts⁹ and to do other acts for the efficient and successful operation of gambling casinos.¹⁰

The franchise was subject to a special condition pertaining to the allocation of 60% of the gross earnings by PAGCOR from the operation of casinos to finance priority infrastructure and socio-civic projects within Metropolitan Manila.¹¹ However, all PAGCOR income shall be audited by the Commission on Audit.¹²

PAGCOR was also granted exemptions: (1) from duties and taxes on all importations of equipment, vehicles, boats, and other gambling paraphernalia or facilities for the sole and exclusive use of its casinos; and (2) from income and other taxes except a franchise tax of 5% of the gross revenue or earnings derived by PAGCOR from its casino operation.¹³

Finally, PAGCOR was allowed to operate "necessary and related services, shows and entertainment;" provided that income from this would be subjected to the regular income tax.¹⁴

After the success of the Floating Casino in providing much needed revenues for government priority projects,¹⁵ Presidential Decree No. 1399¹⁶ was enacted, further amending PAGCOR's Charter and Franchise to fully attain this objective. Specifically, it changed the membership of PAGCOR's Board of Directors;¹⁷ expanded the areas of its operations outside

⁸ Presidential Decree No. 1067-B, sec. 1.

⁹ Presidential Decree No. 1067-B, sec. 2(1).

¹⁰ Presidential Decree No. 1067-B, sec. 2(5).

¹¹ Presidential Decree No. 1067-B, sec. 3 provides:

SECTION 3. *Special Condition of Franchise.* — Sixty (60%) percent of the aggregated gross earnings derived by the franchise holder from this Franchise shall be immediately set aside and allocated to fund the following infrastructure and socio-civic projects within the Metropolitan Manila Area:

- (a) Flood Control.
- (b) Sewerage and Sewage.
- (c) Nutritional Programs.
- (d) Population Control.
- (e) "Tulungan ng Bayan" Centers.
- (f) Beautification. (Emphasis in the original)

¹² Presidential Decree No. 1067-B, sec. 5 provides:

SECTION 5. *Other Conditions.* —

(4) *Audit of income.* — The books of accounts of the franchise holder, as well as all financial records and other supporting documents, shall be subject to audit by the Commission on Audit or his duly authorized representative.

¹³ Presidential Decree No. 1067-B, sec. 4.

¹⁴ Presidential Decree No. 1067-B, sec. 5(5).

¹⁵ Presidential Decree No. 1399, 1st and 2nd Whereas Clauses.

¹⁶ Amending Certain Sections of Presidential Decree No. 1067-A dated January 1, 1977 and Presidential Decree No. 1067-B dated January 1, 1977 (June 2, 1978).

¹⁷ Presidential Decree No. 1399, sec. 1 provides:

SECTION 1. Section 5 of Presidential Decree No. 1067-A dated January 1, 1977, is hereby amended to read as follows:

Metropolitan Manila; allocated and appropriated generated revenues to fund priority infrastructure and/or socio-civic projects not just in Metro Manila, but *throughout* the Philippines;¹⁸ and expanded the tax exemptions,¹⁹ to include exemption from indirect taxes.²⁰

Then in 1983, Presidential Decree No. 1869²¹ was enacted to consolidate Presidential Decree Nos. 1067-A, 1067-B and 1067-C,²² 1399 and 1632²³ “to facilitate their enforcement and application.”²⁴ To make it more dynamic and effective in its tasks, PAGCOR was reorganized by: (i) increasing the private sector’s participation in the subscription of the authorized capital stock from 40% to 45%,²⁵ and adjusting the Government’s share in gross earnings to 50%;²⁶ and (ii) limiting governmental audit to the determination of the 5% franchise tax and the Government’s 50% share.²⁷

“SEC. 5. *Board of Directors.* — The Corporation shall be governed and its activities be directed, controlled and managed by a Board of Directors that shall be composed of five (5) members, namely: (1) The Chairman of the National Development Corporation, who shall act as Chairman; (2) Government Corporate Counsel; (3) Office of the Executive Assistant, Office of the President, or their respective representatives; and two other members to be appointed by the President of the Philippines from the private sector.”

¹⁸ Presidential Decree No. 1399, sec. 2 provides:

SECTION 2. Section 3 of Presidential Decree No. 1067-B is hereby amended to read as follows:
Section 3. SPECIAL CONDITION OF FRANCHISE. — . . .

. . . .

In addition to the priority infra-structure and socio-civic projects within the Metropolitan Manila Areas specifically enumerated above, the 60% share of the government in the aggregate gross earnings derived by the Franchise Holder from this Franchise may now be appropriated and allocated to fund and finance any infra-structure and/or socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President. (Emphasis supplied)

¹⁹ Presidential Decree No. 1869, sec. 4.

²⁰ *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corp.*, 545 Phil. 113 (2007) [Per J. Velasco, Jr., Second Division].

²¹ Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR) (July 11, 1983).

²² Amended Presidential Decree No. 1067-B, PAGCOR’s franchise, by adding the following provision:
This franchise shall become exclusive in character, subject only to the exception of existing franchises and games of chance heretofore permitted by law, upon the generation by the Franchise Holder of gross revenues amounting to P1.2 Billion and its contribution therefrom of the amount of P720 Million as the government’s share. (Section 1)

²³ Amending Sections Three and Four of Presidential Decree No. 1067-B . . . , as amended by Presidential Decree No. 1399 . . . (August 13, 1979).

²⁴ 2nd Preambular Clause.

²⁵ Presidential Decree No. 1869, sec. 4.

²⁶ Presidential Decree No. 1869, sec. 12.

²⁷ 5th Preambular Clause.

TITLE V

Government Audit

SECTION 15. *Auditor.* — The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. **The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share.** (Emphasis supplied)

In addition to its corporate powers,²⁸ PAGCOR was also given regulatory powers, as provided in Sections 8 and 9 of Presidential Decree No. 1869, thus:

TITLE III
Affiliation Provisions

SECTION 8. *Registration.* — All persons primarily engaged in gambling, together with their allied business, with contract or franchise from the Corporation, shall register and affiliate their businesses with the Corporation. The Corporation shall issue the corresponding certificates of affiliation upon compliance by the registering entity with the promulgated rules and regulations thereon.

SECTION 9. *Regulatory Power.* — The Corporation shall maintain a Registry of the affiliated entities, and shall exercise all the powers, authority and the responsibilities vested in the Securities and Exchange Commission over such affiliated entities mentioned under the preceding section, including but not limited to amendments of Articles of Incorporation and By-Laws, changes in corporate term, structure, capitalization and other matters concerning the operation of the affiliating entities, the provisions of the Corporation Code of the Philippines to the contrary notwithstanding, except only with respect to original incorporation.

After more than two decades, or on June 20, 2007, Republic Act No. 9487 was passed: (1) extending PAGCOR's franchise for another 25 years, renewable for another 25 years; and (2) expanding PAGCOR's regulatory powers by granting it the authority to license gambling casinos.²⁹

²⁸ Presidential Decree No. 1869, sec. 3.

²⁹ Republic Act No. 9487, sec. 1 provides:

SECTION 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869, otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:

(1) Section 10, Nature and Term of Franchise, is hereby amended to read as follows:

SEC. 10. *Nature and Term of Franchise.* —

Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five years, the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e. basketball, football, bingo, etc. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: *Provided*, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations.

The operation of slot machines and other gambling paraphernalia and equipment, shall not be allowed in establishments open or accessible to the general public unless the site of these operations are three-star hotels and resorts accredited by the Department of Tourism authorized by the corporation and by the local government unit concerned.

The authority and power of the PAGCOR to authorize, license and regulate games of chance, games of cards and games of numbers shall not extend to: (1) games of chance authorized, licensed and regulated by, in, and under existing franchises or other regulatory bodies; (2) games of chance, games of cards and games of numbers authorized, licensed, regulated by, in, and under special laws such as Republic Act No. 7922; and (3) games of chance, games of cards and games of numbers like cockfighting, authorized, licensed and regulated by local government units. The conduct of such games of chance, games of cards and games of numbers covered by existing franchises, regulatory bodies or special laws, to the extent of the jurisdiction and powers granted under such franchises and special laws, shall be outside the licensing authority and regulatory powers of the PAGCOR.

From the foregoing evolution of laws, it can be gleaned that PAGCOR is a government-owned or controlled corporation with original charter, with the Government owning 55% of its authorized capital stock. It was tasked to perform dual roles: *first*, to *operate* gambling casinos and related services, shows and entertainment³⁰ that would provide an additional source of income for the government, and *second*, to *regulate* gambling casinos.³¹

In line with its revenue-generating function, 50% of PAGCOR's revenues was to be segregated for the Government (General Fund) to be used for funding infrastructure and other projects authorized by the President.³² To provide PAGCOR with "greater flexibility in [its] operation[,]"³³ the Presidential Decree expressly limits the extent of audit jurisdiction of the Commission on Audit to the said 50% government share and to the 5% franchise tax. Section 15 of Presidential Decree No. 1869 states:

TITLE V

Government Audit

SECTION 15. *Auditor.* — The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. **The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share.** (Emphasis supplied)

The language of Section 15 is clear and unmistakable. All laws are presumed valid and constitutional unless otherwise ruled by this Court. Consequently, the Commission is bound to observe the limitation on audit expressed in Section 15 of P.D. No. 1869, which remains operative.

II

However, I hasten to express my view that PAGCOR's dual role of a gaming regulator and a franchise holder is anomalous and constitutionally suspect. It presents a direct conflict of interest and is inconsistent with the system of checks and balances that is inherent in our form of government.

³⁰ Presidential Decree No. 1869, sec. 14(5).

³¹ *Basco v. Philippine Amusements and Gaming Corp.*, 274 Phil. 323 (1991) [Per J. Paras, En Banc].

³² Presidential Decree No. 1869, sec. 12.

³³ Presidential Decree No. 1869, 5th Whereas Clause.

Being a regulator and regulated entity at the same time, PAGCOR becomes an almost untouchable institution on its own, which is one of the evils that our Constitution guards against. In Justice Carpio's Separate Opinion in *Gonzales III v. Office of the President of the Philippines*:³⁴

A completely "independent" body is alien to our constitutional system. There is no office that is insulated from a possible correction from another office. The executive, legislative and judicial branches of government operate through the system of checks and balances. All independent constitutional bodies are subject to review by the courts. A fiscally autonomous body is subject to audit by the Commission on Audit, and Congress cannot be compelled to appropriate a bigger budget than that of the previous fiscal year.

... under a system of checks and balances, an external disciplinary authority is desirable and is often the norm.³⁵ (Citation omitted)

Gambling, in all its forms, is reprehensible. It is offensive to public morals and the public good.³⁶ The integrity of regulatory function, especially with regard to gambling activity, is a matter of public interest. The independence of the regulator becomes questionable when it has the power to regulate itself. PAGCOR's aim, as regulatory body, to protect public morals and promote the general welfare directly clashes with its goal, as a franchise holder, to generate revenues from this economic activity.

The issue of accountability also comes into play. PAGCOR is hampered in its role of regulating gambling activity in a transparent, effective, accountable and consistent way, if it engages in the very activity it regulates. The performance of its regulatory duties cannot be considered to be above suspicion of irregularities. Article XI, Section 1 of the Constitution is emphatic in stating:

Section. 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives[.]

Public policy demands that public officers discharge their duties with undivided loyalty. Thus, public officers are not permitted to place themselves in a position that will subject them to conflicting duties or cause them to act other than for the best interest of the public. The dual roles of PAGCOR expose the officers and employees to suspicion of irregularities, corruption or bad faith in the exercise of their powers.

³⁴ 694 Phil 52 (2012) [Per J. Perlas-Bernabe, En Banc].

³⁵ Id. at 118-119.

³⁶ *Lim v. Pacquing*, 310 Phil. 722 (1995) [Per J. Padilla, En Banc].

III

I also note, with equal concern, the limitation on audit under Section 15 of Presidential Decree No. 1869 as constitutionally doubtful.

PAGCOR as a government-owned or controlled corporation must be subject to the Commission on Audit's jurisdiction without limitation.

Article IX-D, Section 2(1) of the Constitution vests the Commission on Audit, as the "guardian of public funds and properties[.]"³⁷ with the power, authority and duty to "examine, audit and settle" all "accounts" of the following public entities:³⁸

1. The government, or any of its subdivisions, agencies and instrumentalities;
2. GOCCs with original charters;
3. GOCCs without original charters;
4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; *and*
5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.³⁹

The term "*accounts*" pertains to all forms of government revenue and expenditure and "*uses of funds and property*."⁴⁰

With regard to non-governmental entities receiving subsidy or equity from the government, the scope of audit is limited to "*funds . . . coming from or through the government*."⁴¹

The COA's power under the 1987 Constitution is broader and more extensive.⁴² Notably, it includes the *exclusive* power to *define the scope of its audit and examination* and to establish the techniques it will follow.⁴³

A government-owned or controlled corporation is defined under the Administrative Code as:

. . . any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in

³⁷ *Miralles v. Commission on Audit*, 818 Phil. 380, 389 (2017) [Per J. Bersamin, En Banc].

³⁸ *Funa v. Manila Economic & Cultural Office*, 726 Phil. 63, 86 (2014) [Per J. Perez, En Banc].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 87, *citing* sec. 29(1) of the Audit Code and sec. 14(1), Book V, of the Administrative Code.

⁴² *Orocio v. Commission on Audit*, 287 Phil. 1045 [Per J. Davide, Jr., Third Division].

⁴³ CONST. art. IX-D, sec. 2(2).

nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.⁴⁴

In *Oriondo v. Commission on Audit*,⁴⁵ “an entity is considered a government-owned or controlled corporation if all three attributes are present: (1) the entity is organized as a stock or non-stock corporation; (2) its functions are public in character; and (3) it is owned or, at the very least, controlled by the government.”

As a government-owned or controlled corporation, PAGCOR is under the Commission on Audit’s audit jurisdiction. In *Feliciano v. Commission on Audit*, it was held that “[t]he determining factor of COA’s audit jurisdiction is *government ownership or control* of the corporation.”⁴⁶ Further:

[T]he constitutional criterion on the exercise of COA’s audit jurisdiction depends on the government’s ownership or control of a corporation. The nature of the corporation, whether it is private, quasi-public, or public is immaterial.

The Constitution vests in the COA audit jurisdiction over “government-owned and controlled corporations with original charters,” as well as “government-owned or controlled corporations” without original charters. GOCCs with original charters are subject to COA pre-audit, while GOCCs without original charters are subject to COA post-audit. GOCCs without original charters refer to corporations created under the Corporation Code but are owned or controlled by the government. The nature or purpose of the corporation is not material in determining COA’s audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law.⁴⁷

III. A

The revenues derived by PAGCOR from its operations of gambling casinos are public in nature or at the very least affected with public interest. For one, PAGCOR was granted a franchise to operate casinos principally to raise funds to finance the government’s infrastructure and socio-civic projects. Moreover, its operations involve gambling activity, which is so affected with public interest as to be within the police power of the State.⁴⁸

⁴⁴ Introductory Provisions, E.O. 292, sec. 2(13).

⁴⁵ G.R. No. 211293, June 4, 2019 [Per J. Leonen, En Banc].

⁴⁶ *Feliciano v. Commission on Audit*, 464 Phil. 439, 462 (2004) [Per J. Carpio, En Banc].

⁴⁷ *Id.* at 461–462.

⁴⁸ *Basco v. Philippine Amusements and Gaming Corp.*, 274 Phil. 323 (1991) [Per J. Paras, En Banc].

In *Republic v. COCOFED*,⁴⁹ this Court held that the coconut levy funds are not only affected with public interest; they are, in fact, *prima facie* public funds. They are exacted pursuant to law not only to raise revenues for the support of the government but also to advance the State policy of protecting the coconut industry and its farmers. This Court has also previously held special funds like the sugar levy fund and the oil price stabilization fund⁵⁰ to be public in character and subject to audit by the Commission on Audit.

In his Concurring Opinion in *Kilosbayan, Inc. v. Guingona, Jr.*,⁵¹ Justice Florentino P. Feliciano explained that the funds raised by the On-line Lottery System were also public in nature. In his words:

In the case presently before the Court, the funds involved are clearly public in nature. The funds to be generated by the proposed lottery are to be raised from the population at large. Should the proposed operation be as successful as its proponents project, those funds will come from well-nigh every town and barrio of Luzon. The funds here involved are public in another very real sense: they will belong to the PCSO, a government owned or controlled corporation and an instrumentality of the government and are destined for utilization in social development projects which, at least in principle, are designed to benefit the general public.... The interest of a private citizen in seeing to it that public funds, from whatever source they may have been derived, go only to the uses directed and permitted by law is as real and personal and substantial as the interest of a private taxpayer in seeing to it that tax monies are not intercepted on their way to the public treasury or otherwise diverted from uses prescribed or allowed by law. It is also pertinent to note that the more successful the government is in raising revenues by non-traditional methods such as PAGCOR operations and privatization measures, the lesser will be the pressure upon the traditional sources of public revenues, *i.e.*, the pocket books of individual taxpayers and importers.⁵²

In *Fernando v. Commission on Audit*, this Court held that the funds of the Executive Committee of the Metro Manila Film Festival that were sourced from non-tax revenues are considered public funds, and are subject to COA's audit jurisdiction. The Executive Committee was found to be an office under the Metropolitan Manila Development Authority, tasked to assist the latter in the conduct of the annual Manila Film Festival:

As to the committee's funds coming from non-tax revenues, the fact that such funds come from purported private sources, do not convert the same to private funds. Such funds must be viewed with the public purpose for which it was solicited, which is the management of the

⁴⁹ *Republic v. COCOFED*, 423 Phil. 735 (2001) [Per J. Panganiban, En Banc].

⁵⁰ *Caltex Philippines, Inc. v. Commission on Audit*, 284-A Phil. 233 (1992) [Per J. Davide, Jr., En Banc].

⁵¹ 302 Phil. 107 (1994) [Per J. Davide, Jr., En Banc].

⁵² J. Feliciano, Separate Concurring Opinion in *Kilosbayan, Inc. v. Guingona, Jr.*, 302 Phil. 107, 116-117 (1994) [Per J. Davide, Jr., En Banc]

MMFF. In *Confederation of Coconut Farmers Organizations of the Philippines, Inc. (CCFOP) v. His Excellency President Benigno Simeon C. Aquino III, et al.*, reiterating this Court's ruling in *Republic of the Philippines v. COCOFED*:

Even if the money is allocated for a special purpose and raised by special means, it is still public in character. In the case before us, the funds were even used to organize and finance State offices. In *Cocofed v. PCGG*, the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of laws of the late dictatorship . . . with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly. The Court continued: ". . . It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population, but also of export earnings the sustained growth of which is one of the imperatives of economic stability.

In *The Veterans Federation of the Phils., represented by Esmeraldo R. Acordo v. Hon. Reyes*, this Court also declared as public funds contributions from affiliate organizations of the VFP:

. . . In the case at bar, some of the funds were raised by even more special means, as the contributions from affiliate organizations of the VFP can hardly be regarded as enforced contributions as to be considered taxes. They are more in the nature of donations which have always been recognized as a source of public funding.⁵³ (Citations omitted)

Being public funds or funds imbued with public interest, PAGCOR's revenues are subject to audit by the Commission.

Indeed, PAGCOR's books of accounts and all financial records and supporting documents were initially subject to the Commission on Audit's jurisdiction.⁵⁴ It was only under Section 15 of Presidential Decree No. 1869 that a limitation on audit was introduced:

TITLE V *Government Audit*

SECTION 15. *Auditor.* — The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the

⁵³ *Fernando v. Commission on Audit*, December 4, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64808>> [Per J. Tijam, En Banc].

⁵⁴ Presidential Decree No. 1067-B, sec. 5.

performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. **The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share.** (Emphasis supplied)

III. B

This limitation on audit is constitutionally doubtful.

It is the constitutionally-mandated function of the Commission on Audit, as the “independent watchdog” of the Government, to examine the accuracy of all financial records, to determine whether expenditures conform with law, and to disallow “irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.”⁵⁵ “This independent constitutional body is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property.”⁵⁶

In *Feliciano*, this Court nullified the second sentence of Section 20 of Presidential Decree No. 198, which stated: “*Auditing shall be performed by a certified public accountant not in the government service[.]*”⁵⁷ for being unconstitutional. It held:

PD 198 cannot prevail over the Constitution. No amount of clever legislation can exclude GOCCs like LWDs from COA's audit jurisdiction. Section 3, Article IX-C of the Constitution outlaws any scheme or devise to escape COA's audit jurisdiction, thus:

....

The framers of the Constitution added Section 3, Article IX-D of the Constitution precisely to annul provisions of Presidential Decrees, like that of Section 20 of PD 198, that exempt GOCCs from COA audit. The following exchange in the deliberations of the Constitutional Commission elucidates this intent of the framers:

MR. OPLE:

⁵⁵ CONST. sec. 2, art. IX-D provides:
Section. 2. ...

....
(2) The Commission shall have **exclusive authority**, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and **promulgate accounting and auditing rules and regulations**, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties[.] (Emphasis supplied)

⁵⁶ *Barbo v. Commission on Audit*, 589 Phil. 289, 297 (2008) [Per J. Leonardo-De Castro, En Banc].

⁵⁷ *Feliciano v. Commission on Audit*, 464 Phil. 439, 465 (2004) [Per J. Carpio, En Banc].

l

I propose to add a new section on line 9, page, 2 of the amended committee report which reads: NO LAW SHALL BE PASSED EXEMPTING ANY ENTITY OF THE GOVERNMENT OR ITS SUBSIDIARY IN ANY GUISE WHATEVER, OR ANY INVESTMENTS OF PUBLIC FUNDS, FROM THE JURISDICTION OF THE COMMISSION ON AUDIT.

May I explain my reasons on record.

We know that a number of entities of the government took advantage of the absence of a legislature in the past to obtain presidential decrees exempting themselves from the jurisdiction of the Commission on Audit, one notable example of which is the Philippine National Oil Company which is really an empty shell. It is a holding corporation by itself, and strictly on its own account. Its funds were not very impressive in quantity but underneath that shell there were billions of pesos in a multiplicity of companies. The PNOC — the empty shell — under a presidential decree was covered by the jurisdiction of the Commission on Audit, but the billions of pesos invested in different corporations underneath it were exempted from the coverage of the Commission on Audit.

Another example is the United Coconut Planters Bank. The Commission on Audit has determined that the coconut levy is a form of taxation; and that, therefore, these funds attributed to the shares of 1,400,000 coconut farmers are, in effect, public funds. And that was, I think, the basis of the PCGG in undertaking that last major sequestration of up to 94 percent of all the shares in the United Coconut Planters Bank. The charter of the UCPB, through a presidential decree, exempted it from the jurisdiction of the Commission on Audit, it being a private organization.

So these are the fetuses of future abuse that we are slaying right here with this additional section.

.....
MR. DE CASTRO:

Thank you. May I just ask a few questions of Commissioner Ople.

Is that not included in Section 2 (1) where it states: "(c) government-owned or controlled corporations and their subsidiaries"? So that if these government-owned and controlled corporations and their subsidiaries are subjected to the audit of the COA, any law exempting certain government corporations or subsidiaries will be already unconstitutional.

So I believe, Madam President, that the proposed amendment is unnecessary.

.....



MR. MONSOD:

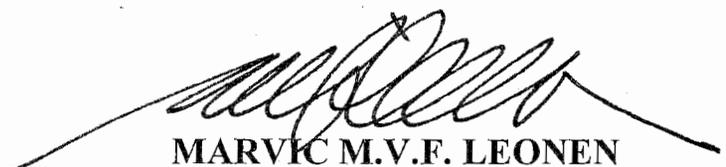
I think the Commissioner is trying to avoid the situation that happened in the past, because the same provision was in the 1973 Constitution and yet somehow a law or a decree was passed where certain institutions were exempted from audit. We are just reaffirming, emphasizing, the role of the Commission on Audit so that this problem will never arise in the future.

There is an irreconcilable conflict between the second sentence of Section 20 of PD 198 prohibiting COA auditors from auditing LWDs and Sections 2(1) and 3, Article IX-D of the Constitution vesting in COA the power to audit all GOCCs. We rule that the second sentence of Section 20 of PD 198 is unconstitutional since it violates Sections 2(1) and 3, Article IX-D of the Constitution.⁵⁸ (Citation omitted)

Section 15 of Presidential Decree No. 1869 does not totally deprive the Commission of its audit jurisdiction over PAGCOR funds. Still, the limitation on extent of audit is a curtailment of its power, which is inconsistent with Article IX-D, Sections 2(1) and 3, of the Constitution.

At any rate, the constitutionality of Presidential Decree No. 1869 is not questioned here, which prevents the Court from taking up this issue. However, this is an opportune time for the legislative and executive departments to review and re-examine PAGCOR's charter and its amendatory laws, particularly PAGCOR's dual roles and the limitation on the Commission on Audit's jurisdiction, in light of their perceived inconsistencies with the Constitution.

ACCORDINGLY, I vote to **GRANT** the petition.


MARVIC M.V.F. LEONEN
Associate Justice

⁵⁸ Id. at 465-468.