



**GAERLAN, J.:**

### **The Case**

These consolidated petitions for review assail the April 20, 2015 Decision<sup>1</sup> and the July 20, 2015 Resolution<sup>2</sup> of the Sandiganbayan (SB) in Criminal Case No. 23624, which pronounced Romualdo J. Bawasanta (Bawasanta), Rodolfo G. Valencia (Valencia), and Alfonso V. Umali, Jr. (Umali) guilty of violating Section 3(e) in relation to Section 3(g) of the Anti-Graft and Corrupt Practices Act,<sup>3</sup> in connection with a Credit Agreement entered into by the Oriental Mindoro provincial government with a certain Alfredo M. Atienza (Atienza). As Sangguniang Panlalawigan (SP) Member, Provincial Governor, and Provincial Administrator, respectively, petitioners Bawasanta, Valencia, and Umali were held liable therefor.

### **The Antecedents**

Sometime in 1992, Valencia, as then-Governor of Oriental Mindoro, grouped the officials of the provincial administration into several clusters. The cluster members were tasked with gathering feedback on matters within their ambit. The cluster chairpersons then reported these findings to the monthly meetings of the provincial Executive Committee, which was headed by Valencia and composed of members of the SP, all provincial chiefs of offices, and officials of national-level agencies stationed in the province.<sup>4</sup> Among the clusters created were the Finance cluster, which was headed by the provincial treasurer; and the Transportation and Communication Cluster (TCC), which was composed of certain provincial officials and the provincial officers of the Philippine Ports Authority, Maritime Industry Authority, the Postal Service, and the Bureau of Telecommunications.<sup>5</sup>

The TCC was tasked to give utmost priority to the problem of the long-standing shipping monopoly in the province, wherein the two major shipping companies were controlled by interlocking directors,<sup>6</sup> resulting in poor service and exorbitant fares.<sup>7</sup> The TCC Chairperson, Manolo Brotonel (Brotonel),

<sup>1</sup> *Rollo*, G.R. No. 219323 (vol. I), pp. 116-152; penned by Associate Justice Jose R. Hernandez with the concurrence of Associate Justices Alex L. Quiroz and Maria Cristina J. Cornejo.

<sup>2</sup> *Id.* at 153-178.

<sup>3</sup> REPUBLIC ACT No. 3019.

<sup>4</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 16.

<sup>5</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 7; *Rollo*, G.R. No. 219323 (vol. I), pp. 15, 132.

<sup>6</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 216.

<sup>7</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 15; *Rollo*, G.R. No. 219343 (vol. I), p. 217.

proposed that the provincial government acquire its own ships in cooperation with local private investors.<sup>8</sup>

Accordingly, on August 5, 1993, the SP of Oriental Mindoro passed Resolution No. 169-93, which authorized Valencia to negotiate the purchase or lease of three (3) passenger vessels to ply the Calapan-Batangas/Batangas-Calapan sea route, and to obtain loans for said purpose.<sup>9</sup> The TCC was able to identify one vessel for acquisition. However, the private investors lost interest after the target vessel was foreclosed and another vessel owned by the same company sank, leading the provincial government to abandon the plan.<sup>10</sup>

In December of the same year, Mindoro was battered by three (3) strong typhoons (Monang,<sup>11</sup> Naning,<sup>12</sup> and Puring<sup>13</sup>), which destroyed five (5) bridges in Oriental Mindoro.<sup>14</sup> On December 7, 1993, due to the destruction caused by Typhoon Monang, then-President Fidel V. Ramos issued Proclamation No. 306-A, series of 1993, placing the provinces of Oriental Mindoro and Occidental Mindoro in a state of calamity.<sup>15</sup> The destruction of bridges in Oriental Mindoro meant that the southern areas of the province had become reachable only by ship.<sup>16</sup>

At around the same time, Brotonel became acquainted with Atienza. Upon inquiry, Brotonel learned that Atienza operated one (1) vessel plying Calapan-Batangas route and had another vessel under repair.<sup>17</sup> In a meeting of the Executive Committee, Brotonel proposed that the provincial government tap the services of Atienza's ships to address the shipping monopoly

<sup>8</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 8, 218, 224-225; *Rollo*, G.R. No. 219323 (vol. I), p. 16.

<sup>9</sup> *Rollo*, G.R. No. 219323 (vol. I), pp. 187-189. A copy of the resolution is publicly available on the Internet at <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10682.pdf>

<sup>10</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 229.

<sup>11</sup> International code name Lola, struck the Philippines on December 6, 1993. See United Nations Department of Humanitarian Affairs (DHA), Philippines - Typhoon Lola DHA-Geneva Information Report No. 1, dated 7 December 1993, and Philippines - Typhoon Lola DHA-Geneva Information Report No. 2, dated 10 December 1993. Accessed 20 September 2021 at <https://reliefweb.int/report/philippines/philippines-typhoons-lola-and-manny-dec-1993-un-dha-information-reports-1-3>.

<sup>12</sup> International code name Manny, struck the Philippines on December 10, 1993, worsening the situation caused by Typhoon Monang. *Rollo*, G.R. No. 219323 (vol. I), p. 179. See also United Nations Department of Humanitarian Affairs (DHA), *supra*.

<sup>13</sup> International code name Nell, struck the Philippines on December 27, 1993. See U. S. Naval Pacific Meteorology and Oceanography Center West Joint Typhoon Warning Center, 1993 Annual Tropical Cyclone Report 153-155. Accessed 20 September 2021 at <https://www.metoc.navy.mil/jtwc/products/atcr/1993atcr.pdf>. See also Greg Bankoff, In the Eye of the Storm: The Social Construction of the Forces of Nature and the Climatic and Seismic Construction of God in the Philippines, 35 JOURNAL OF SOUTHEAST ASIAN STUDIES (No. 1) 91, 95 (2004).

<sup>14</sup> *Rollo*, G.R. No. 219323 (vol. I), pp. 14, 181.

<sup>15</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 205. A copy of the proclamation is publicly accessible at <https://www.officialgazette.gov.ph/1993/12/07/proclamation-no-306-a-s-1993/>.

<sup>16</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 14; *Rollo*, G.R. No. 219343 (vol. II), p. 822.

<sup>17</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 17.

problem.<sup>18</sup> Through Brotonel's assistance, Atienza appeared before the Executive Committee to ask for a loan in order to finance the repairs on his vessel M/V Ace.<sup>19</sup> Upon the favorable recommendation of Brotonel, the SP passed on December 22, 1993 Resolution No. 284-93, which authorized Valencia to enter into a Credit Agreement with Atienza for the repair of M/V Ace.<sup>20</sup> As the resolution was passed in December and the provincial budget had already been exhausted,<sup>21</sup> the SP also authorized Valencia to obtain a loan from the Land Bank of the Philippines (LBP) for the same purpose.<sup>22</sup>

On January 12, 1994, pursuant to Resolution No. 284-93, the provincial government, represented by Valencia, entered into a Credit Agreement with Atienza.<sup>23</sup>

On January 17, 1994, then Provincial Administrator Umali received a letter from Provincial Treasurer Manuel Leycano (Leycano) stating that the release of the loan proceeds under the Credit Agreement requires SP approval and a pre-audit review.<sup>24</sup> Umali thus consulted with Provincial Legal Officer Atty. Ben A. Delos Reyes, Jr. (Delos Reyes), who opined that the release of the loan proceeds is in order because the SP had already authorized Valencia to contract the loan and a pre-audit was not required.<sup>25</sup> Accordingly, Umali immediately forwarded copies of SP Resolution No. 284-93 and the Credit Agreement to Provincial Auditor Salvacion Dalisay (Dalisay).<sup>26</sup>

On January 18, 1994, Leycano sent another letter to Valencia, reiterating his stance that the loan proceeds could not be released without SP approval and a pre-audit.<sup>27</sup> In response, Valencia's office prepared a Memorandum ordering the immediate release of the loan proceeds, which was sent to Delos Reyes for review. When Delos Reyes inquired about the Memorandum, Valencia referred him to Brotonel, as the chair of the TCC. Delos Reyes then approved the Memorandum.<sup>28</sup> The Memorandum was sent to Leycano on the very next day, January 19, 1994.<sup>29</sup> Accordingly, Leycano certified the availability of the funds to be released to Atienza. The provincial budget officer and provincial accountant likewise confirmed the existence of

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<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at 239.

<sup>21</sup> SB Decision, p. 7. *Rollo*, G.R. No. 219323 (vol. I), p. 126; *Rollo*, G.R. No. 219343 (vol. II), p. 845.

<sup>22</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 239.

<sup>23</sup> *Rollo*, G.R. No. 219343 (vol. I), pp. 9, 240-243; *Rollo*, G.R. No. 219323 (vol. I), p. 20. A copy of the Resolution is publicly available on the Internet at <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10842.pdf>.

<sup>24</sup> *Rollo*, G.R. No. 219343 (vol. I), pp. 10, 244; *Rollo*, G.R. No. 219323 (vol. I), p. 20.

<sup>25</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 22.

<sup>26</sup> *Rollo*, G.R. No. 219343 (vol. I), pp. 10, 245; *Rollo*, G.R. No. 219323 (vol. I), p. 20.

<sup>27</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 22.

<sup>28</sup> Id. at 20.

<sup>29</sup> Id. at 20-21; *Rollo* G.R. No. 219343 (vol. I), p. 246.

the appropriation and the amount allotted therefor.<sup>30</sup> When the memorandum and the disbursement voucher reached Umali's office, he consulted Delos Reyes again. Delos Reyes assured Umali that the release of the loan proceeds was lawful and for a public purpose, and was already approved by Valencia and the SP. Delos Reyes further stated that the funds were urgently needed to address the province's transportation problem, and that Umali could be committing nonfeasance if he refuses to sign the disbursement voucher.<sup>31</sup> With these assurances, Umali signed the disbursement voucher.<sup>32</sup>

On that same day, the provincial government issued LBP Check No. 9792602 in the amount of ₱2,500,000.00 to Atienza.<sup>33</sup>

On January 17, 1994, Dalisay wrote<sup>34</sup> to Valencia to reiterate her stance on the propriety of the Credit Agreement. She argued that the Credit Agreement was invalid on the following grounds: 1) SP Resolution No. 284-93 fails to mention the legal basis for granting a loan to a private ship operator; 2) the use of a Land Bank loan, instead of unused provincial funds, to finance the Credit Agreement, was unjustified; 3) the purpose of the loan as stated in the loan agreement with LBP is inconsistent with the stated purpose of SP Resolution No. 284-93 and the Credit Agreement; 4) the Credit Agreement was entered into without proof that the provincial government conducted an inquiry into Atienza's financial and credit standing or the condition of his ships; and 5) the Credit Agreement does not specify any security for the loan to Atienza.<sup>35</sup> Accordingly, Dalisay required the submission of documentary proof of Atienza's ownership of the ships in question, documentary proof of credit investigation and collateral, and a detailed breakdown of the expenditures which will be covered by the loan proceeds.<sup>36</sup> The letter was referred to Delos Reyes for appropriate response.

In a letter dated February 2, 1994,<sup>37</sup> Delos Reyes replied to Dalisay that: 1) the purpose of the loan is to encourage competition in the ferry transport service market in Oriental Mindoro; 2) SP Resolution No. 284-93 is a local legislative enactment which in itself serves as legal basis for the Credit Agreement; nevertheless, the contract finds bases in Section 36 of the Local Government Code (LGC) and in Article 67 of the Rules and Regulations Implementing the LGC (LGC IRR); 3) the provincial government made the call to obtain a loan secured by unused provincial funds since the funds themselves were kept in a time deposit account and withdrawing them would

<sup>30</sup> Id. at 22; *Rollo*, G.R. No. 219343 (vol. III), p. 1181.

<sup>31</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 11.

<sup>32</sup> Id.; *Rollo*, G.R. No. 219343 (vol. III), p. 1181.

<sup>33</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 22.

<sup>34</sup> Id. at 307-310.

<sup>35</sup> Id.

<sup>36</sup> Id. at 309-310.

<sup>37</sup> Id. at 315-318.

adversely affect the cash position of the provincial government;<sup>38</sup> 4) the Finance Committee cluster had already investigated Atienza's credit background and found itself satisfied with his financial standing and ability to pay; 5) Atienza and the provincial government had already agreed to amend the Credit Agreement to reflect their agreement to assign the ships' insurance policies to the provincial government; 6) the specification of remedies for collection on the loan is superfluous, for these remedies are already well-defined in law; and 7) the provincial government was already in the process of obtaining the ships' ownership documents.<sup>39</sup>

On February 3, 1994, the SP ratified the Credit Agreement through its Resolution No. 284-94.<sup>40</sup>

In a 1<sup>st</sup> Indorsement dated February 15, 1994, Dalisay rejected Delos Reyes' arguments. Standing by her earlier findings, Dalisay recommended that the Credit Agreement and the loan taken out from LBP be rescinded, subject to the provincial government's right to appeal to the Regional Office of the Commission on Audit (COA).<sup>41</sup> In response, Delos Reyes wrote to Dalisay that the provincial government is "taking strong exception" to the findings in the Indorsement and will therefore seek the proper legal remedy under COA rules.<sup>42</sup>

Since the loan proceeds had already been released to Atienza anyway, he was able to repair and operate his ship; and was initially able to make partial payments to the provincial government.<sup>43</sup> However, the postdated checks he issued later to pay the loan were dishonored for insufficiency of funds. Atienza was thus criminally charged with thirteen counts of violation of Batas Pambansa Blg. 22 (B.P. Blg. 22). The proceedings culminated in a decision dated December 1, 2004, wherein the Regional Trial Court of Calapan City ordered Atienza to pay the provincial government the amount of ₱2,110,943.43.<sup>44</sup> The decision became final and executory upon the dismissal<sup>45</sup> of Atienza's appeal and subsequent entry of judgment therein.<sup>46</sup>

Atienza, Valencia, Umali, and the SP members who voted for the Credit Agreement were charged before the Office of the Ombudsman. The

<sup>38</sup> Id. at 317; *Rollo*, G.R. No. 219323 (vol. I), p. 23.

<sup>39</sup> Id. at 315-318.

<sup>40</sup> Id. at 327, 350. A copy of the resolution is publicly accessible at <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10332.pdf>.

<sup>41</sup> Id. at 328-333.

<sup>42</sup> Id. at 339.

<sup>43</sup> Id. at 14; *Rollo*, G.R. No. 219323 (vol. I), p. 56.

<sup>44</sup> Id.

<sup>45</sup> Resolution of the Court of Appeals dated September 2, 2005 in CA-G.R. No. UDK-219. *Rollo*, G.R. No. 219343 (vol. III), pp. 1151-1152.

<sup>46</sup> Id. at 1153.

administrative charges, for grave misconduct and conduct prejudicial to the best interest of the service, were dismissed in a decision dated December 1, 1998;<sup>47</sup> but the criminal charges proceeded with respect to Atienza, Valencia, Umali, Bawasanta, and eight other members of the SP. On August 26, 1998, they were charged with violation of Section 3(e) in relation to Section 3(g) of Republic Act (R.A.) No. 3019 in an Information which reads:

That on or about January 12, 1994 or sometime prior or subsequent thereto, in Calapan, Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, accused Rodolfo G. Valencia, then Provincial Governor of Oriental Mindoro, Pedrito A. Reyes, then Provincial Vice-Governor and Presiding Officer of the Sangguniang Panlalawigan of Oriental Mindoro, Bayani C. Anastacio, Romualdo J. Bawasanta, Cesario M. Cueto, Jose A. Enriquez, Nelson B. Gabutero, Jose G. Genilo, Jr., Jose C. Leynes, Remedios E. Marasigan, all members of the Sangguniang Panlalawigan of Oriental Mindoro, and Alfonso V. Umali, Jr., then Provincial Administrator, all of whom are public officials of the provincial government of Oriental Mindoro, while in the performance of their official and or administrative functions, and acting in evident bad faith and manifest partiality, conspiring and confederating with private accused Alfredo M. Atienza, and mutually helping one another, did then and there willfully, unlawfully and criminally give said accused Alfredo M. Atienza, unwarranted benefit, privilege and advantage by entering into a grossly disadvantageous contract of loan, whereby the provincial funds of Oriental Mindoro in the sum of P2,500,000.00 was given to Alfredo M. Atienza to finance the cost of repair, operation and maintenance of his vessel thereby causing the provincial government of Oriental Mindoro damage and injury.

CONTRARY TO LAW.<sup>48</sup>

Valencia and his co-accused tried to invoke the dismissal of the administrative case as a ground to quash the information. The SB rebuffed the attempt. The Court, in a 2004 decision, sustained the anti-graft court, ruling that the dismissal of an administrative case does not bar a criminal prosecution arising from the same transaction, since criminal liability has bases independent and distinct from administrative liability. Moreover, the dismissal cannot be properly raised as a ground to quash the information; but must be pleaded as a defense in the trial of the criminal case.<sup>49</sup> Consequently, trial proceeded and the SB issued hold departure orders against Valencia, Umali, and Bawasanta.<sup>50</sup> The case as against Atienza and the other SP

<sup>47</sup> *Rollo*, G.R. No. 219343 (vol. I), pp. 355-357. Signed by Director Emilio Gonzalez III and approved by Ombudsman Aniano A. Desierto.

<sup>48</sup> *Rollo*, G.R. No. 219323 (vol. I), pp. 117-118.

<sup>49</sup> *Valencia v. Sandiganbayan*, 477 Phil. 103, 112 (2004).

<sup>50</sup> Resolutions dated April 18, 2018 and December 10, 2019. *Rollo*, G.R. No. 219323 (vol. II), pp. 793-796, 893-894.

members was either dismissed, archived, or held in abeyance,<sup>51</sup> leaving Valencia, Umali, and Bawasanta to stand trial.

### The SB Ruling

As earlier mentioned, the SB found Valencia, Umali, and Bawasanta guilty as charged. They were sentenced to imprisonment of six (6) years and one (1) month to ten (10) years, forfeiture of all retirement and gratuity benefits, and perpetual disqualification from public office. They were also held solidarily liable to the provincial government for the amount released to Atienza under the Credit Agreement.<sup>52</sup>

The anti-graft court ruled that the prosecution was able to prove the existence, beyond reasonable doubt, of all the elements of Sections 3(e) and 3(g). The fact that Valencia, Umali, and Bawasanta were public officers acting in their official capacities when they approved the Credit Agreement and the release of funds thereunder is undisputed. With respect to Section 3(g), the SB ruled that the Credit Agreement was grossly and manifestly disadvantageous to the government, for the following reasons: 1) the Credit Agreement was not for a public purpose, as it extends credit to a private person, in apparent contravention of Section 305 of the LGC;<sup>53</sup> 2) the provincial government had to incur debts just to finance the Credit Agreement,<sup>54</sup> and 3) the Credit Agreement was unsecured.<sup>55</sup>

With respect to Section 3(e), the extension of credit by the Oriental Mindoro provincial government to a private person had no basis in law and therefore amounted to a grant of an unwarranted benefit, privilege, or preference to Atienza. The SB rejected the defense's contention that the Credit Agreement had legal bases in Sections 15, 16, 297(a), and in the state of calamity provisions of the LGC.<sup>56</sup> According to the anti-graft court, the provisions of the LGC on disbursements from the local calamity fund are inapplicable because the Credit Agreement was financed by a loan and not from the provincial calamity fund. Moreover, the shipping monopoly problem

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<sup>51</sup> The case against Board Members Nelson B. Gabutero and Remedios E. Marasigan was dismissed per Order dated September 20, 1999; the case against Board Members Bayani C. Anastacio and Jose G. Genilo, Jr. was dismissed by virtue of their demise; the case against Board Member Cesario M. Cueto, whose person was not brought under the SB's jurisdiction, remained archived in view of his death without proof thereof submitted to the court. The trial of the case as against Atienza, Vice Governor Pedrito A. Reyes, and Board Members Jose C. Leynes and Jose A. Enriquez was held in abeyance pending the conclusion of the trial as against Valencia, Umali, and Bawasanta. *Rollo*, G.R. No. 219300 (vol. I), pp. 122-123.

<sup>52</sup> *Id.* at 151.

<sup>53</sup> *Id.* at 137-138.

<sup>54</sup> *Id.* at 138.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 139-146.

sought to be remedied by the Credit Agreement predates the 1993 typhoon season which precipitated the declaration of the state of calamity.<sup>57</sup>

Anent the third element of Section 3(e), Valencia, Umali, and Bawasanta acted with manifest partiality and bad faith in approving the Credit Agreement. Their approval of a contract that was manifestly and grossly disadvantageous to the government shows manifest partiality toward the other party to said contract: Atienza. As regards each individual accused, the SB held:

1) *Valencia* — His reliance on the SP authorization to enter into the Credit Agreement is unjustified, for he had the power to veto SP enactments that are contrary to law. He entered into the Credit Agreement with Atienza over the legally justified objections of his Provincial Treasurer and Provincial Auditor; and despite its inconsistency with the underlying loan contract with LBP, which provided that the amount was to be used for the *purchase* of a ferry boat.<sup>58</sup> Moreover, he ordered the *immediate* release of the loan proceeds despite Leycano and Dalisay's warnings.<sup>59</sup>

2) *Umali* — His recommendatory power under Section 480(b) of the LGC and approval power over disbursements are both discretionary in nature; and he refused to exercise such discretionary powers when he approved the disbursement voucher over Leycano and Dalisay's objections to the Credit Agreement.<sup>60</sup> Furthermore, he failed to act on Dalisay's recommendations as embodied in the 1<sup>st</sup> Indorsement.<sup>61</sup>

3) *Bawasanta* — The SP, Bawasanta included, exceeded its authority under Section 467(2) of the LGC when it approved an appropriation that is contrary to law. Bawasanta's defense that he went along with the other SP members who approved the Credit Agreement is invalid, as their power to approve appropriations is conditioned upon the legality and propriety thereof. As an SP member, Bawasanta was remiss in his duty to study the legality and propriety of all proposed local legislative enactments.<sup>62</sup>

Finally, the SB ruled that Valencia, Umali and Bawasanta acted in conspiracy with each other, *viz.*:

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<sup>57</sup> Id. at 144-145.

<sup>58</sup> Id. at 148-149.

<sup>59</sup> Id. at 153.

<sup>60</sup> Id. at 150.

<sup>61</sup> Id. at 152.

<sup>62</sup> Id. at 149-150.

In the present case, while it was accused Valencia who signed 1) the loan contract with the bank and 2) the Credit Agreement with Atienza, the act of giving unwarranted benefit required for its completion the indispensable participation of 1) the sanggunian of which accused Bawasanta was a member by his vote to authorize and ratify the loan contracts and 2) the participation of accused Umali by his certification as to its lawfulness. The overt acts of the accused show their intentional participation geared to the eventual release of the loan, accused Valencia by direct participation while accused Bawasanta and Umali by indispensable cooperation. According to the Supreme Court, once established, all the conspirators are criminally liable as co-principals regardless of the degree of participation of each of them, for in contemplation of the law the act of one is the act of all.<sup>63</sup>

Valencia, Umali, and Bawasanta filed separate motions for reconsideration,<sup>64</sup> which the SB all denied in the assailed resolution; hence, the present petitions.

In a Resolution dated April 18, 2018, the Court granted Valencia's Motion for Leave to Travel Abroad.

### The Issues

The petitions raise several errors, which may boil down to the following issues:

1. Whether the SB erred in ruling that the Credit Agreement was manifestly and grossly disadvantageous to the government.<sup>65</sup>
  - a. Whether the Credit Agreement was entered into for a public purpose; and whether the recitals therein may be used to determine such purpose.<sup>66</sup>
  - b. Whether the extension of credit by the Oriental Mindoro LGU to a private person is justified under the provisions of the LGC and by the attendant circumstances.<sup>67</sup>
  - c. Whether the SB erred in ruling that the decision to finance the Credit Agreement through a bank loan taken out by the LGU, as opposed to tapping its unutilized funds, resulted in manifest and gross disadvantage to the provincial government.<sup>68</sup>

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<sup>63</sup> Id. at 154.

<sup>64</sup> Id. at 177.

<sup>65</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 5; *Rollo*, G.R. No. 219323 (vol. I), pp. 28-30.

<sup>66</sup> Id.

<sup>67</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 6; *Rollo*, G.R. No. 219323 (vol. I), pp. 28-30.

<sup>68</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 28.

- d. Whether the SB erred in ruling that the Credit Agreement was unsecured.<sup>69</sup>
2. Whether the SB erred in ruling that the Credit Agreement had no basis in fact and law and therefore amounted to the grant of an unwarranted benefit, privilege, or preference to Atienza.<sup>70</sup>
3. Whether the SB erred in finding the existence of a conspiracy among Valencia, Umali, and Bawasanta, considering that they were simply discharging their official duties and there was no evidence of foreknowledge of the alleged irregularity to be committed by the accused.<sup>71</sup>
4. Whether Bawasanta, a SP member, may be held liable for violation of the Anti-Graft and Corrupt Practices Act for the sole act of voting in favor of a SP resolution.<sup>72</sup>
5. Whether the due process rights of Valencia, Umali, and Bawasanta were violated when the SB decided their motions for reconsideration without the inhibition of Justice Jose R. Hernandez from the case.<sup>73</sup>

### The Court's Ruling

I. *Elements of the offenses defined in Sections 3(e) and (g) of Republic Act No. 3019; concept of "gross and manifest disadvantage"*

Petitioners were charged with granting "unwarranted benefit, privilege and advantage" to Atienza by "entering into a grossly disadvantageous contract" with him. In terms of the Anti-Graft and Corrupt Practices Act, they were accused of violating Section 3(e) thereof through the modality defined in Section 3(g). As correctly pointed out by the SB,<sup>74</sup> since the prosecution specifically alleged that the violation of Section 3(e) was committed by means of entering into a grossly and manifestly disadvantageous contract as defined under Section 3(g), the prosecution must therefore prove the elements of both offenses beyond reasonable doubt. Stated differently, if the prosecution fails to prove the existence of the elements of Section 3(g), petitioners are entitled

<sup>69</sup> Id.

<sup>70</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 6.

<sup>71</sup> Id.; *Rollo*, G.R. No. 219323 (vol. I), p. 31; *Rollo*, G.R. No. 219300, pp. 14-15.

<sup>72</sup> *Rollo*, G.R. No. 219300, pp. 18-19.

<sup>73</sup> *Rollo*, G.R. No. 219343 (vol. I), p. 6; *Rollo*, G.R. No. 219323 (vol. I), p. 31.

<sup>74</sup> SB Decision, *Rollo*, G.R. No. 219323 (vol. I), p. 135.

to an acquittal, for the alleged means by which they violated Section 3(e) will not exist.

The offense defined in Section 3(e) has four elements: 1) the accused is a public officer; 2) the act claimed to be violative of the provision was done in the discharge of the public officer's official, administrative, or judicial functions; 3) said act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and 4) the public officer caused any undue injury to any party, including the government, or gave any unwarranted benefits, advantage or preference.<sup>75</sup> The offense defined in Section 3(g) has three elements: 1) the accused is a public officer; 2) said accused entered into a contract or transaction in behalf of the government; and 3) said contract or transaction is grossly and manifestly disadvantageous to the government.<sup>76</sup>

"Gross and manifest disadvantage" as used in the statute is an inherently relative concept which has two components. The first and essential component is the existence of a disadvantage to the government, *i.e.*, the contract must result in "*loss or damage especially to the reputation, credit, or finances*"<sup>77</sup> of the government; or place the government at "*an unfavorable, inferior, or prejudicial condition.*"<sup>78</sup> Thus, when the government is amply protected in the contract or transaction, as when the accused himself stood as guarantor in case of a finding of overpricing, there is no disadvantage to the government to speak of and the accused is entitled to an acquittal.<sup>79</sup>

However, mere proof of disadvantage to the government is not enough, for the statute further requires that the disadvantage be **gross and manifest**. The disadvantage is gross when it is glaringly and flagrantly noticeable because of its inexcusable objectionableness,<sup>80</sup> and is manifest when such disadvantage is readily and easily evident, perceivable, recognizable or understandable<sup>81</sup> to the trial judge.<sup>82</sup> The modifier "*gross and manifest*," like

<sup>75</sup> *Suba v. Sandiganbayan*, G.R. No. 235418, March 3, 2021, citing *People v. Bacaltos*, G.R. No. 248701, July 28, 2020.

<sup>76</sup> *Braza v. Sandiganbayan*, 704 Phil. 476, 493 (2013), citing *Ingco v. Sandiganbayan*, 338 Phil. 1061, 1072 (1997); *Dans, Jr. v. People*, 349 Phil. 434, 460 (1998).

<sup>77</sup> Merriam-Webster online dictionary, Disadvantage, <https://www.merriam-webster.com/dictionary/disadvantage>. Accessed 6 October 2021. See also *Miranda v. Sandiganbayan*, 815 Phil. 123 (2017).

<sup>78</sup> Id.

<sup>79</sup> *Froilan v. Sandiganbayan*, 385 Phil. 32, 43-44 (2000).

<sup>80</sup> Merriam-Webster online dictionary, Gross, <https://www.merriam-webster.com/dictionary/disadvantage>. Accessed 6 October 2021. See also *Miranda v. Sandiganbayan*, *supra* note 77.

<sup>81</sup> Merriam-Webster online dictionary, Manifest, <https://www.merriam-webster.com/dictionary/manifest>. Accessed 6 October 2021. See also *Miranda v. Sandiganbayan*, *supra* note 77.

<sup>82</sup> Section 3(g) "is intended to be flexible in order to allow the judge a certain latitude in determining if the disadvantage to the government occasioned by the act of a public officer in entering into a particular contract is, indeed, gross and manifest." *Dans, Jr. v. People*, *supra* note 76.

its modified term “*disadvantage*,” is also a relative concept which requires a standard by which it may be measured against.<sup>83</sup>

There is no dispute that Valencia, Umali, and Bawasanta were public officers and that they either approved (Umali and Bawasanta) or entered into (Valencia) the Credit Agreement, in their official capacities, on behalf of the Oriental Mindoro provincial government.

As earlier mentioned, the SB ruling rests on three crucial findings: 1) that the Credit Agreement served no public purpose; 2) that the Credit Agreement violated the LGC; and 3) that the Credit Agreement was unsecured. On the basis of these findings, the anti-graft court concluded that the Credit Agreement was grossly and manifestly disadvantageous to the government; and by entering into or approving said contract, Valencia, Umali, and Bawasanta granted Atienza an unwarranted benefit, privilege, or advantage. As the court of last and only resort in appeals from cases decided by the SB in its original jurisdiction,<sup>84</sup> the Court is obliged to revisit the factual circumstances of the case to determine if the Credit Agreement was indeed grossly and manifestly disadvantageous to the government, by determining its purpose and compliance with the applicable laws.

## II. *The public purpose rule*

Section 305(b) of the LGC reiterates and codifies a long-standing legal principle which will be referred from here on as the *public purpose rule*. The provision states:

Section 305. Fundamental Principles. - The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:

x x x x

(b) Local government funds and monies shall be spent solely for public purposes.

The 1960 case of *Pascual v. Secretary of Public Works*<sup>85</sup> (*Pascual*) contains a definitive statement of the public purpose rule:

It is a general rule that the legislature is without power to appropriate public revenue for anything but a public purpose. . . . It is the essential character of

<sup>83</sup> *Marcos v. Sandiganbayan (1<sup>st</sup> Division)*, 357 Phil. 762, 788 (1998).

<sup>84</sup> See *Villarosa v. People*, G.R. Nos. 233155-63, June 23, 2020.

<sup>85</sup> *Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960).

the direct object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. Incidental advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does not justify their aid by the use of public money. x x x

x x x x

In accordance with the rule that the taxing power must be exercised for public purposes only, discussed supra sec. 14, money raised by taxation can be expended only for public purposes and not for the advantage of private individuals. x x x

Explaining the reason underlying said rule, Corpus Juris Secundum states:

Generally, under the express or implied provisions of the constitution, public funds may be used for a public purpose. The right of the legislature to appropriate funds is correlative with its right to tax, under constitutional provisions against taxation except for public purposes and prohibiting the collection of a tax for one purpose and the devotion thereof to another purpose, no appropriation of state funds can be made for other than a public purpose. . .<sup>86</sup>

However, the scope of *public purpose* which justifies the expenditure of public funds has been held to be more or less coextensive with the scope of the police power, such that “*the term includes not only activities that will benefit the community as a body and are related to the traditional functions of government, but also those designed to promote social justice, general welfare and the common good.*”<sup>87</sup>

Propounding on the correlative power of taxation, the Court held in *Ferrer, Jr. v. Mayor Bautista*<sup>88</sup> that

the public purpose of a tax may legally exist even if the motive which impelled the legislature to impose the tax was to favor one over another. It is inherent in the power to tax that a State is free to select the subjects of taxation. Inequities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation.<sup>89</sup>

Since the taxing power is correlative to the appropriation and expenditure power, if the public purpose of a tax exists even if the motive

<sup>86</sup> Id. at 340. Underscoring supplied.

<sup>87</sup> *Yap v. Commission on Audit*, 633 Phil. 174, 184 (2010); *Binay v. Domingo*, 278 Phil. 515 (1991); Dissenting Opinion of Sereno, C.J. in *Ocampo, et al. v. Rear Admiral Enriquez, et al.*, 798 Phil. 227, 496-497 (2016).

<sup>88</sup> 762 Phil. 232 (2006).

<sup>89</sup> Id. at 277.

beyond the imposition of said tax was to favor one over another, then the same can be said of the public purpose of a government appropriation or expenditure. Stated differently, if the direct object of a government expenditure is imbued with public purpose, then its public character is not affected by any incidental benefit to a private person or entity occasioned by such expenditure.

Thus, in the above-cited *Pascual* case, and in the 2006 case of *Albon v. Mayor Fernando*,<sup>90</sup> this Court categorically declared that “the use of LGU [or other public] funds for the widening and improvement of privately owned sidewalks [and streets] is unlawful as it directly contravenes Section 335 of [the LGC],”<sup>91</sup> since the direct object of such expenditure would be the improvement of private property, and any public welfare benefit would be merely incidental to such improvement. Both cases were remanded to the trial court for reception of evidence regarding the public or private character of the facilities sought to be built or improved with government funds.

However, in *Binay v. Domingo*,<sup>92</sup> we sustained a Makati municipal resolution which ratified and authorized the *direct transfer of LGU funds to private persons* in the form of a burial assistance program to families with a gross monthly income of below two thousand pesos. The Commission on Audit disallowed the expenditure for being violative of the public purpose rule. In reversing the national audit body, we held:

COA’s additional objection is based on its contention that “Resolution No. 60 is still subject to the limitation that the expenditure covered thereby should be for a public purpose, should be for the benefit of the whole, if not the majority, of the inhabitants of the Municipality and not for the benefit of only a few individuals as in the present case.” x x x

COA is not attuned to the changing of the times. Public purpose is not unconstitutional merely because it incidentally benefits a limited number of persons. As correctly pointed out by the Office of the Solicitor General, “the drift is towards social welfare legislation geared towards state policies to provide adequate social services (Section 9, Art. II, Constitution), the promotion of the general welfare (Section 5, *ibid*) social justice (Section 10, *ibid*) as well as human dignity and respect for human rights. (Section 11, *ibid*.” x x x

The care for the poor is generally recognized as a public duty. The support for the poor has long been an accepted exercise of police power in the promotion of the common good.<sup>93</sup>

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<sup>90</sup> 526 Phil. 630 (2006).

<sup>91</sup> *Id.* at 639.

<sup>92</sup> *Supra* note 87.

<sup>93</sup> *Id.* at 523.

The law and applicable jurisprudence clearly show that an expenditure, or even a *direct transfer* of public funds, which has for its direct object an essentially public purpose, although made in favor of a private person or a select group or class, is legally permissible under the public purpose rule now embodied in Section 305(b) of the LGC.

### III. *The public purpose of the Credit Agreement*

In the present case, the SB, echoing *Pascual*, ruled that the direct object of the public expenditure embodied in the Credit Agreement was the furtherance of Atienza's private business. The Court is of the considered opinion that the SB committed reversible error in so ruling.

First, the SB erred when it refused to look into the recitals of the Credit Agreement, on the ground that these “do not determine the nature of the transaction and cannot lend “public purpose” to it, [since these] do not create rights and obligations between the contracting parties.”<sup>94</sup>

A “whereas clause,” which is more properly referred to as a recital or perambulatory clause, has been defined as “[a] preliminary statement in a contract or deed explaining the reasons for entering into it or the background of the transaction, or showing the existence of particular facts x x x. Traditionally, each recital begins with the word *whereas*.”<sup>95</sup> The recitals in a contract or other written instrument are mere introductory and preparatory statements and are not an essential part of the operating portions of the contract. They may be used as a guide in interpreting ambiguous portions of the operative part, but cannot supersede the latter.<sup>96</sup>

While it is true that the recitals of a contract or other legally binding instrument do not create binding rights and obligations, courts have nevertheless referred to them in order to determine the cause, consideration, or *raison d’etre* therefor.<sup>97</sup> The SB therefore erred in refusing to look into the

<sup>94</sup> SB Decision, p. 18; *Rollo*, G.R. No. 219323 (vol. I), p. 137.

<sup>95</sup> Black’s Law Dictionary, 9th ed., p. 1385. See also *Risos-Vidal v. COMELEC*, 751 Phil. 479, 552-553 (2015).

<sup>96</sup> *Rep. of the Phils. v. Sandiganbayan*, 300 Phil. 765, 810 (1994). See also *Kuwait Airways Corp. v. Philippine Airlines, Inc.*, 605 Phil. 474 (2009) and *Barrio Balagbag of Pasay City Neighborhood Association, Inc. v. Office of the President*, G.R. No. 230204, August 19, 2019.

<sup>97</sup> See *People v. Sandiganbayan (Third Division)*, G.R. Nos. 190728-29, November 18, 2020; *Gotesco Properties, Inc. v. International Exchange Bank*, G.R. No. 212262, August 26, 2020; *University of the Philippines v. City Treasurer of Quezon City*, G.R. No. 214044, June 19, 2019; *Alyansa para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission*, G.R. No. 227670, May 3, 2019; *FGU Insurance Corp. v. Spouses Roxas*, 816 Phil. 71 (2017); *Risos-Vidal v. Commission on Elections*, supra note 95; *The Learning Child, Inc. v. Ayala Alabang Village Association*, 638 Phil. 255 (2010); *Kuwait Airways Corp. v. Philippine Airlines, Inc.*, supra note 96; *Philippine Ports Authority v. Court*

Credit Agreement's recitals in order to determine the *cause* thereof. "*The cause of a contract has been defined as the essential reason which moves the contracting parties to enter into it. [It] is the immediate, direct and proximate reason which justifies the creation of an obligation thru the will of the contracting parties.*"<sup>98</sup>

The recitals of the Credit Agreement read:

WHEREAS, cognizant of the inconvenience and safety hazards prevailing in the sea transport system plying the Calapan-Batangas sea route, the [Provincial Government of Oriental Mindoro] has since tried very hard to address the situation. However, it appears that the measures taken by the province are mere palliatives because it does not write finish [sic] to the problem.

WHEREAS, the problem appears to be perennial in the light of the monopoly of certain shipping entity plying to Calapan-Batangas sea route which admittedly is inimical to the best interest of the people of Oriental Mindoro,

WHEREAS, it becomes imperative to encourage competition in the shipping industry serving our constituents not only to afford the commuting public a choice but also to improve the quality of the ferry transport service that the people of Oriental Mindoro rightly deserves [sic].

WHEREAS, [Atienza] requires financing for the repair, operation and maintenance of one (1) unit motor vessel known as M V ACE, an inter-island vessel intended to ply the Calapan-Batangas-Calapan sea route;

WHEREAS, [Atienza] has requested, and the [Provincial Government of Oriental Mindoro] has agreed to loan to [Atienza] the sums of money with which to finance the said cost of repair, operation and maintenance of the aforesaid vessel;

Had the SB considered these recitals, it would have easily discerned that the cause of the Credit Agreement *on the part of the provincial government* was the improvement of the quality of shipping service in the Calapan-Batangas sea route through the *introduction of a new shipping service provider* therein. As earlier mentioned, Atienza was selected by the TCC to be this new service provider; and the Credit Agreement was meant to enable him to discharge such function. By refusing to consider the recitals, the SB was only able to see the cause of the Credit Agreement *on Atienza's part*, leading it to conclude that the direct object of the Credit Agreement was solely for a private purpose. However, the recitals of the Credit Agreement

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*of Appeals*, 323 Phil. 260 (1996); *Lim v. Pacquing*, 310 Phil. 722 (1995); *Basco v. Philippine Amusement and Gaming Corp.* 274 Phil. 323 (1991); *Star Forwarders, Inc. v. Navarro*, 269 Phil. 428 (1990).

<sup>98</sup> *Tong Brothers Co. v. Intermediate Appellate Court*, 240 Phil. 688, 699-700 (1987).

make it clear that the benefit to Atienza was but one side of the coin, the other side being the *public benefit* of introducing a new service provider in the Calapan-Batangas shipping market.

Second, the SB failed to recognize that the business involved in the present case is not an ordinary private enterprise, for the operation of interisland vessels is a public service as defined in the Public Service Act.<sup>99</sup> An interisland vessel operator who transports goods and cargo is considered a common carrier.<sup>100</sup> The business of interisland shipping is not only impressed with public interest but also heavily regulated by law,<sup>101</sup> thus:

Business of certain kinds, including the business of a common carrier, holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation. x x x When private property is "affected with a public interest it ceases to be *juris privati* only." Property becomes clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. "When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to control."<sup>102</sup>

Given the stringent regulation and the public service character of the interisland shipping business, the SB erred in placing the Credit Agreement in the same category as the expenditures disallowed in *Pascual* and *Albon*. The use of public funds to improve privately owned streets and pathways does not directly redound to the benefit of the general public, who are excluded from the use of such streets and pathways. In contrast, the use of public funds for the repair, operation, and maintenance of an interisland vessel directly

<sup>99</sup> Section 13(b) of Commonwealth Act No. 146 provides: (b) The term "public service" includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railway, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas electric light, heat and power, water supply and power, petroleum, sewerage system, wire or wireless communications system, wire or wireless broadcasting stations and other similar public services; x x x.

<sup>100</sup> See *Javellana v. Public Service Commission, et al.*, 98 Phil. 964, 973 (1956); *San Pablo v. Pantranco South Express, Inc.*, 237 Phil. 200, 211 (1987); and *Sea-Land Service, Inc. v. IAC*, 237 Phil. 531, 538-539 (1987).

<sup>101</sup> See First Recital, Executive Order No. 493, December 3, 1991; Republic Act No. 9295 (2004); and Rules and Regulations Implementing Republic Act No. 9295, Entitled "An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, and Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines, and for Other Purposes" (November 30, 2004).

<sup>102</sup> *Land Transportation Franchising and Regulatory Board v. G.V. Florida Transport, Inc.*, 811 Phil. 728 (2017), quoting *Luque v. Villegas*, 141 Phil. 108 (1969).

benefits the general public, since such vessel provides a legally regulated public service which is open to all who may avail thereof, even if such vessel belongs to a private operator. In *Yap v. Commission on Audit*, the Court ruled that:

As understood in the traditional sense, public purpose or public use means any purpose or use **directly available to the general public as a matter of right**. Thus, it has also been defined as “an activity as will serve as benefit to [the] community as a body and which at the same time is directly related function of government.” However, the concept of public use is not limited to traditional purposes. Here as elsewhere, the idea that “public use” is strictly limited to clear cases of “use by the public” has been discarded. In fact, this Court has already categorically stated that the term “public purpose” is not defined, since it is an elastic concept that can be hammered to fit modern standards. It should be given a broad interpretation; therefore, it does not only pertain to those purposes that which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform. In short, public use is now equated with public interest, and that it is not unconstitutional merely because it incidentally benefits a limited number of persons.<sup>103</sup>

Viewed in the light of the foregoing precedents, the public purpose of the Credit Agreement becomes clear; and the SB committed reversible error in ruling that it had no public purpose whatsoever.

#### IV. *Legal and factual bases of the Credit Agreement*

Still premised on the lack of public purpose therein, the SB ruled that the Credit Agreement was an *ultra vires* instrument that went beyond the powers granted by Sections 15, 16, and 297(a) of the LGC. Particularly, the SB held that:

1) *General welfare clause (LGC, Section 16)* — The Credit Agreement cannot be justified under the general welfare clause because its direct object is the financing and promotion of a private business. Any incidental benefit arising from such primarily private purpose is immaterial. While it may be admitted that Atienza provides a *public service* because he operates a *public utility*, the general welfare clause does not authorize a local government unit to finance *private operators* of public utilities.<sup>104</sup>

<sup>103</sup> *Yap v. Commission on Audit*, supra note 87 at 187-188.

<sup>104</sup> *Rollo*, G.R. No. 219300, pp. 139-142.

2) *Corporate powers of LGUs (LGC, Section 15)* — The Credit Agreement is an unlawful exercise of LGU corporate powers for it serves a private purpose: the financing of Atienza's shipping business.<sup>105</sup>

3) *Credit financing power of LGUs (LGC, Section 297[a])* — The Credit Agreement does not comply with the requisite in Section 297(a) that the loan must be used to “finance the construction, installation, improvement, expansion, operation, or maintenance of public facilities, infrastructure facilities, housing projects, the acquisition of real property, and the implementation of other capital investment projects,” since the direct object thereof is the financing of a private party's business.<sup>106</sup>

Petitioners argue that Valencia and the SP resorted to the extension of a loan to a private interisland vessel operator because of the dire situation of sea transport in Oriental Mindoro brought about by the shipping monopoly and the destruction wrought by the three typhoons that hit the province in 1993; and that such extension of credit finds legal bases in Sections 15, 16, and 297(a) of the LGC.

#### *IV.A. Factual bases of the Credit Agreement*

As earlier mentioned, the Oriental Mindoro provincial government entered into the Credit Agreement for the purpose of introducing a new shipping service provider in the Calapan-Batangas sea route. During the trial, the TCC chairperson, Brotonel, testified as follows:

[Atty. Dario:] Now, insofar as transportation and communications are concerned, what were the pressing concerns that were brought to your attention when you were the Chairman?

[Brotonel:] The most pressing problem, was how to break down the monopoly established by the \_\_\_\_\_ family which was established in the early '70s, sir.

[Atty. Dario:] And in the early '70s, having been a long time native of Calapan, do you have any personal experience as to how the shipping company was affected in the '70s?

[Brotonel:] Yes, sir. Since there was shipping monopoly, the sea transport service was at its worst. The vessels that service that route were not maintained. The fares were high, the schedule of trip was dismal, and this

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<sup>105</sup> Id. at 143-144.

<sup>106</sup> Id. at 146.

favored the shipping company of \_\_\_\_\_, the shipping cartel in those years, sir.

[Atty. Dario:] What company did you represent?

[Brotonel:] We formed two shipping companies – the Sto. Domingo Lines and the Viva Shipping Lines. These two shipping companies have interlocking directors, sir.

[Atty. Dario:] How about in the '80s, do you recall of any personal experience how this monopoly affected you personally?

[Brotonel:] The ill-effects of the monopoly were at its high during the '80s to the point that our group campaigned on investors to help competition to be re-established, sir.

[Atty. Dario:] When you were appointed as Chairman of the Transportation and Communications Cluster in 1992 by Governor Valencia, why did the shipping monopoly become another concern in the early '90s?

[Brotonel:] It was a matter of concern because —the fares were so high to the point that even the Provincial Governor prior to the time of Governor Valencia, filed a Complaint before the MARINA, and I was one of the witnesses presented by the Provincial Government to establish the high fares which was over and above the rate imposed by the MARINA.

[Atty. Dario:] So, how did the Transportation and Communications Cluster address this Concern about the shipping monopoly?

[Brotonel:] In our meetings with the Chief of the Offices under my cluster, we submitted recommendations to Governor Valencia that there was a need because investors could not raise funds to buy vessels. So we endorsed it to the Governor. And I recommended, as Chairman, to Require vessels and have them fielded on that sea route, sir.

[Atty. Dario:] And you said that you meet once a month with the Executive Committee. How did the Executive Committee address the reports?

[Brotonel:] You know, sir, every Executive Meeting was attended by the Members of the SP, all the Chief of Offices in the Provincial Level as well as the National Level.

They were there — there were discussions on how we can solve this problem of monopoly, sir.

[Atty. Dario:] You mentioned about "SP". Will you please enlighten us about this "SP"?

[Brotonel:] "SP" is the Sangguniang Panlalawigan which is the legislative body in the Province of Oriental Mindoro, sir.

[Atty. Dario:] And do you recall how the Sangguniang Panlalawigan acted on the reports, if any, when you reported to the Executive Committee?

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[Brotonel:] The Sangguniang Panlalawigan passed a series of resolutions intended to address the problem, not only on the shipping monopoly. But if I recall other areas of concern, the most pressing problem was the shipping monopoly which adversely affected the riding public sir.

[Atty. Dario:] And are you aware of that resolution?

[Brotonel:] Yes, sir, because the Sangguniang Panlalawigan furnished me a copy of that resolution.

x x x x

[Atty. Dario:] x x x Mr. Witness, could you please go over a 3-page document which purports to be — there's a marking on the resolution - No. 169-93, and the title of which is "Authorizing the Hon. Rodolfo G. Valencia, Provincial Governor of Oriental Mindoro, to Negotiate with Persons, Natural or Juridical x x x" (reading).

Could you please go over this document and tell us what relation has this to the resolution that you said was furnished to you by the Sangguniang Panlalawigan.

[Justice Hernandez:] What is the date of that resolution?

[Atty. Dario:] August 5, 1993, Your Honor.

x x x x

[Atty. Dario:] Now, you stated that you were furnished a copy of Sangguniang Panlalawigan Resolution No. 169-93 which has been provisionally marked as Exhibit "1".

What did the Transportation and Communications Cluster do, if any?

[Brotonel:] I have to read the Resolution, sir. (Document handed over to witness)

We continued our campaign for the local businessmen to pool their resources for the people of Oriental Mindoro to form a shipping company. In fact, a corporation was formed. I was one of the Directors of the corporation.

So, we continued our campaign for businessmen from Oriental Mindoro but who were doing business in Metro Manila, sir.

[Atty. Dario:] And what happened?

[Brotonel:] Some businessmen responded to our call. In fact, we were intending to buy the vessel of the Manila International Shipping Company, which vessel was mortgaged with the DBP. And our group was able to raise P5 Million which was paid to the DBP as amortization, sir.

x x x x

[Atty. Dario:] After the Transportation and Communications Cluster addressed the concern of the shipping monopoly in its campaign for

investors and trying to get a vessel which was mortgaged to DBP, how did the cluster address thereafter the concern?

[Brotonel:] It was during this period that this representation met Engr. Atienza because this Alfredo Atienza was able to field one vessel in that sea route. And when I talked to him, I learned that aside from that vessel that was plying that route, there was another vessel which was being repaired at the drydock. And he asked me if I could help him.

So, I thought of presenting this Development to the Executive Committee Meeting Because we wanted to help Engr. Alfredo Atienza.

[Atty. Dario:] And what was the reaction of the Executive Committee?

[Brotonel:] Well, during the Executive Committee Meeting, everybody became so interested, the Sangguniang Panlalawigan Members and all the members of the Executive Committee.

So, the decision was to invite Engr. Alfredo Atienza so that they would know what the financial capacity of Engr. Atienza is, sir.

[Justice Ong:] They are so interested in trying to help this Engr. Atienza?

[Brotonel:] Yes, Your Honor, because that will Solve the problem of shipping monopoly.

[Justice Hernandez:] But what happened to that foreclosed vessel at DBP which you said you paid half million?

[Brotonel:] Almost P5 Million, Your Honor. But because of the —

[Justice Hernandez:] Where did this amount come from?

[Brotonel:] From the local investors, Your Honor. Now, the purchase did not push through because the vessel was foreclosed and one vessel of the shipping company sank.

So, these developments discouraged the local investors in pursuing the plan of buying the vessel, Your Honor.

[Atty. Dario:] Continue.

[Atty. Dario:] And you testified that the Executive Committee was very interested in helping Engr. Alfredo Atienza.

Exactly, what help was in their minds at that time?

[Brotonel:] Engr. Atienza appeared to the Executive Committee to help him either by extending him a loan so that he could field the other vessel that was being repaired in the drydock, sir.

[Atty. Dario:] Do you know the name of that vessel?

[Brotonel:] M/V Ace, sir.

[Atty. Dario:] And do you know what happened after, what happened next?

Q

[Justice Hernandez:] When was this, when did this happen?

[Brotonel:] In 1992, 1993, 1994, through 1999, Your Honor.

[Justice Hernandez:] So, even prior to the passing of that resolution, you were already concerned in the monopoly in Oriental Mindoro because as you said, this happened in 1992, 1993 and 1994?

[Brotonel:] Yes, Your Honor.

[Justice Hernandez:] Now, when did you show your concern, you and the cluster, insofar as Engr. Atienza was concerned?

[Brotonel:] During the Executive Committee Meeting, I spoke therein and I favorably recommended to the Executive Committee to help Engr. Atienza because —

[Justice Hernandez:] When was this?

[Brotonel:] In 1992, 1993 and 1994, Your Honor.

[Justice Hernandez:] So, how many meetings were there at the cluster in 1992, 1993 and 1994, to show your concern to help Engr. Atienza?

[Brotonel:] We used to hold meetings in the cluster monthly and these meetings preceded the meetings of the Executive committee, Your Honor.<sup>107</sup>

Brotonel's testimony clearly shows that, in his capacity as TCC chairperson, he served as the conduit through which Atienza was able to present himself to the Executive Committee and the SP as a more viable alternative to the TCC's original plan of acquiring vessels. His testimony regarding the state of the shipping service in the province is corroborated by contemporaneous resolutions of the SP, thus:

Resolution/Date	Title	Remarks
Resolution No. 72, Series of 1993 (March 25, 1993)	A Resolution Requesting for the Appropriate Action of Viva Shipping Lines, Philippine Ports Authority, Philippine National Police, Philippine Coast Guard, the Ombudsman, the Office of the President and the Office of the Provincial Prosecutor on the Imposition of 100% Additional Fare Being Imposed by Viva Shipping Lines as Penalty for Passengers Boarding the Ship Without Tickets <sup>108</sup>	Based on the sense of the SP that the 100% additional charge mandated by MARINA Memorandum Circular No. 48, series of 1989 subjects passengers to inconvenience and harassments. <sup>109</sup>

<sup>107</sup> *Rollo*, G.R. No. 219343 (vol. I), pp. 215-219; 220-221; 224-225; 227-231.

<sup>108</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elt.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10951.pdf>. Accessed

Resolution No. 74 (April 1, 1993)	A Resolution Requesting Atty. Ben A. Delos Reyes, Provincial Legal Officer of Oriental Mindoro to File the Appropriate Legal Action in Court Against Any Person Involved in the Imposition of 100% Additional Fare Being Imposed by Viva Shipping Lines as Penalty for Passengers Boarding the Ship Without Tickets <sup>110</sup>	
Resolution No. 151-93 (July 1, 1993)	Opposing the Transfer of the Certificate of Public Convenience of M/V Diamond I to any Third Entity Owned and Controlled by Mr. Domingo Reyes, other than Viva Shipping Lines and Sto. Domingo Lines, Inc., to Prevent the Existence of a Shipping Monopoly in the Calapan-Batangas Sea Route <sup>111</sup>	
Resolution No. 159-93 (July 22, 1993)	A Resolution Strongly Opposing the Increase of Ten Pesos (P10.00) in the Passenger Fare Being Proposed by Viva Shipping Lines and Sto. Domingo Shipping Lines on Their Vessels Plying the Calapan-Batangas/Batangas-Calapan Sea Route <sup>112</sup>	
Resolution No. 160-93 (July 22, 1993)	A Resolution Requesting the Maritime Industry Authority to Investigate Viva Shipping Lines and Sto. Domingo Lines for Failure to Comply with MARINA Memorandum Circular No. 48 <sup>113</sup>	MARINA Memorandum Circular No. 48 imposes a 100% penalty on unticketed passengers as a measure to prevent overcrowding, overloading, and scalping of

28 October 2021. Archive link at <https://web.archive.org/web/20211029021829/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10951.pdf>

<sup>109</sup> Third recital of Resolution No. 72, Series of 1993, Id.

<sup>110</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10953.pdf>. Accessed 28 October 2021. Archive link at <https://web.archive.org/web/20211029022223/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10953.pdf>

<sup>111</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10656.pdf>. Accessed 28 October 2021. Archive link at <https://web.archive.org/web/20211029022526/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10656.pdf>

<sup>112</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10669.pdf>. Accessed 28 October 2021. Archive link at <https://web.archive.org/web/20211029022641/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10669.pdf>

<sup>113</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10670.pdf>. Accessed 28 October 2021. Archive link at <https://web.archive.org/web/20211029023404/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10670.pdf>

		tickets in the interisland shipping trade. <sup>114</sup>
Resolution No. 162-93 (July 22, 1993)	Petitioning the Maritime Industry Authority to Amend and/or Revoke Section 3 of Memorandum Circular No. 48 dated 10 April 1989, and Praying that the Pending Resolution of this Petition x x x to Immediately Suspend the Operation of said Section 3 x x x and Direct all Concerned Shipping Companies to Cease and Desist from Implementing the Same. <sup>115</sup>	
Resolution No. 172-93 (August 12, 1993)	Requesting the Commission on Audit (COA) to Examine and Audit the Penalties Imposed and Collected by Private Shipping Companies thru Private Shipping Companies by the Maritime Industry Authority (MARINA) under Section 3 of MARINA Memorandum Circular No. 48 dated 10 April 1989; to Require an Accounting thereof x x x <sup>116</sup>	Passed after widespread complaints from Oriental Mindoro residents that the two shipping companies in the province were collecting a 100% penalty on unticketed passengers.
Resolution No. 172-93a (August 12, 1993)	Requesting the Bureau of Internal Revenue to Determine the Taxability of the Penalties Imposed and Collected by Private Shipping Companies under Section 3 of MARINA Memorandum Circular No. 48 dated 10 April 1989 and the Persons Liable Therefor <sup>117</sup>	Passed after widespread complaints from Oriental Mindoro residents that the two shipping companies in the province were collecting a 100% penalty on unticketed passengers.
Resolution No. 201-93 (September 9, 1993)	A Resolution Vigorously Opposing Any Application Filed by Viva Shipping Lines and Sto. Domingo Shipping Lines with the MARINA for the Purchase of Two (2) Additional Vessels of 200 Ton Capacity to be Fielded in the Calapan-	Passed on the basis of SP consensus that the grant of such application does not comply with the tonnage requirements of MARINA and that the vessel capacity will not be able to fully

<sup>114</sup> Based on the first recital of the resolution. Id.

<sup>115</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10671.pdf>. Accessed 28 October 2021. Archive link at <http://web.archive.org/web/20211029023642/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10671.pdf>.

<sup>116</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10685.pdf>. Accessed 28 October 2021. Archive link at <http://web.archive.org/web/20211029024214/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10685.pdf>

<sup>117</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10686.pdf>. Accessed 28 October 2021. Archive link at <http://web.archive.org/web/20211029024524/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10686.pdf>

	Batangas/Batangas-Calapan Sea Route <sup>118</sup>	respond to the convenience and riding safety of the public. <sup>119</sup>
Resolution No. 228-93 (October 21, 1993)	Requesting the Maritime Industry Authority to Investigate and Take Appropriate Action on the Continued Imposition by Viva Shipping Lines and Sto. Domingo Lines in the Batangas-Calapan Route of the 100% Penalty on Unticketed Passengers under Memorandum Circular No. 48 notwithstanding the Decision of the MARINA Board during its 67 <sup>th</sup> Board Meeting Suspending the Same. <sup>120</sup>	

In view of Brotonel's testimony, as corroborated by contemporaneous resolutions of the SP, it is clear that the poor state of the shipping service, as further exacerbated by the destruction wrought by the three typhoons that ravaged Oriental Mindoro during the 1993 typhoon season, motivated the provincial government to introduce a new shipping service provider to the Calapan-Batangas route; and one of the measures taken by the provincial government to such end was the failed attempt to buy its own vessels. It cannot therefore be said that the Credit Agreement lacked factual basis.

#### IV.B. General welfare clause

Given our findings regarding its public purpose, we cannot subscribe to the SB's conclusion that the Credit Agreement cannot be justified under the general welfare clause embodied in Section 16 of the LGC.

Through Section 16 of the LGC, Congress delegated the exercise of the police power to local governments.<sup>121</sup> This delegated power has two branches: the general legislative power and the police power proper. The police power proper authorizes local governments to enact measures "*as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its*

<sup>118</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10751.pdf>. Accessed 28 October 2021. Archive link at <http://web.archive.org/web/20211029025524/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10751.pdf>

<sup>119</sup> Second and third recitals of Resolution No. 201-93. Id.

<sup>120</sup> Province of Oriental Mindoro Electronic Legislative Tracking System, <https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10806.pdf>. Accessed 28 October 2021. Archive link at <http://web.archive.org/web/20211029030316/https://www.elts.com.ph/Uploads/1/ApprovedResolutions/ApprovedResolution10806.pdf>

<sup>121</sup> *Ferrer, Jr. v. Mayor Bautista*, supra note 88, at 279.

*inhabitants, and for the protection of their property.*"<sup>122</sup> Given its plenary nature, the police power proper is almost illimitable, thus:

Its scope, ever-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuming the greatest benefits.

It finds no specific Constitutional grant for the plain reason that it does not owe its origin to the charter. Along with the taxing power and eminent domain, it is inborn in the very fact of statehood and sovereignty. It is a fundamental attribute of government that has enabled it to perform the most vital functions of governance. Marshall, to whom the expression has been credited, refers to it succinctly as the plenary power of the state "to govern its citizens." The police power of the State is a power co-extensive with self-protection. and is most aptly termed the "law of overwhelming necessity." It is "the most essential, insistent, and illimitable of powers." It is a dynamic force that enables the state to meet the exigencies of the winds of change.<sup>123</sup>

Any attempt to define the police power with circumstantial precision would savor of pedantry. The United States Supreme Court tritely describes it as "the most essential of all powers, at times the most insistent, and always one of least limitable of the powers of government." The police power is based on the maxim "salus populi est suprema lex" — the welfare of the people is the first law. [I]t extends "to the protection of the lives, health and property of the citizens, and to the preservation of good order and the public morals." x x x "[T]he police power of the state includes not only the public health and safety, but also the public welfare, protection against impositions, and generally the public's best interest." Recent judicial decisions incline to give a more extensive scope to the police power than the older cases. The public welfare is rightfully made the basis of construction.

Not only does the State effectuate its purposes through the exercise of the police power but the municipality does also. Like the State, the police power of a municipal corporation extends to all matters affecting the peace, order, health, morals, convenience, comfort, and safety of its citizens — the security of social order — the best and highest interests of the municipality. The best considered decisions have tended to broaden the scope of action of the municipality in dealing with police offenses.<sup>124</sup>

It is therefore crystal clear that the Credit Agreement, which is intended to address the transportation needs of the residents of Oriental Mindoro through the financing of a new shipping operator, finds basis in the general welfare clause. It is a measure intended to benefit the public welfare

<sup>122</sup> *Fernando v. St. Scholastica's College*, 706 Phil. 138, 156 (2013)

<sup>123</sup> *Basco v. Philippine Amusement and Gaming Corp.*, supra note 97, at 336-337. Citations omitted.

<sup>124</sup> *United States v. Salaveria*, 39 Phil. 102, 108-109 (1918). Citations omitted.

by addressing a transportation emergency created by the then-prevailing circumstances in the province.

#### *IV.C. Loan and financing powers of LGUs*

Likewise, we cannot subscribe to the SB's conclusion, still premised on its finding that it is intended solely for the private benefit of a private person, that the Credit Agreement is an invalid exercise of the Oriental Mindoro LGU's loan and financing powers.

Section 22(5) of the LGC empowers LGUs to enter into contracts. In accordance with Section 5(a) of the LGC,<sup>125</sup> this general grant should be deemed to encompass the power to enter into *any kind of legally binding contract*, including contracts of loan, either as debtor or creditor,<sup>126</sup> subject only to the limitations provided elsewhere in the LGC.<sup>127</sup> This principle has been recognized in *Ocampo III v. People*, where this Court acquitted a provincial governor who was convicted of malversation for failure to account for provincial funds that had been loaned to a private non-stock corporation, thus:

Based on the foregoing, it is clear that the funds released by the Province of Tarlac, including the money allegedly malversed by petitioners in Crim. Case Nos. 16794 and 16795, were in the nature of a loan to LTFI.

Art. 1953 of the Civil Code provides that “[a] person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality”.

Hence, petitioner Ocampo correctly argued that **the NALGU funds shed their public character when they were lent to LTFI as it acquired ownership of the funds with an obligation to repay the Province of Tarlac the amount borrowed. The relationship between the Province of Tarlac and the LTFI is that of a creditor and debtor.** Failure to pay the indebtedness would give rise to a collection suit.

<sup>125</sup> Section 5. Rules of Interpretation. - In the interpretation of the provisions of this Code, the following rules shall apply:

(a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned;

<sup>126</sup> Section 300 of the LGC expressly recognizes this principle with respect to the power of LGUs to extend loans to other LGUs.

<sup>127</sup> Some of these limitations are found in Sections 305(b) (the public purpose rule), Sections 324 and 325 (on budgetary requirements and general limitations on expenditure), and in the provisions requiring such loans to be contracted through the local chief executive pursuant to local legislative authorization (Sections 389[b][2] and 391[a][12], 444[b][vi] and 447[2][iii], 455[b][1][vi] and 458[a][2][iii], and 465[b][1][vi] and 468[a][2][iii]).

x x x x

There can be no malversation of public funds by petitioner Ocampo in the instant cases since **the loan of P11.5 million transferred ownership and custody of the funds, which included the sum of money allegedly malversed, to LTFI for which Ocampo could no longer be held accountable.** Thus, contrary to the allegation of the Office of the Special Prosecutor, petitioner Ocampo cannot be held culpable for malversation committed through negligence in adopting measures to safeguard the money of the Province of Tarlac, since the same were neither in his custody nor was he accountable therefor after the loan to LTFI.<sup>128</sup>

Here, the Credit Agreement was entered into by the provincial governor (Valencia) by authority of a resolution passed by the SP of Oriental Mindoro. The Credit Agreement was later ratified by the SP; and is impressed with public purpose. However, the funds used for the Credit Agreement were not taken directly from any of the provincial funds. Since there were no more available appropriations, the provincial government opted to take out a loan from the LBP, secured by hold-outs on its time deposits with the latter. Such course of action is justified under Section 297(a) of the LGC. The provision reads:

Section 297. Loans, Credits, and Other Forms of Indebtedness of Local Government Units. -

(a) A local government unit may contract loans, credits, and other forms of indebtedness with any government or domestic private bank and other lending institutions **to finance the** construction, installation, improvement, expansion, **operation, or maintenance of public facilities,** infrastructure facilities, housing projects, the acquisition of real property, and the **implementation of other capital investment projects,** subject to such terms and conditions as may be agreed upon by the local government unit and the lender. The proceeds from such transactions shall accrue directly to the local government unit concerned.

Contrary to the SB's position, the LBP loan is compliant with Section 297(a). The public character of the interisland shipping business and the facilities involved in the operation thereof, especially the *vessels themselves*, has already been established. Likewise, the proceeds of the loan accrued directly to the Oriental Mindoro provincial government and not to Atienza, who was not a party to the Loan Agreement with the LBP.<sup>129</sup> Pursuant to Article 1953 of the Civil Code, the funds loaned by LBP to the provincial government became the property of the latter and was integrated into its funds. Pursuant to the SP Resolutions, the loan proceeds were then disbursed

<sup>128</sup> *Ocampo III v. People*, 567 Phil. 461, 478-481 (2008). Emphasis and underscoring supplied.

<sup>129</sup> The parties to the Loan Agreement are LBP and the Provincial Government of Oriental Mindoro. *Rollo*, G.R. No. 219323 (vol. I), p. 297.

to Atienza. Had the proceeds accrued directly to Atienza as the SB posits, then the LBP should have released the loan proceeds directly to him without the provincial government issuing a disbursement voucher. However, it has already been established that Atienza received the funds from the provincial government through a duly executed disbursement voucher.<sup>130</sup>

V. *Existence of gross and manifest disadvantage*

The SB found the Credit Agreement grossly and manifestly disadvantageous for the following reasons: 1) the Credit Agreement violated the public purpose rule; 2) in order to finance the Credit Agreement, the provincial government had to take out an interest-bearing loan secured by its time deposits, thereby exposing the LGU funds to risks and additional onerous obligations; 3) the Credit Agreement was not secured; and 4) there was no proof that Atienza actually owned the vessel M/V Ace.<sup>131</sup>

At the outset, we address petitioners' contention that the SB erred "[i]n making [its] determination [of gross and manifest disadvantage by taking] into account the subject/object of the contract and its terms",<sup>132</sup> without reference to any other comparable contract or arrangement. While it is true that the determination of gross and manifest disadvantage must be made relative to a certain standard, such applicable standard depends on the facts of each particular case, and need not always involve a comparison of prices or contractual arrangements.

In *Castillo-Co v. Sandiganbayan (Second Division)* we sustained the conviction of a provincial governor who was convicted of violating Section 3(g) for purchasing reconditioned heavy equipment instead of brand-new heavy equipment, as specified in the SP resolution which authorized the purchase and appropriated funds therefor:

A resolution is a declaration of the will of a municipal corporation or local government unit on a given matter. In the case at bar, the inclination of the Province of Quirino, as shown by Resolution No. 120 and Resolution No. 06-A, was evidently to procure brand new heavy machinery. To its prejudice, however, Gov. Co caused the expenditure of public funds allotted for that purpose on reconditioned equipment instead. Worse, she did so knowingly. When she entered into the loan with the PNB and the sale with Nakajima Trading, she was well aware of the existence and tenor of Resolution No. 120. She likewise knew, prior to the sale, that the subject equipment was merely reconditioned and not brand new as

<sup>130</sup> *Rollo*, G.R. No. 219343 (vol. III), p. 1181.

<sup>131</sup> SB Decision, pp. 18-19; *Rollo*, G.R. No. 219323 (vol. I), pp. 137-138.

<sup>132</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 137.

required by the Sangguniang Panlalawigan. Nonetheless, to the detriment of the province, she pushed through with the transaction. To the Court, this act clearly caused gross and manifest disadvantage to the government. The record shows that even prior to the date of the loan, the Office of the Provincial Engineer had already informed Gov. Co that the province could not afford brand new equipment. In a letter dated October 31, 1995, Engr. Ringor recommended that the province purchase reconditioned machinery due to insufficiency of funds x x x.

Given the foregoing recommendation of Engr. Ringor, Gov. Co was duty-bound to inform the Sangguniang Panlalawigan that the funds allotted by the province were insufficient for brand new heavy equipment. She was likewise obliged to defer contracting with Nakajima Trading until the province had given her the appropriate authority to purchase reconditioned equipment. However, in defiance of the unequivocal will of the province, she proceeded with the sale.

x x x x

To encapsulate, by purchasing reconditioned instead of brand-new heavy equipment in contravention of the terms of her authority, Gov. Co entered into a contract grossly and manifestly disadvantageous to the Province of Quirino. Such disadvantage was brought about because the province had set aside public funds for brand new heavy machinery only to receive used albeit reconditioned equipment.<sup>133</sup>

Clearly, the standard employed in *Castillo-Co* was a local legislative enactment. Since the contract in question violated the terms of said enactment, it was deemed grossly and manifestly disadvantageous to the government. In this case, the standard applied by the SB is found in a provision of law, *i.e.*, Section 305(b) of the LGC. As demonstrated above, the Credit Agreement complies with this provision.

Even if we apply the contractual or price comparison approach<sup>134</sup> to the present case, the lack of gross and manifest disadvantage is nevertheless made evident by the fact that the defense was able to present proof that the extension of credit to a private shipping operator was resorted to *only after* the Oriental Mindoro LGU failed to finance the acquisition of its own ships; thereby showing that the provincial government, herein petitioners included, attempted other similar or comparable means to introduce an additional shipping provider in the province, but these attempts proved unsuccessful. Furthermore, the prosecution did not even submit evidence of other legally compliant modes of introducing a new shipping service provider or of other

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<sup>133</sup> *Castillo-Co v. Sandiganbayan (Second Division)*, G.R. No. 184766, August 15, 2018. Citations omitted.

<sup>134</sup> See, *e.g.*, *Miranda v. Sandiganbayan*, *supra* note 77; *Sajul v. Sandiganbayan*, 398 Phil. 1082 (2000); *Dans, Jr. v. People*, *supra* note 76; *Marcos v. Sandiganbayan*, *supra* note 83.

suitable shipping service operators that the provincial government may have tapped instead of Atienza.

Turning now to the other grounds cited by the SB, as regards the second ground, it has been proven that the LBP loan was resorted to because the provincial budget had already been exhausted and there were no available funds to be appropriated for the emergency extension of credit to Atienza. Had the LGU used other previously appropriated or unprogrammed funds, it would have violated Section 305(a) of the LGC, which prohibits the disbursement of LGU funds without a corresponding appropriation. Thus, the most expedient and legally compliant way to obtain funds for the Credit Agreement was the availment of a loan secured by assets held by the Oriental Mindoro LGU with the LBP. On this score, we have already demonstrated that LGUs are empowered to contract loans *both as creditor and debtor*; and in this case the use of a loan to finance another loan was expressly authorized and later ratified by the SP.

As regards the third and fourth grounds, which are intertwined, the prosecution argues that there was no proof that Atienza owned the vessels adverted to in the agreement. Without such proof, any security based on said vessels is illusory. Indeed, there is no proof on record to show that Atienza was able to timely submit the ownership and registration papers of the vessels adverted to in the Credit Agreement. The provincial legal officer, Delos Reyes, admitted that the ownership papers of the vessels had not yet been submitted when the Credit Agreement was approved.<sup>135</sup> However, this does not necessarily mean that the Credit Agreement was totally unsecured and that the Oriental Mindoro LGU was not protected in the transaction. As petitioners correctly posit, Atienza was required to pay a high interest rate of 20.5 percent per annum and to pay the loan with post-dated checks in accordance with the schedule set forth in the Credit Agreement.<sup>136</sup> When his checks were dishonored, Atienza was prosecuted for violation of B.P. Blg. 22 and was ordered by final and executory judgment to pay the total amount of the unpaid obligation. Moreover, since the loan proceeds were actually applied to repairing Atienza's ships, the Oriental Mindoro LGU acquired a maritime lien over the repaired ships themselves, pursuant to Sections 17 and 21 of the Ship Mortgage Decree.<sup>137</sup> *Tsuneishi Heavy Industries (Cebu), Inc. v. MIS Maritime Corp.*<sup>138</sup> explains:

A lien is a "legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation." It attaches to a property by operation of law and once attached, it follows the

<sup>135</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 277.

<sup>136</sup> Article II of the Credit Agreement, *id.* at 233.

<sup>137</sup> PRESIDENTIAL DECREE NO. 1521, issued on June 11, 1978.

<sup>138</sup> 829 Phil. 90 (2018).

property until it is discharged. What it does is to give the party in whose favor the lien exists the right to have a debt satisfied out of a particular thing. It is a legal claim or charge on the property which functions as a collateral or security for the payment of the obligation.

Section 21 of the Ship Mortgage Decree establishes a lien. It states:

Sec. 21. Maritime Lien for Necessaries; Persons entitled to such Lien. — Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessities to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall be necessary to allege or prove that credit was given to the vessel.

In practical terms, this means that the holder of the lien has the right to bring an action to seek the sale of the vessel and the application of the proceeds of this sale to the outstanding obligation. Through this lien, a person who furnishes repair, supplies, towage, use of dry dock or marine railway, or other necessities to any vessel, in accordance with the requirements under Section 21, is able to obtain security for the payment of the obligation to him.

A party who has a lien in his or her favor has a remedy in law to hold the property liable for the payment of the obligation. A lienholder has the remedy of filing an action in court for the enforcement of the lien. In such action, a lienholder must establish that the obligation and the corresponding lien exist before he or she can demand that the property subject to the lien be sold for the payment of the obligation. Thus, **a lien functions as a form of security for an obligation.**<sup>139</sup>

That Atienza was eventually unable to submit the needed registration and ownership documents<sup>140</sup> cannot be held against petitioners. It must be remembered that petitioners were faced with a pressing need for additional shipping services brought about by the destruction of vital road links in the province. When Atienza came into the picture, his credentials were investigated by Brotonel's TCC and by the Finance cluster. In view of the assurances given by Brotonel and Delos Reyes (the incumbent provincial legal officer who reviewed the contract)<sup>141</sup>, as well as the findings of the Finance cluster regarding Atienza's creditworthiness, which were made at the time the Credit Agreement was entered into, petitioners had no reason to suspect that Atienza would not be able to submit the necessary ownership documents. Indeed, the prosecution presented no evidence whatsoever to prove that Valencia, Bawasanta, or Umali had any other reason or

<sup>139</sup> Id. at 102-103.

<sup>140</sup> *Rollo*, G.R. No. 219323 (vol. I), p. 267.

<sup>141</sup> Delos Reyes initially testified that the documents were actually submitted. However, he also admitted on cross-examination that his office did not receive copies thereof. *Rollo*, G.R. No. 219343 (vol. II), pp. 851, 881-883.

motivation for urgently pushing through with the Credit Agreement other than the exigent circumstances brought about by the shipping service provider problems and the typhoon-caused destruction of the province's road links. What appears from the record is that: 1) Atienza was introduced to the provincial Executive Committee by Brotonel as an interisland vessel operator; 2) at the time the Credit Agreement was entered into, Atienza represented himself as the owner and operator of the vessels stated therein; and 3) Atienza was able to have the vessels repaired. It is well-settled that the validity of the contract or transaction is immaterial to the determination of gross and manifest disadvantage under Section 3(g).<sup>142</sup> Such determination is limited to the evaluation of the terms and conditions of the contract, including its recitals, as against the applicable standard developed by the law and the evidence. As demonstrated above, the Credit Agreement is compliant with the herein applicable standard.

While it may be conceded that the government was disadvantaged by the posthaste execution of the Credit Agreement, it must be remembered that Section 3(g) of Republic Act No. 3019 only penalizes *grossly and manifestly* disadvantageous transactions. Given its clear public purpose, compliance with the Local Government Code, and the exigent circumstances which gave rise to its execution, as balanced against the post-execution and implementation circumstances which resulted in the filing of the present case, reasonable doubt emerges as to whether the Credit Agreement was *grossly and manifestly disadvantageous* to the government.

Considering that the information alleges Section 3(g) as the *act or modality* by which Section 3(e) was transgressed, the prosecution's failure to prove *gross and manifest disadvantage* beyond reasonable doubt renders its case untenable. Petitioners are entitled to an acquittal.

VI. *Non-inhibition and alleged bias  
of Justice Jose Hernandez*

In *Re: Complaint of Atty. Mariano R. Pefianco Against Justices Sempio Diy, et al. of the Court of Appeals Cebu*,<sup>143</sup> the Court dismissed an administrative complaint for grave misconduct and gross ignorance of the law filed by Umali against Justice Hernandez in connection with the present case. Pertinently, the Court found no bias or manifest partiality on the part of Justice Hernandez:

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<sup>142</sup> *Luciano v. Estrella*, 145 Phil. 454, 464-465 (1970).

<sup>143</sup> 781 Phil. 375 (2016).

Contrary to what Umali alleged, the records do not show that Justice Hernandez instructed the division clerk of court (DCC) not to give Umali a period of time to file a reply to the prosecution's comment on his (Umali's) motion for reconsideration. The records reveal that the DCC told Umali's lawyer that the court (Sandiganbayan) did not give him (DCC) instructions to allow the parties to file a reply, and that the counsel could just file a motion to admit the reply "for the Court to act." Umali, in fact, filed a reply to the prosecution's comment/opposition to his motion for reconsideration.

In any event, there was nothing in the Sandiganbayan Rules that gives Umali the right to file a reply to the prosecution's comment to his motion for reconsideration. The filing of a reply in order to comment on a motion for reconsideration is a matter subject to the Anti-Graft Court's sound discretion; its denial alone does not amount to bias or partiality.

We also find no sufficient basis to rule that Justice Hernandez exhibited manifest partiality when he stated, "You can always go to the Supreme Court," during the hearing of Umali's motions.

We point out that the exact utterance made by Justice Hernandez was, "You still have the Supreme Court." This remark was made in connection with Umali's motion for inhibition which was set for hearing on that day, and not on his motion for reconsideration. Umali's insinuation that the remark implied that he should no longer expect "any change of heart and mind" insofar as the judgment of conviction was concerned, was therefore misplaced. There was nothing in this statement indicating that Justice Hernandez had already prejudged the case against Umali.

Similarly, we find unmeritorious Umali's allegation that Justice Hernandez lawyered for the prosecution when he "thoroughly confronted" defense witness Atty. Rafael Infantado, during cross-examination.

It is settled that [a] judge may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details in the course of the testimony of the witness or thereafter. Questions designed to clarify points and to elicit additional relevant evidence are not improper. Nonetheless, the judge should limit himself to clarificatory questions and this power should be sparingly and judiciously used. The rule is that the court should stay out of it as much as possible, neither interfering nor intervening in the conduct of the trial.

In the present case, we initially point out that Umali's complaint did not faithfully reproduce the exchanges during the hearing on February 9, 2011, as reflected in the TSN. We find it reprehensible that while Umali was imputing bias on Justice Umali based on what transpired during the hearings, he did not accurately quote the TSN in his complaint.

At any rate, piecemeal citations of the exchanges during the February 9, 2011 Sandiganbayan (Fourth Division) hearing in Criminal Case No. 23624 are glaringly insufficient to establish that Justice Hernandez "lawyered" for the prosecution. On the contrary, Justice Hernandez's

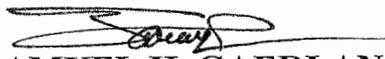
questions were merely designed to clarify points and elicit additional information, particularly on whether the request of authority of then Governor Valencia from the Sangguniang Panlalawigan of Oriental Mindoro to enter into an agreement was included in the agenda. Notably, the Division's Chairman also asked clarificatory questions on this matter.<sup>144</sup>

Given these findings, we find no basis either for the inhibition of Justice Hernandez or for the assertion that his actuations during the trial deprived petitioners of due process.

**WHEREFORE**, the present petitions are hereby **GRANTED**. The April 20, 2015 Decision and the July 20, 2015 Resolution of the Sandiganbayan in Criminal Case No. 23624 are hereby **REVERSED** and **SET ASIDE**. Petitioners Romualdo J. Bawasanta, Rodolfo G. Valencia, and Alfonso V. Umali, Jr. are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. The hold departure order issued against them by reason of this case is hereby **LIFTED** and **SET ASIDE**. Any amount paid by way of a bail bond is ordered **RETURNED**.

Let entry of judgment be issued immediately.

**SO ORDERED.**

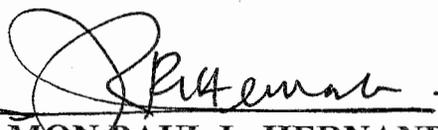
  
**SAMUEL H. GAERLAN**  
Associate Justice

WE CONCUR:

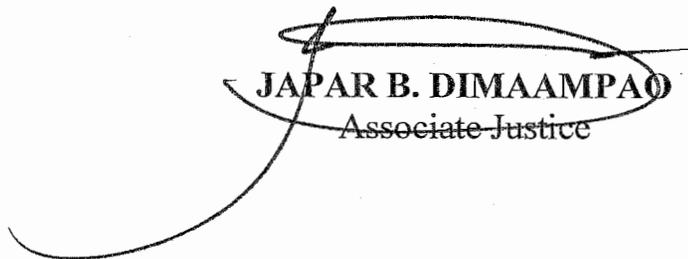
*(On official leave)*  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

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<sup>144</sup> Id. at 390-391. Citations omitted.

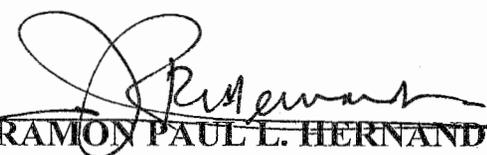
  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

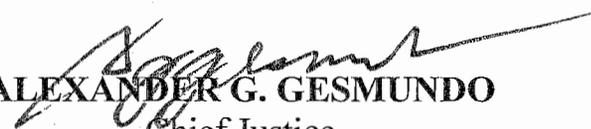
### ATTESTATION

I attest 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's Division.

  
**RAMON PAUL L. HERNANDO**  
Associate Justice  
Acting Chairperson, Second Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice