G.R. No. 195987 ***(Province of Pampanga v. Executive Secretary Alberto Romulo and Department Environment and Natural Resources (DENR))***

Promulgated:

January 12, 2021

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CONCURRING OPINION

LAZARO-JAVIER, *J.*:

I concur with the *ponencia* that Executive Order (EO) No. 224 (2003), entitled *Rationalizing the Extraction and Disposition of Sand and Gravel/Lahar Deposits in the Provinces of Pampanga, Tarlac and Zambales*, is valid in its entirety.

EO 224 states:

> WHEREAS, **Section 17(3)(iii) of Republic Act (R.A.) No. 7160**, otherwise known as the Local Government Code of 1991, provides that a province shall, **subject to the supervision, control and review of the Secretary of the Department of Environment and Natural Resources (DENR)**, enforce **small-scale mining law** and **other laws on the protection** of the environment;
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> WHEREAS, **Sections 4 and 8 of R.A. No. 7942, otherwise known as the Philippine Mining Act of 1995**, provides that the exploration, development, utilization and processing of mineral resources shall be under the **full control and supervision of the State**, that it may directly undertake such activities or it may enter into mineral agreements with contractors and that the **DENR shall be the primary agency responsible** for the conservation, management, development and proper use of the State's mineral resources;
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> WHEREAS, **Executive Order (E.O.) No. 292** mandates that the DENR shall be the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos;
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> WHEREAS, **Chapter 8 of R.A. 7942** further provides that industrial sand and gravel permit covering an **area of more than five (5) hectares** shall be issued by the **Mines and Geosciences Bureau (MGB)**;
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> WHEREAS, it is necessary to protect and properly manage the utilization of the sand and gravel/lahar deposits of the provinces of Pampanga, Tarlac and Zambales to improve the water flows of its river systems, ensure the integrity of the various protective dikes and infrastructures, and thereby reduce risks to lives and properties;

WHEREAS, it is in the interest of the State that said sand and gravel/lahar deposits be properly utilized for the benefit of both local and the national governments and all concerned, with due regard to the environment.

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

SECTION 1. Processing and Issuance of Mining Permits. — The **issuance of permit to extract and dispose of industrial sand and gravel/lahar deposits** by the MGB shall be governed by Chapter 8 of R.A. No. 7924.

The **acceptance, processing and evaluation of applications for permits to extract industrial sand and gravel/lahar deposits** in Pampanga, Tarlac and Zambales shall be undertaken **through a Task Force** composed of the MGB and the Provincial Governor.

SECTION 2. Creation of a Task Force. — To ensure **compliance by all permit holders with the terms and conditions of their permits, properly monitor the volume of extracted materials, and collect the proper taxes and fees** from sand and gravel/lahar operations, a **Task Force** is hereby created for the purpose to be composed of the following:

a. The MGB Regional Director, by himself or through his duly authorized representative — Team Leader

b. The Provincial Governor, by himself or his duly authorized representative — Deputy Team Leader

SECTION 3. Functions and Authorities of the Task Force. — The Task Force shall have the following **functions**:

a. To **accept, process and evaluate applications for permits to extract** industrial sand and gravel/lahar deposits;

b. To **immediately monitor all reported illegal mining and quarrying operations** and, for this purpose, set up as may be necessary checkpoints and other monitoring stations within the territorial jurisdiction of the province of Pampanga;

c. To **arrest mining/quarrying operators, and their agents and employees** who willfully cooperate in the violation of provincial and national mining and environmental laws, and to **confiscate and detain as evidence** all instruments, objects and products of illegal mining/quarrying operations committed within the territorial jurisdiction of the Province;

d. To **immediately deliver confiscated and detained instruments, objects or products** of illegal mining/quarrying operations to the nearest police station or area designated by the Task Force, which shall be properly receipted and shall not be released unless an instruction in writing to that effect is issued by the Office of the Governor; and

e. Insofar as may be allowed by law, to **assign and deputize a special contingent from the Philippine National Police specifically to assist** the Task Force in the fulfillment of its functions.

SECTION 4. Collection of Taxes, Fees and Charges. — The Task Force shall be responsible for the **collection of all applicable local taxes, fees and charges** and shall, among others:

a. **Issue the required DR** only to legitimate sand and gravel operators/permit holders and upon the issuance of Order of Payment by the PMRB;

b. **Ensure** that the **necessary taxes and fees due the local government are duly paid** for prior to the issuance of any DRs;

c. Assist in **ensuring that the excise tax for mineral products is duly paid for prior** to the issuance of such DRs; and

d. Ensure that the **appropriate share** of the concerned Provinces, Municipalities and Barangays, as per Section 138 of the Local Government Code of 1991, are **duly remitted fully and on time**.

e. **Render an accounting** to the Secretary of Environment and Natural Resources

Excise tax payments shall likewise be **immediately remitted** and shared in accordance with law.

SECTION 5. Supplemental Orders, Rules and Regulations. — The **DENR**, if deemed necessary, shall **issue supplemental orders, rules and regulations** to effectively implement this Order.

SECTION 6. Repealing Clause. — All orders, issuances, rules and regulations, or parts thereof which are inconsistent with this Executive Order are hereby repealed or modified accordingly.

SECTION 7. Effectivity. — This Executive Order shall take effect immediately.

DONE in the City of Manila, this 4th day of July, in the year of Our Lord, Two Thousand and Three.

One. The well-settled doctrine is that between two possible modes of construction, the one which would not be in conflict with what is ordained by the *Constitution* is to be preferred.[1] Here, EO 224 can be read in such a way that it would be consistent with R.A. No. 7076, the *People's Small-scale Mining Act*, and R.A. No. 7942, the *Mining Act*, and therefore **not** *ultra vires*.

We can **read down** EO 224 so as to **refer only to** quarry operations covering an area of more than five (5) hectares and a production rate of more

[1] *San Miguel Corporation v. Avelino*, 178 Phil. 47, 53 (1979).

than 50,000 tons annually and/or whose project cost is more than ₱10,000,000.00 so as to fall within the intendment of R.A. No. 7942 and its regulations.

We **also can read down EO 224** to **pertain only** to **small scale** quarry operations that *rely heavily* on *manual labor* using *simple implements* and *methods* and do *not use explosives* or *heavy mining equipment* so as to fall under R.A. No. 7076.[2]

In this regard, quarry operations **do not** involve **massive** undertakings. **Quarry operations** may likewise be done utilizing **small scale** equipment and methods. Quarrying and small scale mining are **not mutually exclusive** terms. Small scale mining **may include** quarry operations, though quarry operations **cannot extend** to small scale mining.[3] The description of quarrying as the extraction by *light blasting* and *barring down with steel bars* and crushing by *manual labor* and *crushers* is **attuned with** R.A. No. 7076's definition of small-scale mining, *i.e.*, heavy reliance upon manual labor using simple implements and methods, without using explosives or heavy mining equipment.

Read in this **non-exhaustive** and **not all-inclusive** manner, the substance of EO 224 cannot be said to be *ultra vires*.

Two. EO 224 **cannot** be ultra vires because it tasked the Task Force to collect the quarry fees and taxes. Note that **R.A. No. 7942 does not itself empower the city and municipal treasurers as the collecting agents** of these fees, much less, the **sole collecting agents** for this purpose. It is **only** the *Implementing Rules* that does, and the assignment is **not even exclusive**. Though the latter has binding force, the validity of EO 224 is **not measured by** what is provided for in the ***implementing regulations*** **but** by what is set forth in the **originating legislation**.[4]

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[2] AN ACT CREATING A PEOPLE'S SMALL-SCALE MINING PROGRAM AND FOR OTHER PURPOSES.

[3] *League of Provinces of the Philippines v. Department of Environment and Natural Resources*, 709 Phil. 189, 229-230 (2013): "The question in this case is whether or not the provincial governor had the power to issue the subject permits. The fact that the application for small-scale mining permit was initially filed as applications for quarry permits is not contested. **Quarry permits, however, may only be issued "on privately-owned lands and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other similar materials . . ." It may not be issued on ". . . resources that contain metals or metallic constituents and/or other valuable materials in economic quantities."** Not only do iron ores fall outside the classification of any of the enumerated materials in Section 43 of the Mining Act, but **iron is also a metal. It may not be classified as a quarry resource, hence, the provincial governor had no authority to issue the quarry permits** in the first place. Probably realizing this error, the applications for quarry permit were converted to applications for small-scale mining permit. Even so, the issuance of the small-scale mining permit was still beyond the authority of the provincial governor. Small-scale mining areas must first be declared and set aside as such before they can be made subject of small-scale mining rights. The applications for small-scale mining permit, in this case, involved covered areas, which were never declared as people's small-scale mining areas. This is enough reason to deny an application for small-scale mining permit. Permits issued in disregard of this fact are void for having been issued beyond the authority of the issuing officer."

[4] *Genuino v. De Lima*, 829 Phil. 691, 769 (2018): "Jurisprudence dictates that the validity of an administrative issuance is hinged on compliance with the following requirements: 1) its promulgation is authorized by the **legislature**; 2) it is promulgated in accordance with the prescribed procedure; 3) it is within the scope of the authority **given by the legislature**; and 4) it is reasonable."

In truth, EO 224 can be seen as an **amendment to the *Implementing Rules*** of R.A. No. 7942 on the ground that the President has the **power of executive control** over the statutory delegate, the DENR, which issued the *Implementing Rules* designating the city and municipal treasurers as the collecting agents of the quarry fees and taxes. As the Court has held –

> The powers of the Philippine President is not limited only to the specific powers enumerated in the Constitution, i.e., executive power is more than the sum of specific powers so enumerated. Thus, he or she should not be prevented from accomplishing his or her constitutionally and statutorily assigned functions and discretionary responsibilities in a broad variety of areas. Presidential prerogative ought not be fettered or embarrassed as the powers, express or implied, may be impermissibly undermined...."[5]

Three. I agree with my senior colleague, Justice Alfredo Benjamin S. Caguioa, when he opined during the deliberations that Section 4 of EO 224 does nothing but **oversee** the proper collection of the quarry fees and that this section has **nothing to do** with, much less, **impaired** petitioner's **fiscal autonomy**. The latter's **core** is the ability **to create** one's own financial sources and **allocate** the proceeds according to its plans and programs. The description of the job assigned to the Task Force is **merely to oversee** the proper collection of the fees.

Notably, petitioner and respondents are all agencies of the Executive Branch. The **key** public service **value** is **not checks and balances** or **separation of powers** *but* **coordination** and **faithful execution of the laws**. So, **unless** this key public service value is compromised, we should be **slow in condemning** the acts of our co-equal branches and instead **indulge** in the **validity** of their official acts.

Part and parcel of this task of ensuring propriety in the collection is the **issuance of the delivery receipts** by the Task Force because. For as the Court may take judicial notice of the **unstated legislative facts** that probably went into the issuance of EO 224, of the **corrupt schemes** that beset quarrying in the past through the use of **fake delivery receipts**.[6] Lahar and other quarry materials are so bountiful in Pampanga that their overabundance made them timid prey for **transactional** regulation at the local levels. **No one really audited** how much was taken out, since they are plentiful, and as a result, it was easy to let quarry trucks in and out according to the field regulators' discretion. Delivery receipts – **fake and recycled** – were central in the scheme to sidestep the process of quarry fee collection. Though untold, besides its express purposes, EO 224 was issued to open up what otherwise was a targeted opportunity for invisible **rent-seeking**.

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[5] *Ocampo v. Enriquez*, 815 Phil. 1175, 1244-1245 (2017).

[6] Manila Bulletin, "Go urges crackdown on unsanctioned quarrying," https://mb.com.ph/2020/12/12/go-urges-crackdown-on-unsanctioned-quarrying/; "After bringing tragedy, lahar makes money," at https://newsinfo.inquirer.net/610891/after-bringing-tragedy-lahar-makes-money; "Pampanga Governor Lito Lapid Suspended for Lahar Overprice," at http://www.newsflash.org/1999/01/ht/ht000651.htm; *Lapid v. Court of Appeals*, 390 Phil. 236 (2000).

Four. Petitioner is seeking a declaration of invalidity of Section 4, EO 224 on the basis of a **facial** challenge. This **facial** challenge is **inappropriate**. There is **no actual case or controversy** in the sense propounded by petitioner. It has **not been deprived** of the collections of quarry fees. Its power to allocate the collections has **not been set aside** or **overruled**. Petitioner's claim of subversion of its fiscal autonomy is **speculative** and therefore **unproven**.

Five. EO 224, inclusive of the assailed Section 4, was **not an exercise** by then President Gloria Macapagal-Arroyo **of a delegated power** from Congress. The EO flowed from her **inherent ordinance-making power** that was part and parcel of her power of executive control. Hence, it **cannot be said** that the EO merely **delegated again** what had been delegated by Congress to the Executive Branch.

Under the *Administrative Code of 1987*, the President may enact **on her own measured discretion** the following ordinances:

> CHAPTER 2
> Ordinance Power
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> SECTION 2. **Executive Orders**. — Acts of the President providing for rules of a general or permanent character in **implementation or execution of constitutional or statutory powers** shall be promulgated in executive orders.
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> SECTION 3. Administrative Orders. — Acts of the President which relate to particular aspects of governmental operations in pursuance of his duties as administrative head shall be promulgated in administrative orders.
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> SECTION 4. Proclamations. — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order.
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> SECTION 5. Memorandum Orders. — Acts of the President on matters of administrative detail or of subordinate or temporary interest which only concern a particular officer or office of the Government shall be embodied in memorandum orders.
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> SECTION 6. Memorandum Circulars. — Acts of the President on matters relating to internal administration, which the President desires to bring to the attention of all or some of the departments, agencies, bureaus or offices of the Government, for information or compliance, shall be embodied in memorandum circulars.
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> SECTION 7. General or Special Orders. — Acts and commands of the President in his capacity as Commander-in-Chief of the Armed Forces of the Philippines shall be issued as general or special orders.

The President issued EO 224 for the purpose of rationalizing the quarry industry in the most affected provinces by the eruption of Mt. Pinatubo. She made mention of RA 7076, RA 7942, and the *Local Government Code* **not** to

provide the details for their implementation because obviously these statutes already have their respective implementing rules, **but** as an incident of her power of executive control to establish a structure of what she believed in good faith to be an efficient utilization of the resources impacted by these legislations.

In ***ABAKADA Guro Party List, et al. v. Cesar V. Purisima, et al.***, G.R. No. 166715, August 14, 2008, the Court confirmed the **inherent character** of this ordinance-making power of the President:

> **These provisions of the Revised Administrative Code do not grant, but, merely recognize the President's Ordinance Power and enjoin that such power shall be promulgated according to certain nomenclatures. The President's Ordinance Power is the Executive's rule-making authority** in implementing or executing constitutional or statutory powers. Indisputably, there are constitutional powers vested in the Executive that are self-executory. The President may issue "rules of a general or permanent character in implementation or execution" of such self-executory constitutional powers. The power to issue such rules is inherent in Executive power. Otherwise, the President cannot execute self-executory constitutional provisions without a grant of delegated power from the Legislature, a legal and constitutional absurdity.
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> ....
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> **Apart from whatever rule-making power that Congress may delegate to the President, the latter has inherent ordinance powers covering the executive branch as part of the power of executive control** ("The President shall have control of all the executive departments, bureaus and offices. . ." Section 17, Article VII, Constitution.). By its nature, this ordinance power does not require or entail delegation from Congress. Such faculty must be distinguished from the authority to issue implementing rules to legislation which does not inhere in the presidency but instead, as explained earlier, is delegated by Congress.
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> ....
>
> The prevalent practice in the Office of the President is to issue orders or instructions to officials of the executive branch regarding the enforcement or carrying out of the law. This practice is valid conformably with the President's power of executive control. **The faculty to issue such orders or instructions is distinct from the power to promulgate implementing rules to legislation.** The latter originates from a different legal foundation — the delegation of legislative power to the President.

Ocampo v. Enriquez, supra, reiterated this doctrine:

> In the **exercise of executive power**, the **President has inherent power to adopt rules and regulations** — a **power** which is **different from** a **delegated legislative power** that **can be exercised only within** the **prescribed standards set by law** ....

Ocampo further confirmed the President's authority to delegate the enactment of subordinate rules supplementing, implementing, or interpreting the presidential ordinance:

> In the **exercise of executive power**, the **President has inherent power to adopt rules and regulations**... and to **delegate this power** to **subordinate executive** officials. On July 12, 1957, then President Carlos P. Garcia, in the exercise of his powers of control and to reserve public land, issued Proclamation No. 423. Pursuant thereto, the AFP Chief of Staff issued AFP Regulations G 161-371 on February 2, 1960, which was eventually succeeded by AFP Regulations G 161-375. By granting the AFP Chief of Staff the power to administer a military reservation site then known as Fort Wm Mckinley (now Fort Andres Bonifacio), part of which is now the LNMB, former President Garcia and the presidents subsequent to him effectively delegated their rule-making power. As expressed in said regulations, they were issued "By Order of the Secretary of National Defense/Defense Minister," who, in turn, is under the Office of the President.

Another example of this **valid delegation** was mentioned in ***Saguisag v. Ochoa***, G.R. No. 212426, January 12, 2016:

> **Section 9 of Executive Order No. 459**, or the Guidelines in the Negotiation of International Agreements and its Ratification, thus, **correctly reflected the inherent powers of the President** when it stated that **the DFA "shall determine** whether an agreement is an executive agreement or a treaty."

Section 5 of EO 224 **cannot therefore be faulted** for delegating to the DENR the issuance of supplemental, implementing, or interpretative rules, if needed, to attain the objectives of EO 224.

Six. We have to be **slow in nullifying Section 4** of **EO 224** not only because of its presumptive validity **but** especially since administrative officials and even the Court **have relied on it** in the past as a source of power for government officials.[7] Administrative officials in charge of implementing these statutes have **contemporaneously interpreted** the relevant provisions thereof, and **that interpretation** is now **embodied** in **EO 224**. Unlike these officials' interpretation of constitutional provisions, **their understanding of the statutes** they are duty-bound to enforce is **entitled to great weight** in the present proceeding. Thus:

> **The interpretation of an administrative government agency** like the ERB, **which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts**. A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies

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[7] See e.g. *Batac v. Office of the Ombudsman*, G.R. No. 216949, July 3, 2019: "Anchored solely on this provision, petitioner claims that the lahar deposits belonged to him, having naturally been attached to his land as a result of a volcano eruption. Public respondent, however, points out that natural resources are owned by the State.... Furthermore, Executive Order No. 224, series of 2003, entitled, 'Rationalizing the Extraction and Disposition of Sand and Gravel/Lahar Deposits in the Provinces of Pampanga, Tarlac and Zambales,' provides.... These provisions treat lahar deposits as minerals, which are owned by the State and are covered by various laws on mining. Thus, on this matter, public respondent ruled that there was no undue injury...."

entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. More explicitly —

> Generally, **the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts**. The reason behind this rule was explained in Nestle Philippines, Inc. vs. Court of Appeals, in this wise:
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> "The rationale for this rule relates not only to the **emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs**; it also **relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute**. In Asturias Sugar Central, Inc. v. Commissioner of Customs, the Court stressed that **executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon**. The **courts give much weight to the government agency or officials** charged with the implementation of the law, **their competence, expertness, experience and informed judgment**, and the fact that they frequently are drafters of the law they interpret."
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> As a general rule, contemporaneous construction is resorted to for certainty and predictability in the laws, especially those involving specific terms having technical meanings.[8]

ACCORDINGLY, I vote to dismiss the petition. I concur with the *ponencia* as it affirms the validity of EO 224.

AMY C. LAZARO-JAVIER
Associate Justice

[8] *Energy Regulatory Board v. Court of Appeals*, 409 Phil. 36, 46-48 (2001).