

## EN BANC

[ G.R. No. 199802, July 03, 2018 ]

**CONGRESSMAN HERMILANDO I. MANDANAS; MAYOR EFREN B. DIONA; MAYOR ANTONINO A. AURELIO; KAGAWAD MARIO ILAGAN; BARANGAY CHAIR PERLITO MANALO; BARANGAY CHAIR MEDEL MEDRANO; BARANGAY KAGAWAD CRIS RAMOS; BARANGAY KAGAWAD ELISA D. BALBAGO, AND ATTY. JOSE MALVAR VILLEGAS, PETITIONERS, V. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; SECRETARY CESAR PURISIMA, DEPARTMENT OF FINANCE; SECRETARY FLORENCIO H. ABAD, DEPARTMENT OF BUDGET AND MANAGEMENT; COMMISSIONER KIM JACINTO-HENARES, BUREAU OF INTERNAL REVENUE; AND NATIONAL TREASURER ROBERTO TAN, BUREAU OF THE TREASURY, RESPONDENTS.**

[G.R. No. 208488, July 3, 2018]

**HONORABLE ENRIQUE T. GARCIA, JR., IN HIS PERSONAL AND OFFICIAL CAPACITY AS REPRESENTATIVE OF THE 2ND DISTRICT OF THE PROVINCE OF BATAAN, PETITIONER, V. HONORABLE [PAQUITO] N. OCHOA, JR., EXECUTIVE SECRETARY; HONORABLE CESAR V. PURISIMA, SECRETARY, DEPARTMENT OF FINANCE; HONORABLE FLORENCIO H. ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT; HONORABLE KIM S. JACINTO-HENARES, COMMISSIONER, BUREAU OF INTERNAL REVENUE; AND HONORABLE ROZZANO RUFINO B. BIAZON, COMMISSIONER, BUREAU OF CUSTOMS, RESPONDENTS.**

## D E C I S I O N

**BERSAMIN, J.:**

The petitioners hereby challenge the manner in which the *just share* in the national taxes of the local government units (LGUs) has been computed.

### **Antecedents**

One of the key features of the 1987 Constitution is its push towards decentralization of government and local autonomy. Local autonomy has two facets, the administrative and the fiscal. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the National Government, as well as the power to allocate their resources in accordance with their own priorities.<sup>[1]</sup> Such autonomy is as indispensable to the viability of the policy of decentralization as the other.

Implementing the constitutional mandate for decentralization and local autonomy, Congress enacted Republic Act No. 7160, otherwise known as the *Local Government*

Code (LGC), in order to guarantee the fiscal autonomy of the LGUs by specifically providing that:

SECTION 284. *Allotment of Internal Revenue Taxes.* — Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:

- (a) On the first year of the effectivity of this Code, thirty percent (30%);
- (b) On the second year, thirty-five percent (35%); and
- (c) On the third year and thereafter, forty percent (40%).

Provided, That in the event that the National Government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

The share of the LGUs, heretofore known as the Internal Revenue Allotment (IRA), has been regularly released to the LGUs. According to the implementing rules and regulations of the LGC, the IRA is determined on the basis of the actual collections of the National Internal Revenue Taxes (NIRTs) as certified by the Bureau of Internal Revenue (BIR).<sup>[2]</sup>

G.R. No. 199802 (*Mandanas, et al.*) is a special civil action for *certiorari*, prohibition and *mandamus* assailing the manner the General Appropriations Act (GAA) for FY 2012 computed the IRA for the LGUs.

*Mandanas, et al.* allege herein that certain collections of NIRTs by the Bureau of Customs (BOC) – specifically: excise taxes, value added taxes (VATs) and documentary stamp taxes (DSTs) – have not been included in the base amounts for the computation of the IRA; that such taxes, albeit collected by the BOC, should form part of the base from which the IRA should be computed because they constituted NIRTs; that, consequently, the release of the additional amount of P60,750,000,000.00 to the LGUs as their IRA for FY 2012 should be ordered; and that for the same reason the LGUs should also be released their unpaid IRA for FY 1992 to FY 2011, inclusive, totaling P438,103,906,675.73.

In G.R. No. 208488, Congressman Enrique Garcia, Jr., the lone petitioner, seeks the writ of *mandamus* to compel the respondents thereat to compute the just share of the LGUs on the basis of *all national taxes*. His petition insists on a literal reading of Section 6, Article X of the 1987 Constitution. He avers that the insertion by

Congress of the words *internal revenue* in the phrase *national taxes* found in Section 284 of the LGC caused the diminution of the base for determining the *just share* of the LGUs, and should be declared unconstitutional; that, moreover, the exclusion of certain taxes and accounts pursuant to or in accordance with special laws was similarly constitutionally untenable; that the VATs and excise taxes collected by the BOC should be included in the computation of the IRA; and that the respondents should compute the IRA on the basis of all national tax collections, and thereafter distribute any shortfall to the LGUs.

It is noted that named as common respondents were the then incumbent Executive Secretary, Secretary of Finance, the Secretary of the Department of Budget and Management (DBM), and the Commissioner of Internal Revenue. In addition, Mandanas, *et al.* impleaded the National Treasurer, while Garcia added the Commissioner of Customs.

The cases were consolidated on October 22, 2013.<sup>[3]</sup> In the meanwhile, Congressman Garcia, Jr. passed away. Jose Enrique Garcia III, who was subsequently elected to the same congressional post, was substituted for Congressman Garcia, Jr. as the petitioner in G.R. No. 208488 under the resolution promulgated on August 23, 2016.<sup>[4]</sup>

In response to the petitions, the several respondents, represented by the Office of the Solicitor General (OSG), urged the dismissal of the petitions upon procedural and substantive considerations.

Anent the procedural considerations, the OSG argues that the petitions are procedurally defective because, firstly, *mandamus* does not lie in order to achieve the reliefs sought because Congress may not be compelled to appropriate the sums allegedly illegally withheld for to do so will violate the doctrine of separation of powers; and, secondly, *mandamus* does not also lie to compel the DBM to release the amounts to the LGUs because such disbursements will be contrary to the purposes specified in the GAA; that Garcia has no clear legal right to sustain his suit for *mandamus*; that the filing of Garcia's suit violates the doctrine of hierarchy of courts; and that Garcia's petition seeks declaratory relief but the Court cannot grant such relief in the exercise of its original jurisdiction.

On the substantive considerations, the OSG avers that Article 284 of the LGC is consistent with the mandate of Section 6, Article X of the 1987 Constitution to the effect that the LGUs shall have a *just share* in the national taxes; that the determination of the *just share* is within the discretion of Congress; that the limitation under the LGC of the basis for the *just share* in the NIRTs was within the powers granted to Congress by the 1987 Constitution; that the LGUs have been receiving their *just share* in the national taxes based on the correct base amount; that Congress has the authority to exclude certain taxes from the base amount in computing the IRA; that there is a distinction between the VATs, excise taxes and DSTs collected by the BIR, on one hand, and the VATs, excise taxes and DSTs collected by the BOC, on the other, thereby warranting their different treatment; and that Development Budget Coordination Committee (DBCC) Resolution No. 2003-02 dated September 4, 2003 has limited the base amount for the computation of the IRA to the "cash collections based on the BIR data as reconciled with the Bureau of Treasury;" and that the collection of such national taxes by the BOC should be excluded.

## Issues

The issues for resolution are limited to the following, namely:

I.

Whether or not *mandamus* is the proper vehicle to assail the constitutionality of the relevant provisions of the GAA and the LGC;

II.

Whether or not Section 284 of the LGC is unconstitutional for being repugnant to Section 6, Article X of the 1987 Constitution;

III.

Whether or not the existing shares given to the LGUs by virtue of the GAA is consistent with the constitutional mandate to give LGUs a "just share" to national taxes following Article X, Section 6 of the 1987 Constitution;

IV.

Whether or not the petitioners are entitled to the reliefs prayed for.

Simply stated, the petitioners raise the novel question of whether or not the exclusion of certain national taxes from the base amount for the computation of the *just share* of the LGUs in the national taxes is constitutional.

## Ruling of the Court

The petitions are partly meritorious.

### I

#### ***Mandamus* is an improper remedy**

Mandanas, *et al.* seek the writs of *certiorari*, prohibition and *mandamus*, while Garcia prays for the writ of *mandamus*. Both groups of petitioners impugn the validity of Section 284 of the LGC.

The remedy of *mandamus* is defined in Section 3, Rule 65 of the *Rules of Court*, which provides:

Section 3. *Petition for mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

For the writ of *mandamus* to issue, the petitioner must show that the act sought to be performed or compelled is ministerial on the part of the respondent. An act is ministerial when it does not require the exercise of judgment and the act is performed pursuant to a legal mandate. The burden of proof is on the *mandamus* petitioner to show that he is entitled to the performance of a legal right, and that the respondent has a corresponding duty to perform the act. The writ of *mandamus* may not issue to compel an official to do anything that is not his duty to do, or that is his duty not to do, or to obtain for the petitioner anything to which he is not entitled by law.<sup>[5]</sup>

Considering that its determination of what constitutes the *just share* of the LGUs in the national taxes under the 1987 Constitution is an entirely discretionary power, Congress cannot be compelled by writ of *mandamus* to act either way. The discretion of Congress thereon, being exclusive, is not subject to external direction; otherwise, the delicate balance underlying our system of government may be unduly disturbed. This conclusion should at once then demand the dismissal of the Garcia petition in G.R. No. 208488, but we do not dismiss it. Garcia has attributed the non-release of some portions of their IRA balances to an alleged congressional indiscretion – the diminution of the base amount for computing the LGU's just share. He has asserted that Congress altered the constitutional base not only by limiting the base to the NIRTs instead of including therein all national taxes, but also by excluding some national taxes and revenues that only benefitted a few LGUs to the detriment of the rest of the LGUs.

Garcia's petition, while dubbed as a petition for *mandamus*, is also a petition for *certiorari* because it alleges that Congress thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction. It is worth reminding that the actual nature of every action is determined by the allegations in the body of the pleading or the complaint itself, not by the nomenclature used to designate the same.<sup>[6]</sup> Moreover, neither should the prayer for relief be controlling; hence, the courts may still grant the proper relief as the facts alleged in the pleadings and the evidence introduced may warrant even without a prayer for specific remedy.<sup>[7]</sup>

In this regard, Garcia's allegation of the unconstitutionality of the insertion by Congress of the words internal revenue in the phrase *national taxes* justifies treating his petition as one for *certiorari*. It becomes our duty, then, to assume jurisdiction over his petition. In *Araullo v. Aquino III*,<sup>[8]</sup> the Court has emphatically opined that the Court's *certiorari* jurisdiction under the expanded judicial power as stated in the second paragraph of Section 1, Article VIII of the Constitution can be asserted:

xxxx to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.<sup>[9]</sup>