

EN BANC

[G.R. No. 210503, October 08, 2019]

GRECO ANTONIOUS BEDA B. BELGICA, PETITIONER, VS. THE HONORABLE EXECUTIVE SECRETARY, THE HONORABLE SECRETARY OF BUDGET, AND THE PHILIPPINE CONGRESS, AS REPRESENTED BY THE HONORABLE SENATE PRESIDENT AND THE HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES, RESPONDENTS.

DECISION

PER CURIAM:

Before the Court is a petition for *certiorari* and prohibition (Petition) assailing the constitutionality of the "lump-sum discretionary funds" in the 2014 General Appropriations Act^[1] (GAA), including, among others, the Unprogrammed Fund, the Contingent Fund, the E-Government Fund, and the Local Government Support Fund (collectively, the specifically assailed appropriations).

The Facts

On November 19, 2013, the Court rendered its Decision in *Belgica v. Ochoa, Jr.*^[2] (2013 *Belgica* case), declaring certain provisions of the 2013 GAA unconstitutional. The dispositive portion of the Court's Decision in the 2013 *Belgica* case reads:

WHEREFORE, the petitions are **PARTLY GRANTED**. In view of the constitutional violations discussed in this Decision, the Court hereby declares as **UNCONSTITUTIONAL**: **(a)** the entire 2013 Priority Development Assistance Fund [(PDAF)] Article; **(b)** all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and [Countrywide Development Fund (CDF)] Articles and the various Congressional Insertions, which authorize/d legislators - whether individually or collectively organized into committees - to intervene, assume or participate in any of the various post-enactment stages of the budget execution, such as but not limited to the areas of project identification, modification and revision of project identification, fund release and/or fund realignment, unrelated to the power of congressional oversight; **(c)** all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which confer/red personal, lump-sum allocations to legislators from which they are able to fund specific projects which they themselves determine; **(d)** all informal practices of similar import and effect, which the Court similarly deems to be acts of grave abuse of discretion amounting to lack or excess of jurisdiction; and **(e)** the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of Presidential Decree No. 910 and (2) "to finance the priority infrastructure development projects" under Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, for both failing the sufficient standard test in violation of the principle of non-delegability of legislative power.^[3]

In fine, the Court's Decision in the 2013 *Belgica* case abolished the "pork barrel system" in its latest iteration as the Priority Development Assistance Fund (PDAF) Article in the 2013 GAA, and similar informal practices that allowed individual legislators to participate in the execution of the budget through post-enactment measures of identification of projects, for violation of the separation of powers - by impinging on the authority of the Executive to implement the national budget.

As well, the 2013 *Belgica* case declared as unconstitutional the broad standards of "other purposes as may be hereafter directed by the President," and "priority infrastructure development projects" for the use of the President's Social Fund and the Malampaya Fund, respectively, for being insufficient standards to check the President's discretion as to the use of these lump-sum funds.

Republic Act No. (RA) 10633 or the 2014 GAA was subsequently passed on December 27, 2013. It appropriated funds for the operations of the government for fiscal year 2014.

On January 13, 2014, Greco Antonious Beda B. Belgica (Petitioner) filed the instant Petition, seeking to declare all lump-sum appropriations in the 2014 GAA unconstitutional, including the specifically assailed appropriations. Petitioner asserts that the lump-sum discretionary funds in the 2014 GAA were passed in violation of the Constitution, since these funds are of the same character as the pork barrel funds which were declared unconstitutional in the 2013 *Belgica* case, and should thus be prohibited.

Petitioner sought the issuance of a *status quo ante* order to prevent the use and disbursement of the specifically assailed lump-sum funds pending resolution of this Petition. However, *status quo ante* order was issued by the Court.

Subsequently, the parties submitted their respective pleadings.

The Issues

Based on the issues submitted by the parties in their pleadings, the Court is called upon to determine whether the lump-sum appropriations found in the 2014 GAA are unconstitutional for:

1. violating the doctrine on non-delegability of legislative power;
2. violating the essence and purpose of separation of powers (*i.e.*, checks and balances) and the democratic process; and
3. failing to comply with the requirements of a valid appropriation, the line-item veto power of the President, and Executive Order No. (EO) 292,^[4] otherwise referred to as the Administrative Code of 1987.

Discussion

Procedural Issues

In resorting to the remedy of *certiorari* under Rule 65, Petitioner implores the Court to exercise its power of judicial review to secure the reliefs sought.

The Court's power of judicial review-specifically its power to review the constitutionality of the actions of other branches of government^[5] - is subject to well-defined limitations, to wit: "(1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance, [or,] otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case."^[6]

Actual case or controversy

The requirement of an actual case or controversy stems from Section 1, Article VIII of the Constitution, which includes within the sphere of judicial power "the duty x x x to settle actual controversies involving rights which are legally demandable and enforceable, and to determine

whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Jurisprudence defines an actual case or controversy as "one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.'"^[7] Subsumed in the requirement of an actual case or controversy is the requirement of ripeness, and "[f]or a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action."^[8] To be sure, the Court may not wield its power of judicial review to address a hypothetical problem.^[9] "Without any completed action or a concrete threat of injury to the petitioning party, the act is not yet ripe for adjudication."^[10]

The Executive Secretary, the Secretary of Budget, the Senate, and the House of Representatives (collectively, Respondents), through the Office of the Solicitor General (OSG), aver that unlike the 2013 *Belgica* case, which had been prompted by the "findings of irregularities by the Commission on Audit [(COA)] over the use of the PDAF," no such findings have been alleged by Petitioner so as to warrant judicial intervention.^[11]

By challenging the validity of the specifically assailed appropriations, Petitioner questions the implementation of what he characterizes as unconstitutional provisions of the 2014 GAA. Such a challenge has been deemed by the Court as sufficient to afford ripeness to a controversy, involving as it does the possible misapplication of public funds which cause "injury or hardship to taxpayers."^[12]

Hence, the requisite of an actual case or controversy to allow the Court's exercise of its power of judicial review is satisfactorily met.

Mootness

The Petition assails what it considers lump-sum discretionary funds in the 2014 GAA. In view of the lapse of the said year and the enactment of GAAs for subsequent years, this may raise questions on mootness.

Suffice it to state, however, that the Court may resolve cases otherwise moot and academic, when: (1) there is a grave violation of the Constitution; (2) the exceptional character of the situation and the paramount public interest is involved; (3) when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.^[13] The Petition falls under the last three exceptions.

Undoubtedly, this case involves paramount public interest as it deals with the constitutionality of appropriations of public funds. Moreover, the case involves issues concerning significant constitutional principles such as separation of powers, valid delegation, and appropriation.

The constitutional issues raised by Petitioner also require the formulation of controlling principles to guide the Executive, the Legislative, and the public. While the 2013 *Belgica* case drew a conceptual distinction between the two kinds of lump-sum discretionary funds, (*i.e.*, the "Congressional Pork Barrel"^[14] and the "Presidential Pork Barrel"), the Court therein "delimit[ed] the use of such term to refer only to the Malampaya Funds and the Presidential Social Fund."^[15] Hence, there is a need to determine the scope of the Executive's authority with respect to the utilization and management of lump-sum discretionary funds.

Moreover, the Petition presents a case that is capable of repetition, yet evading review. In 2013 *Belgica* case, the Court ruled:

Finally, **the application of the fourth exception is called for by the recognition that the preparation and passage of the national budget is, by constitutional imprimatur, an affair of annual occurrence.** The relevance of the issues before the Court does not cease with the passage of a "PDAF-free budget for 2014." The evolution of the "Pork Barrel System," by its multifarious iterations throughout the course of history, lends a semblance of truth to petitioners' claim that "the same dog will just resurface wearing a different collar." In *Sanlakas v. Executive Secretary*, the government had already backtracked on a previous course of action yet the Court used the "capable of repetition but evading review" exception in order "[t]o prevent similar I questions from re-emerging." The situation similarly holds true to these cases. **Indeed, the myriad of issues underlying the manner in which certain public funds are spent, if not resolved at this most opportune time, are capable of repetition and hence, must not evade judicial review.**^[16] (Emphasis supplied)

The same reasoning applies squarely in this case. In fact, the GAAs enacted since the filing of the Petition contained appropriations for the Unprogrammed Fund, Contingent Fund, and Local Government Support Fund. Failing the formulation of controlling principles, petitions assailing these subsequent appropriations may likely be filed again.

Substantive Issues

The rule on singular correspondence in the 2013 Belgica case

At the outset, it must be noted that Petitioner heavily anchors the present challenge on his literal reading of the rule on singular correspondence in the 2013 *Belgica* case which purportedly invalidated lump-sum appropriations that he characterizes as "Presidential Pork Barrel." As well, Petitioner vacillates between claiming that the decision therein made a wholesale declaration of unconstitutionality of lump-sum appropriations,^[17] and conceding that lump-sum appropriations are not unconstitutional *per se*.^[18]

Thus, **it is necessary to begin the discussion by resolving Petitioner's foremost premise that the 2013 Belgica case ruled upon the general question of constitutionality of lump-sum appropriations per se.** Petitioner bases this premise upon the following quoted portion of the Court's Decision therein which, according to him, amounts to a wholesale declaration of unconstitutionality of all lump-sum discretionary funds:

Further, it is significant to point out that an item of appropriation must be an item characterized by **singular correspondence** -meaning an allocation of a **specified singular amount for a specified singular purpose**, otherwise known as a "**line-item**." This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same. Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line-item" appropriations which are rightfully subject to item veto. Likewise, **it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item.** Moreover, as Justice Carpio correctly pointed out, **a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, e.g., MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power.** Finally, special purpose funds and discretionary funds would equally square with the constitutional mechanism of item-veto **for as long as they follow the rule on singular correspondence** as herein discussed. Anent

special purpose funds, it must be added that Section 25 (4), Article VI of the 1987 Constitution requires that the "special appropriations bill **shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or to be raised by a corresponding revenue proposal therein.**" Meanwhile, with respect to discretionary funds, Section 25 (6), Article VI of the 1987 Constitution requires that said funds "shall be disbursed only for public purposes to be **supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.**"

In contrast, what beckons constitutional infirmity are appropriations which merely provide for a **singular lump-sum amount** to be tapped as a source of funding for **multiple purposes**. Since such appropriation type necessitates the further determination of **both** the **actual amount** to be expended **and** the **actual purpose** of the appropriation which must still be chosen from the multiple purposes stated in the law, it cannot be said that the appropriation law already indicates a "specific appropriation of money" and hence, without a proper line-item which the President may veto. As a practical result, the President would then be faced with the predicament of either vetoing the entire appropriation if he finds some of its purposes wasteful or undesirable, or approving the entire appropriation so as not to hinder some of its legitimate purposes. Finally, it may not be amiss to state that such arrangement also raises non-delegability issues considering that the implementing authority would still have to determine, again, both the actual amount to be expended and the actual purpose of the appropriation. Since the foregoing determinations constitute the integral aspects of the power to appropriate, the implementing authority would, in effect, be exercising legislative prerogatives in violation of the principle of non-delegability.^[19] (Additional emphasis supplied)

Petitioner's heavy reliance on the 2013 *Belgica* case as precedent to argue that lump-sum appropriations are unconstitutional *per se* is erroneous. **The rule on singular correspondence therein distinguished what is a prohibited lump-sum.** Identifying the Calamity Fund, the Contingent Fund, and the Intelligence Fund as valid appropriations, the Court explained that:

x x x Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line-item" appropriations which are rightfully subject to item veto. Likewise, **it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item.** x x x^[20] (Additional emphasis supplied)

The requirement of singular correspondence does not mean that all lump-sum appropriations are unconstitutional *per se*; hence, the specifically assailed appropriations are constitutional.

As explained in the Concurring Opinion of Associate Justice Estela M. Perlas-Bernabe, the *ponente* in the 2013 *Belgica* case, for as long as the lump-sum amount is meant as a funding source for multiple programs, projects, or activities that may all be clearly classified as falling under *one singular appropriation purpose*, the lump-sum appropriation is valid:

Again, it should be reiterated that the Court's disquisition regarding "line-item" and "lump-sum" appropriations all hearken to compliance with the constitutional postulates on separation of powers and Presidential item veto. Relatedly, **the rule on singular correspondence**, as discussed in the 2013 *Belgica* case, was therefore meant to subserve these principles. That being said, not all "lump-sum" amounts defy this rule should observance of these principles be preserve. **It is hence, my opinion that a lump-sum amount may still be considered as a valid item subject to the President's item veto power for as long as the lump-sum amount is meant as a funding source for multiple programs, projects, or activities that may all be clearly classified as falling under one singular appropriation**