

## EN BANC

[ G.R. No. 166715, August 14, 2008 ]

**ABAKADA GURO PARTY LIST (FORMERLY AASJS) \*  
OFFICERS/MEMBERS SAMSON S. ALCANTARA, ED VINCENT S.  
ALBANO, ROMEO R. ROBISO, RENE B. GOROSPE AND EDWIN R.  
SANDOVAL, PETITIONERS, VS. HON. CESAR V. PURISIMA, IN HIS  
CAPACITY AS SECRETARY OF FINANCE, HON. GUILLERMO L.  
PARAYNO, JR., IN HIS CAPACITY AS COMMISSIONER OF THE  
BUREAU OF INTERNAL REVENUE, AND HON. ALBERTO D. LINA,  
IN HIS CAPACITY AS COMMISSIONER OF BUREAU OF CUSTOMS,  
RESPONDENTS.**

### D E C I S I O N

**CORONA, J.:**

This petition for prohibition<sup>[1]</sup> seeks to prevent respondents from implementing and enforcing Republic Act (RA) 9335<sup>[2]</sup> (Attrition Act of 2005).

RA 9335 was enacted to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC). The law intends to encourage BIR and BOC officials and employees to exceed their revenue targets by providing a system of rewards and sanctions through the creation of a Rewards and Incentives Fund (Fund) and a Revenue Performance Evaluation Board (Board).<sup>[3]</sup> It covers all officials and employees of the BIR and the BOC with at least six months of service, regardless of employment status.<sup>[4]</sup>

The Fund is sourced from the collection of the BIR and the BOC in excess of their revenue targets for the year, as determined by the Development Budget and Coordinating Committee (DBCC). Any incentive or reward is taken from the fund and allocated to the BIR and the BOC in proportion to their contribution in the excess collection of the targeted amount of tax revenue.<sup>[5]</sup>

The Boards in the BIR and the BOC are composed of the Secretary of the Department of Finance (DOF) or his/her Undersecretary, the Secretary of the Department of Budget and Management (DBM) or his/her Undersecretary, the Director General of the National Economic Development Authority (NEDA) or his/her Deputy Director General, the Commissioners of the BIR and the BOC or their Deputy Commissioners, two representatives from the rank-and-file employees and a representative from the officials nominated by their recognized organization.<sup>[6]</sup>

Each Board has the duty to (1) prescribe the rules and guidelines for the allocation, distribution and release of the Fund; (2) set criteria and procedures for removing from the service officials and employees whose revenue collection falls short of the target; (3) terminate personnel in accordance with the criteria adopted by the

Board; (4) prescribe a system for performance evaluation; (5) perform other functions, including the issuance of rules and regulations and (6) submit an annual report to Congress.<sup>[7]</sup>

The DOF, DBM, NEDA, BIR, BOC and the Civil Service Commission (CSC) were tasked to promulgate and issue the implementing rules and regulations of RA 9335,<sup>[8]</sup> to be approved by a Joint Congressional Oversight Committee created for such purpose.<sup>[9]</sup>

Petitioners, invoking their right as taxpayers filed this petition challenging the constitutionality of RA 9335, a tax reform legislation. They contend that, by establishing a system of rewards and incentives, the law "transform[s] the officials and employees of the BIR and the BOC into mercenaries and bounty hunters" as they will do their best only in consideration of such rewards. Thus, the system of rewards and incentives invites corruption and undermines the constitutionally mandated duty of these officials and employees to serve the people with utmost responsibility, integrity, loyalty and efficiency.

Petitioners also claim that limiting the scope of the system of rewards and incentives only to officials and employees of the BIR and the BOC violates the constitutional guarantee of equal protection. There is no valid basis for classification or distinction as to why such a system should not apply to officials and employees of all other government agencies.

In addition, petitioners assert that the law unduly delegates the power to fix revenue targets to the President as it lacks a sufficient standard on that matter. While Section 7(b) and (c) of RA 9335 provides that BIR and BOC officials may be dismissed from the service if their revenue collections fall short of the target by at least 7.5%, the law does not, however, fix the revenue targets to be achieved. Instead, the fixing of revenue targets has been delegated to the President without sufficient standards. It will therefore be easy for the President to fix an unrealistic and unattainable target in order to dismiss BIR or BOC personnel.

Finally, petitioners assail the creation of a congressional oversight committee on the ground that it violates the doctrine of separation of powers. While the legislative function is deemed accomplished and completed upon the enactment and approval of the law, the creation of the congressional oversight committee permits legislative participation in the implementation and enforcement of the law.

In their comment, respondents, through the Office of the Solicitor General, question the petition for being premature as there is no actual case or controversy yet. Petitioners have not asserted any right or claim that will necessitate the exercise of this Court's jurisdiction. Nevertheless, respondents acknowledge that public policy requires the resolution of the constitutional issues involved in this case. They assert that the allegation that the reward system will breed mercenaries is mere speculation and does not suffice to invalidate the law. Seen in conjunction with the declared objective of RA 9335, the law validly classifies the BIR and the BOC because the functions they perform are distinct from those of the other government agencies and instrumentalities. Moreover, the law provides a sufficient standard that will guide the executive in the implementation of its provisions. Lastly, the creation of the congressional oversight committee under the law enhances, rather than

violates, separation of powers. It ensures the fulfillment of the legislative policy and serves as a check to any over-accumulation of power on the part of the executive and the implementing agencies.

After a careful consideration of the conflicting contentions of the parties, the Court finds that petitioners have failed to overcome the presumption of constitutionality in favor of RA 9335, except as shall hereafter be discussed.

## **ACTUAL CASE AND RIPENESS**

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial adjudication.<sup>[10]</sup> A closely related requirement is ripeness, that is, the question must be ripe for adjudication. And a constitutional question is ripe for adjudication when the governmental act being challenged has a direct adverse effect on the individual challenging it.<sup>[11]</sup> Thus, to be ripe for judicial adjudication, the petitioner must show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision of the Court.<sup>[12]</sup>

In this case, aside from the general claim that the dispute has ripened into a judicial controversy by the mere enactment of the law even without any further overt act, <sup>[13]</sup> petitioners fail either to assert any specific and concrete legal claim or to demonstrate any direct adverse effect of the law on them. They are unable to show a personal stake in the outcome of this case or an injury to themselves. On this account, their petition is procedurally infirm.

This notwithstanding, public interest requires the resolution of the constitutional issues raised by petitioners. The grave nature of their allegations tends to cast a cloud on the presumption of constitutionality in favor of the law. And where an action of the legislative branch is alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute.<sup>[14]</sup>

## **ACCOUNTABILITY OF PUBLIC OFFICERS**

Section 1, Article 11 of the Constitution states:

Sec. 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism, and justice, and lead modest lives.

Public office is a public trust. It must be discharged by its holder not for his own personal gain but for the benefit of the public for whom he holds it in trust. By demanding accountability and service with responsibility, integrity, loyalty, efficiency, patriotism and justice, all government officials and employees have the duty to be responsive to the needs of the people they are called upon to serve.

Public officers enjoy the presumption of regularity in the performance of their duties. This presumption necessarily obtains in favor of BIR and BOC officials and employees. RA 9335 operates on the basis thereof and reinforces it by providing a system of rewards and sanctions for the purpose of encouraging the officials and

employees of the BIR and the BOC to exceed their revenue targets and optimize their revenue-generation capability and collection.<sup>[15]</sup>

The presumption is disputable but proof to the contrary is required to rebut it. It cannot be overturned by mere conjecture or denied in advance (as petitioners would have the Court do) specially in this case where it is an underlying principle to advance a declared public policy.

Petitioners' claim that the implementation of RA 9335 will turn BIR and BOC officials and employees into "bounty hunters and mercenaries" is not only without any factual and legal basis; it is also purely speculative.

A law enacted by Congress enjoys the strong presumption of constitutionality. To justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal one.<sup>[16]</sup> To invalidate RA 9335 based on petitioners' baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.

Public service is its own reward. Nevertheless, public officers may by law be rewarded for exemplary and exceptional performance. A system of incentives for exceeding the set expectations of a public office is not anathema to the concept of public accountability. In fact, it recognizes and reinforces dedication to duty, industry, efficiency and loyalty to public service of deserving government personnel.

In *United States v. Matthews*,<sup>[17]</sup> the U.S. Supreme Court validated a law which awards to officers of the customs as well as other parties an amount not exceeding one-half of the net proceeds of forfeitures in violation of the laws against smuggling. Citing *Dorsheimer v. United States*,<sup>[18]</sup> the U.S. Supreme Court said:

The offer of a portion of such penalties to the collectors is to stimulate and reward their zeal and industry in detecting fraudulent attempts to evade payment of duties and taxes.

In the same vein, employees of the BIR and the BOC may by law be entitled to a reward when, as a consequence of their zeal in the enforcement of tax and customs laws, they exceed their revenue targets. In addition, RA 9335 establishes safeguards to ensure that the reward will not be claimed if it will be either the fruit of "bounty hunting or mercenary activity" or the product of the irregular performance of official duties. One of these precautionary measures is embodied in Section 8 of the law:

SEC. 8. *Liability of Officials, Examiners and Employees of the BIR and the BOC.* – The officials, examiners, and employees of the [BIR] and the [BOC] who violate this Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by any business establishment or taxpayer as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.

## **EQUAL PROTECTION**

Equality guaranteed under the equal protection clause is equality under the same conditions and among persons similarly situated; it is equality among equals, not similarity of treatment of persons who are classified based on substantial differences in relation to the object to be accomplished.<sup>[19]</sup> When things or persons are different in fact or circumstance, they may be treated in law differently. In *Victoriano v. Elizalde Rope Workers' Union*,<sup>[20]</sup> this Court declared:

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the [S]tate. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. **The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.**

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. **All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class.** This Court has held that **the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.**

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence, legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.<sup>[21]</sup> (emphasis supplied)

The equal protection clause recognizes a valid classification, that is, a classification that has a reasonable foundation or rational basis and not arbitrary.<sup>[22]</sup> With respect to RA 9335, its expressed public policy is the optimization of the revenue-generation