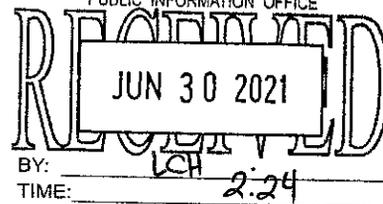




Republic of the Philippines
Supreme Court
Manila

EN BANC

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



DAISY JOY ROJALLO
CERVANTES, BASILIO
DAYSON MANJARES, JAY-R
MEDINILLA LADUB,
ARMANDO MAMARIN DE
GUZMAN, indigent patients at the
Philippine Orthopedic Center
(POC), SEAN HERBERT
VELCHEZ, RN, DANTE A.
PEREZ, RICARDO ANTONIO,
MINNELLIE I. CAGARA, RN, and
VALENTIN ABALOS ARCIAGA
of the National Orthopedic
Hospital Workers' Union-Alliance
of Health Workers (NOHWU-
AHW); FRESCO BASCARA
YAPENDON, MD, AMELIA
MANGAY MAGLACAS, RN,
JOSSEL I. EBESATE, RN, of the
Alliance of Health Workers;
CECILIA M. LAURENTE, RN, of
the Network Opposed to
Privatization of Public Hospitals
and Health Services (NOP);
ELEANOR A. JARA, MD, of the
Council for Health and
Development, DARBY E.
SANTIAGO, MD, of the Health
Alliance for Democracy;
EDELINA P. DELA PAZ, MD, of
the People's Health Movement;
JOSEPH P. CARABEO, MD, of
the Community Medicine
Practitioners and Advocates
Association (COMPASS);
REGINALD PAMUGAS, MD, of
the Health Action for Human
Rights (HAHR); ELEANOR M.

G.R. No. 210805

NOLASCO, RN, of the Nars ng Bayan Community Health Nurses' Association; SATURNINO C. OCAMPO, of the MAKABAYAN; JOAN MAY E. SALVADOR, of the Gabriela Alliance of Women; GLORIA ARELLANO, of the Kalipunan ng Damayan ng Mahihirap (KADAMAY); ELMER LABOG, of the Kilusang Mayo Uno; Bayan Muna Rep. NERI JAVIER COLMENARES and Rep. ISAGANI CARLOS ZARATE, and Kabatan Partylist Rep. TERRY RIDON,

Petitioners,

- versus -

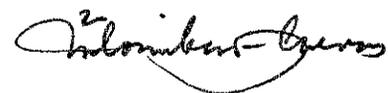
H.E. BENIGNO SIMEON AQUINO III, Chairperson of the National Economic Development Authority; Hon. ENRIQUE T. ONA, Secretary of Department of Health; Hon. TEODORO J. HERBOSA, Undersecretary, DOH Head, MPOC-PBAC; COSETTE C. CANILAO, Executive Director of the Public Private Partnership Center; JAN IRISH P. VILLEGAS, Project Manager, Modernization of the Philippine Orthopedic Center; ARSENIO M. BALISACAN, Director General and Vice Chairman of the National Economic Development Authority; CESAR V. PURISIMA, Chair of the NEDA-Investment Coordinating Committee (ICC); and CONSORTIUM OF MEGAWIDE CONSTRUCTION CORPORATION and WORLD CITI MEDICAL CENTER, represented by MANUEL LOUIE B. FERRER,

Respondents.

Present:

**GESMUNDO, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,*
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M. V.,
DELOS SANTOS,
GAERLAN,
ROSARIO, and
LOPEZ, J. Y., JJ.**

Promulgated:



May 11, 2021

* No part.

X- - - - - X

DECISION**HERNANDO, J.:**

This special civil action for *Certiorari* and Prohibition¹ with Application for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order seeks to annul and set aside the proposed privatization or commercialization of the Philippine Orthopedic Center (POC) and the subsequent award of the Modernization of the POC Project (MPOC Project) to private respondents. It further seeks to permanently prohibit and restrain public respondents from implementing the said modernization project.

The petitioners in this case are patients and employees of the POC, health-allied professionals and legislators. They contend that they are suing on their own behalf and on behalf of the general public, who will be directly affected by the privatization of the POC which is the country's only specialized orthopedic hospital that treats patients who are mostly indigents or otherwise unable to pay the high cost of medical care. They assert that being taxpayers, they have a clear interest in the disbursement of public funds to be allocated for the whole process of privatizing the POC, hence, they will suffer direct and substantial injury therefrom, thus clothing them with legal standing to institute the instant petition.²

Further, petitioners invoke the concurrent jurisdiction of this Court to resolve the present controversy claiming that they do not have other available practical administrative remedies. Moreover, given the paramount importance or transcendental significance of the issues involved and the magnitude of the actual and imminent injury as well as the adverse effects of the questioned acts of respondents, petitioners submit that they have no speedy, plain and adequate remedy except to seek urgent judicial intervention from this Court.³

Public respondents, on the other hand, are being sued in their capacity as officials of the government while private respondents are private corporations duly registered under Philippine laws.⁴

The facts as culled from the records are as follows:

¹ *Rollo*, Vol. I, pp. 3-64.

² *Id.* at 7-12.

³ *Id.* at 13-15.

⁴ *Id.* at 10-11.

The MPOC Project consists of the construction of a new hospital facility within the National Kidney and Transplant Institute Compound along East Avenue, Quezon City, wherein the project proponent will undertake the construction of a 700-bed capacity specialty care hospital providing orthopedic clinical services and allied services; procurement, installation, operations and management of modern diagnostics and clinical equipment; procurement, installation, operations and management of IT facilities; operation and maintenance of the new hospital facility; provision of administrative and ancillary services; provision of appropriately qualified staff; and provision of teaching and training facilities to be used in the conduct of training programs to be offered in the new hospital facility.

To summarize, the concessionaire will design, build, finance, operate and maintain the facility for a period of 25 years and thereafter, transfer the said facility to the Department of Health (DOH). The MPOC Project shall be implemented through a Build-Operate-Transfer (BOT) arrangement under the provisions of Republic Act No. (RA) 6957⁵ as amended by RA 7718, otherwise known as the "Build-Operate-and-Transfer (BOT) Law" and pursuant to the Public Private Partnership (PPP) Program of public respondent former President Benigno S. Aquino III (respondent Aquino).⁶

On November 18, 2012, the Modernization of the Philippine Orthopedic Center - Pre-Qualification, Bids and Awards Committee (MPOC-PBAC) issued an invitation to pre-qualify and bid for the MPOC Project.⁷

On January 28, 2013, the MPOC-PBAC conducted a Pre-Qualification Conference wherein it recommended the pre-qualification of the following prospective bidders:

1. Siemens, Inc. Health Sector;
2. G.E. Healthcare General Electric Philippines, Inc.;
3. Sta. Clara International Corp.;
4. Mount Grace Hospital Venture;
5. Philips Electronics and Lighting, Inc.;
6. Metro Pacific Investments;
7. Megawide Engineering Excellence;
8. Strategic Alliance Holding, Inc.; and
9. Data Trail Corporation.⁸

⁵ An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes.

⁶ *Rollo*, Vol. I, pp. 18-19.

⁷ *Id.* at 17-18.

⁸ *Id.* at 19.

On June 4, 2013, the Consortium of Megawide Construction Company (Megawide) and World Citi Medical Center (WCMC; collectively, the Consortium), submitted its proposal as the sole bidder. After declaring the technical and financial bid of Megawide to be complete, the MPOC-PBAC submitted the pertinent documents to the Investment Coordination Committee of the National Economic and Development Authority (ICC-NEDA) for evaluation. The same was approved by the NEDA Board chaired by respondent Aquino on November 21, 2013. Thus, the MPOC-PBAC issued Resolution No. 13 on November 28, 2013 recommending to Enrique T. Ona (respondent Ona) the award of the MPOC Project to Megawide. On December 9, 2013, respondent Ona issued a Notice of Award⁹ in favor of Megawide.

Pursuant thereto, public respondent DOH, through respondent Ona, executed a Build-Operate-Transfer Agreement¹⁰ (BOT Agreement) with private respondents, through their authorized representative, private respondent Manuel Louie B. Ferrer, on March 6, 2014.

These prompted petitioners to file before this Court on February 3, 2014 the present petition seeking to annul and set aside the privatization of the POC including the award to Megawide of the MPOC Project and accordingly prohibit the building, operation and transfer of the POC to Megawide.

Petitioners impute grave abuse of discretion amounting to lack or excess of jurisdiction against public respondents when they:

1. relinquished the duty and responsibility to provide and ensure basic social service such as health to a private entity through privatization or commercialization of a government hospital (the POC) to the prejudice of the poor and underprivileged; and
2. expanded the application of the Build, Operate and Transfer (BOT) Law to cover the privatization of health services.¹¹

Petitioners contend that the privatization of the POC will result in the denial of medical services to thousands of indigent Filipinos, a clear violation of their constitutional right to health.¹² According to petitioners, under the present set-up, POC has a 700-bed capacity, 85% of which or a total of 562 are allocated to service non-paying patients while only 15% or 95 beds are allotted to pay patients.

⁹ Id. at 65-66.

¹⁰ *Rollo*, Vol. II, pp. 325-408.

¹¹ *Rollo*, Vol. I, pp. 24-25.

¹² Id. at 25.

However, with the privatization of the POC, Megawide is required to apportion only 10% of the 700 beds to service patients or a measly 70 beds. Thus, the reduction of the beds to be devoted to service patients is practically a denial of expert medical care for thousands of Filipinos who do not have the means to pay for their medical needs.¹³

Moreover, petitioners argue that the privatization of the POC violates Section 6 of RA 1939 which prescribes that all government hospitals shall operate with not less than 90% of its bed capacity as free or charity beds.¹⁴

Additionally, petitioners assert that the privatization of the POC violates POCs employees' right to security of tenure because they are only given two options: to either work in the Modernized POC in which case, they will have to resign or, if eligible, to retire from government service, or they may be transferred to another DOH hospital.¹⁵

Also, petitioners argue that public respondents' act of privatizing the POC amounts to grave abuse of discretion amounting to lack or excess of jurisdiction because they illegally expanded the application of the Build Operate and Transfer (BOT) Law to cover the privatization of health services.

Petitioners submit that under the BOT Law, only health facilities, which are limited to equipment and installations or physical structures like buildings, roads, bridges and similar installations, are allowed to be contracted out to private entities. It does not include the activities or services being undertaken in such installations such as health/medical services being offered in a hospital.¹⁶

Lastly, petitioners aver that the DOH committed grave abuse of discretion in awarding to the Consortium a contract which is greatly disadvantageous to the government and the consumers as the public will eventually pay for higher medical expenses contrary to the mandate of the BOT Law which provides that tolls, fees and rentals to be charged or collected should be reasonable.¹⁷

Accordingly, petitioners pray for the annulment of the MPOC Project and issuance of a temporary restraining order and/or writ of preliminary injunction commanding respondents to cease and desist from implementing the challenged project and, after hearing the merits of the petition, that We render judgment permanently enjoining respondents from implementing the

¹³ Id. at 45-46.

¹⁴ Id. at 47.

¹⁵ Id. at 50-52.

¹⁶ Id. at 53-56.

¹⁷ Id. at 57.

complained acts.¹⁸

The Consortium and public respondents filed their respective Comments.¹⁹

Respondents counter that petitioners have no legal standing to initiate the instant action as they do not stand to suffer any direct substantial injury from the implementation of the MPOC Project. As taxpayers, they lack the requisite capacity in the absence of any illegal expenditure or an allegation of disbursement of public funds. Anent petitioners-employees of the POC and health-related professionals, they will not sustain direct or substantial injury from the implementation of the MPOC Project as they will not be terminated from their employment.

In fact, the modernization of the POC would give them more employment opportunities because they will have the option to continue working for the government or transfer to the new facility. Finally, petitioners-legislators are devoid of standing in filing the instant petition because the MPOC Project does not infringe on their duties and prerogatives as legislators.²⁰

Further, respondents argue that the petition does not raise any issue of transcendental importance because there is no prohibition against the establishment of a BOT arrangement between the government and private entities for the modernization of public hospitals such as the POC.²¹

Besides, respondents contend that the petition is premature because the petitioners failed to exhaust all available administrative remedies.²²

Respondents add that the petition involves a political question which is beyond the province of this Court to decide. They argue that the objection of petitioners to the partnership of the DOH with Megawide in the development of the POC is an attack, not only on the legality, but on the soundness of the policy behind the PPP scheme employed in the MPOC Project.²³

Respondents also dispute petitioners' allegation that the MPOC Project violates Section 15, Article II and Section 11, Article XIII of the Constitution as well as International Laws and Treaty. They emphasize that the above-mentioned constitutional provisions are not self-executory, thus, are not judicially demandable rights, the disregard of which can give rise to a cause of

¹⁸ Id. at 59-61.

¹⁹ Id. at 115-160; 165-258.

²⁰ Id. at 127-128.

²¹ Id. at 128-129.

²² Id. at 129-130.

²³ Id. at 131.

action in the courts.

In any case, the implementation of the MPOC Project is not an abdication but is, in fact, in recognition of the State's duty to provide and ensure the people's access to quality hospitals and health care facilities. With the deteriorating state of the POC coupled by its outdated or broken machines, it can no longer accommodate the increasing number of patients and provide quality health care services to them.²⁴

Respondents likewise reject petitioners' contention that the MPOC Project is in fact a privatization of the POC in the guise of modernization. According to respondents, there will be no transfer of ownership of government assets to the private sector. What will be transferred is only the management and operations of the government infrastructure, which transfer will only be for a limited time period.²⁵

As regards petitioners' allegation that the MPOC Project violates the provisions of the BOT Law because it prohibits the contracting out of health and medical services to project proponents, respondents emphasize that under the BOT arrangement, the operation of the facility can be undertaken by the project proponent. Thus, in the case of a health facility such as the POC, the operation thereof by the project proponent will obviously include the performance of health and medical services as a natural consequence of operating such a facility.²⁶

Respondents also protest petitioners' interpretation of the MPOC-PBAC Bid Bulletin No. 5 which allegedly reduced the allocated beds to service patients to only 70 as opposed to the previously allotted 562 beds to service category patients. Respondents explained that out of the 700 beds to be installed, 490 beds are set aside for sponsored and service category patients to ensure that the poor and the indigents will be the main beneficiaries of the modernization project. Moreover, the minimum requirement set to be devoted to sponsored and service category patients is at 490 beds. There is nothing in the arrangement that says that the remaining 210 beds would strictly be for the use of pay patients.²⁷

Finally, respondents argue that the MPOC Project will not impinge on the POC employees' right to security of tenure as they are given the option to either transfer to the new facility or remain in government service where they will be retained in the present POC or transferred to other government hospitals and facilities. In either case, they are accorded security of tenure.²⁸

²⁴ Id. at 138-141.

²⁵ Id. at 143-144.

²⁶ Id. at 144-146.

²⁷ Id. at 149.

²⁸ Id. at 150-152.

Issue

The primordial issue for the Court's resolution is whether or not public respondents gravely abused their discretion in entering into the MPOC Project with private respondents.

Our Ruling

The petition is partly meritorious.

In light of the supervening "Notice of Termination"²⁹ of the BOT Agreement served by private respondents upon public respondent DOH on November 10, 2015 and received by the latter on even date, the dismissal of the case on the ground of mootness is warranted.

The pertinent portion of the November 10, 2015 Notice of Termination reads:

In view of the foregoing, it is with deepest regret that we serve on your office this **Notice of Termination** of the BOT Agreement. Section[s] 8.2 and 9.2a of the BOT Agreement provide that if the delay in the performance of the DOH exceeds one hundred eighty (180) days from Signing Date, the Project Proponent may opt to terminate the BOT Agreement. This 180-day period came and went over a year ago on September 2, 2014. Accordingly, the BOT Agreement will terminate on November 15, 2015 ("Termination Date").³⁰

The grounds relied upon by private respondents in terminating the BOT Agreement were Sections 8 and 9.2a thereof which pertinently provide:

Section 8. PROJECT SITE

x x x x

Within 30 days from the Signing Date, the DOH shall make available and deliver to the Project Proponent the Project Site by issuing a Certificate of Possession in the name of the Project Proponent. If the delay in the issuance of the Certificate of Possession exceeds one hundred eighty (180) days from Signing Date, the Project Proponent shall be entitled to terminate this BOT Agreement without any liability to the DOH or to treat such failure as Non-Fault Delay.

x x x x

²⁹ *Rollo*, Vol. III, pp. 911-912.

³⁰ *Id.* at 911.

Section 9.2a

The DOH shall procure the services of the Independent Consultant during Construction, subject to the terms of reference in Annex H within ninety (90) days from Signing Date. If the delay in the appointment of the Independent Consultant exceeds one hundred eighty (180) days from Signing Date, the Project Proponent shall be entitled to terminate this BOT Agreement without any liability to the DOH or to treat such failure as Non-Fault Delay.³¹

Thus, on November 27, 2015, private respondents filed a Manifestation³² before this Court manifesting that in view of this development, the instant petition has been rendered moot and academic.

Accordingly, the Court finds that the petition at bar has indeed become moot and academic by virtue of the supervening termination of the BOT Agreement that transpired after the filing of the instant petition.

To expound, "[a] case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced."³³

In the case at bar, there is no dispute that the action for *certiorari* and prohibition filed by petitioners has been mooted by the termination of the BOT Agreement of private respondents. The staleness of the claims becomes more manifest considering the reliefs sought by petitioners, i.e., to annul and set aside the BOT Agreement for the modernization of the POC; and to permanently enjoin respondents from implementing the MPOC Project, are hinged on the existence of the BOT Agreement.

Corollarily, the eventual termination of the BOT Agreement rendered the resolution of the issues relating to the prayers for *certiorari* and prohibition of no practical or legal effect. Simply stated, petitioners in this case would no longer be entitled to any actual substantial relief regardless of this Court's disposition on the merits of the present petition.

WHEREFORE, the Court resolves to **DISMISS** the petition for being moot and academic.

³¹ *Rollo*, Vol. II, pp. 348-349.

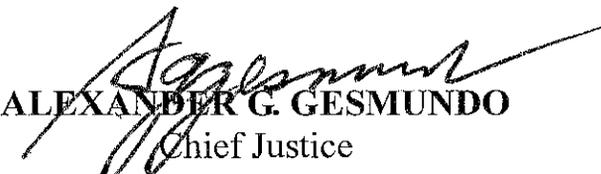
³² *Rollo*, Vol. III, pp. 908-910.

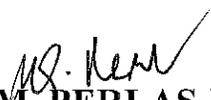
³³ *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535, 540 (2014).

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

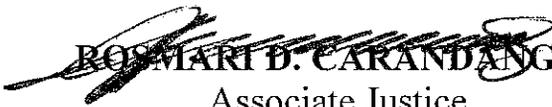
WE CONCUR:

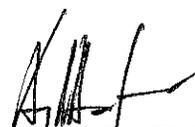

ALEXANDER G. GESMUNDO
Chief Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

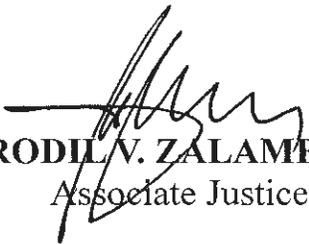

MARVIC M.V.F. LEONEN
Associate Justice

No part
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

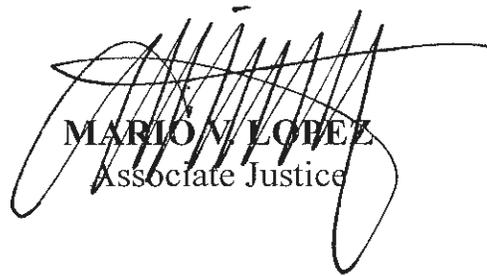

ROSMARI D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



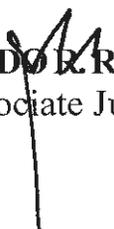
MARIO V. LOPEZ
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



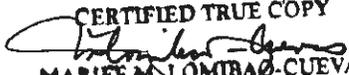
JHOSEP V. LOPEZ
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court