

EN BANC

G.R. No. 195987 – PROVINCE OF PAMPANGA, *Petitioner*, v. EXECUTIVE SECRETARY ALBERTO ROMULO and DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), *Respondents*.

Promulgated: *Jose R. Lopez-Jordan*

January 12, 2021

X-----X

CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

The present petition assails the constitutionality of Executive Order No. (EO) 224,¹ series of 2003, issued by then President Gloria Macapagal-Arroyo.

Essentially, EO 224 established a Task Force, composed of the Department of Environment and Natural Resources (DENR) - Mining and Geosciences Bureau (MGB) Regional Director as Team Leader and the Provincial Governor of the concerned provinces as the deputy Team Leader.² As per the EO, the Task Force has multiple functions, *which cover not only the collection of the taxes and fees from sand and gravel/lahar operations but also the issuance of regulatory permits for the extraction of the above-mentioned resources, the regulation of compliance with the permit's terms and conditions, the monitoring of illegal mining and quarrying operations, and the like*, as follows:

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.

SEC. 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:

¹ Entitled "RATIONALIZING THE EXTRACTION AND DISPOSITION OF SAND AND GRAVEL/LAHAR DEPOSITS IN THE PROVINCES OF PAMPANGA, TARLAC AND ZAMBALES" (July 4, 2003).

² See Section 2 of EO 224.

H

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*

SEC. 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.

SEC. 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. (Emphases and underscoring supplied)

As the *ponencia* correctly ruled, Section 4 of EO 224 as above-cited is unconstitutional since it violates the concerned local government units' (LGUs) local autonomy by placing the provincial government's taxing and collecting power under the Task Force's control and supervision. To expound, RA 7160³ or the Local Government Code of 1991 (LGC) states that the "province **may levy and collect** not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, **sand, gravel, earth, and other quarry resources x x x.**"⁴ Accordingly, aside from the power to levy, **the power to collect** taxes for sand and gravel/lahar is statutorily-lodged with the provinces. Further, the LGC Implementing Rules and Regulations (IRR)⁵ provide that the **governor, as chief executive of the province**, has the power to "[e]nsure that all taxes and other revenues of the province are **collected**, and that provincial funds are applied to the payment of expenses and settlement of obligations of the province, in accordance with law or ordinance."⁶ Thus, by conferring the responsibility of collecting taxes to the Task Force, Section 4 of EO 224 contravenes the LGC and its IRR and therefore, must necessarily be struck down.

However, it should be stressed that Section 4 is one of several provisions of EO 224. Section 4 only pertains to the tax collection functions of the Task Force, whereas the other provisions of EO 224 pertain to regulatory functions on permit issuance, monitoring, and compliance. Indeed, as these other provisions of EO 224 show, the Task Force was not merely intended to be a tax collection agency but, moreover, a coordinated body composed of the DENR-MGB Regional Director and the Provincial Governor that was constituted to holistically address the regulatory issues pervading an industry prone to exploitation. As the whereas clauses of EO 224 evince:

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.

In my view, considering that the Task Force is composed of the DENR-MGB Regional Director, who has the authority to issue quarry permits for applications covering areas above five (5) hectares, and the Provincial

³ Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," approved on October 10, 1991.

⁴ Section 138 of the Local Government Code of 1991.

⁵ Administrative Order No. 270 entitled "PRESCRIBING THE IMPLEMENTING RULES AND REGULATIONS OF THE LOCAL GOVERNMENT CODE OF 1991" (February 21, 1992).

⁶ See Article 85 (3) (iii), Rule XV of the LGC IRR.

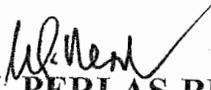
Governor, who is responsible for approving permits for areas five (5) hectares and below, *there is ample legal basis to uphold EO 224 with respect to the regulatory aspects of permits issuance, while declaring only the tax collection provisions under Section 4 as unconstitutional.* At the very least, the Task Force's authority to issue permits may be harmonized, and hence, limited to applications for permits for areas above five (5) hectares.

That being said, it is, however, apt to clarify that the unconstitutionality of Section 4 does not affect the other provisions of EO 224.

In the foregoing relation, it is observed that EO 224 has no separability clause, which in concept, harbors doubt as to whether or not its provisions are severable from each other. There is case law which evokes that the "intent [of severability] is expressed in a separability clause stating that the invalidity or unconstitutionality of any provision or section of the law will not affect the validity or constitutionality of the remainder."⁷

Nonetheless, case law equally recognizes that "the separability clause only creates a presumption that the act is severable. It is merely an aid in statutory construction. It is not an inexorable command."⁸ As I see it, given that the Task Force's regulatory functions in terms of permit issuance, among others, may be considered as functionally different from its tax collection function, it is reasonably apparent that Section 4 of EO 224 may be severable from the EO's other provisions. In fact, their separability is further evinced by the deliberate placement of these distinct functions in separate provisions of the EO.

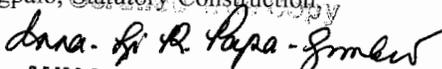
Thus, in light of the foregoing, only Section 4 should be declared unconstitutional for violating the principle of local autonomy with respect to the collection of taxes.⁹ The other provisions may be substantially severed from the infirm provision and hence, remain valid. As such, I vote to partly grant the petition on this limited score.


ESTELA M. PERLAS-BERNABE
 Senior Associate Justice

⁷ *Tatad v. Secretary of the Department of Energy*, 347 Phil. 1, 23 (1997)

⁸ *Id.*; citing *Dorchy v. Kansas*, 68 L. ed. 686 (1924). See also Ruben E. Agpalo, *Statutory Construction*, 1990, p. 15.

⁹ See *ponencia*, p. 19.


ANNA-LI R. PAPA-GOMBIO
 Deputy Clerk of Court En Banc
 OCC En Banc, Supreme Court