

EN BANC

[G.R. No. 152774, May 27, 2004]

THE PROVINCE OF BATANGAS, REPRESENTED BY ITS GOVERNOR, HERMILANDO I. MANDANAS, PETITIONER, VS. HON. ALBERTO G. ROMULO, EXECUTIVE SECRETARY AND CHAIRMAN OF THE OVERSIGHT COMMITTEE ON DEVOLUTION; HON. EMILIA BONCODIN, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT; HON. JOSE D. LINA, JR., SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

The Province of Batangas, represented by its Governor, Hermilando I. Mandanas, filed the present petition for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court, as amended, to declare as unconstitutional and void certain provisos contained in the General Appropriations Acts (GAA) of 1999, 2000 and 2001, insofar as they uniformly earmarked for each corresponding year the amount of five billion pesos (P5,000,000,000.00) of the Internal Revenue Allotment (IRA) for the Local Government Service Equalization Fund (LGSEF) and imposed conditions for the release thereof.

Named as respondents are Executive Secretary Alberto G. Romulo, in his capacity as Chairman of the Oversight Committee on Devolution, Secretary Emilia Boncodin of the Department of Budget and Management (DBM) and Secretary Jose Lina of the Department of Interior and Local Government (DILG).

Background

On December 7, 1998, then President Joseph Ejercito Estrada issued Executive Order (E.O.) No. 48 entitled "ESTABLISHING A PROGRAM FOR DEVOLUTION ADJUSTMENT AND EQUALIZATION." The program was established to "facilitate the process of enhancing the capacities of local government units (LGUs) in the discharge of the functions and services devolved to them by the National Government Agencies concerned pursuant to the Local Government Code."^[1] The Oversight Committee (referred to as the Devolution Committee in E.O. No. 48) constituted under Section 533(b) of Republic Act No. 7160 (The Local Government Code of 1991) has been tasked to formulate and issue the appropriate rules and regulations necessary for its effective implementation.^[2] Further, to address the funding shortfalls of functions and services devolved to the LGUs and other funding requirements of the program, the "Devolution Adjustment and Equalization Fund" was created.^[3] For 1998, the DBM was directed to set aside an amount to be determined by the Oversight Committee based on the devolution status appraisal surveys undertaken by the DILG.^[4] The initial fund was to be sourced from the

available savings of the national government for CY 1998. [5] For 1999 and the succeeding years, the corresponding amount required to sustain the program was to be incorporated in the annual GAA. [6] The Oversight Committee has been authorized to issue the implementing rules and regulations governing the equitable allocation and distribution of said fund to the LGUs. [7]

The LGSEF in the GAA of 1999

In Republic Act No. 8745, otherwise known as the GAA of 1999, the program was renamed as the LOCAL GOVERNMENT SERVICE EQUALIZATION FUND (LGSEF). Under said appropriations law, the amount of P96,780,000,000 was allotted as the share of the LGUs in the internal revenue taxes. Item No. 1, Special Provisions, Title XXXVI – A. Internal Revenue Allotment of Rep. Act No. 8745 contained the following proviso:

... PROVIDED, That the amount of FIVE BILLION PESOS (P5,000,000,000) shall be earmarked for the Local Government Service Equalization Fund for the funding requirements of projects and activities arising from the full and efficient implementation of devolved functions and services of local government units pursuant to R.A. No. 7160, otherwise known as the Local Government Code of 1991: PROVIDED, FURTHER, That such amount shall be released to the local government units subject to the implementing rules and regulations, including such mechanisms and guidelines for the equitable allocations and distribution of said fund among local government units subject to the guidelines that may be prescribed by the Oversight Committee on Devolution as constituted pursuant to Book IV, Title III, Section 533(b) of R.A. No. 7160. The Internal Revenue Allotment shall be released directly by the Department of Budget and Management to the Local Government Units concerned.

On July 28, 1999, the Oversight Committee (with then Executive Secretary Ronaldo B. Zamora as Chairman) passed Resolution Nos. OCD-99-003, OCD-99-005 and OCD-99-006 entitled as follows:

OCD-99-005

RESOLUTION ADOPTING THE ALLOCATION SCHEME FOR THE PhP5 BILLION CY 1999 LOCAL GOVERNMENT SERVICE EQUALIZATION FUND (LGSEF) AND REQUESTING HIS EXCELLENCY PRESIDENT JOSEPH EJERCITO ESTRADA TO APPROVE SAID ALLOCATION SCHEME.

OCD-99-006

RESOLUTION ADOPTING THE ALLOCATION SCHEME FOR THE PhP4.0 BILLION OF THE 1999 LOCAL GOVERNMENT SERVICE EQUALIZATION FUND AND ITS CONCOMITANT GENERAL FRAMEWORK, IMPLEMENTING GUIDELINES AND MECHANICS FOR ITS IMPLEMENTATION AND RELEASE, AS PROMULGATED BY THE OVERSIGHT COMMITTEE ON DEVOLUTION.

OCD-99-003

RESOLUTION REQUESTING HIS EXCELLENCY PRESIDENT JOSEPH EJERCITO ESTRADA TO APPROVE THE REQUEST OF THE OVERSIGHT COMMITTEE ON DEVOLUTION TO SET ASIDE TWENTY PERCENT (20%) OF THE LOCAL GOVERNMENT SERVICE EQUALIZATION FUND (LGSEF) FOR LOCAL AFFIRMATIVE ACTION PROJECTS AND OTHER PRIORITY INITIATIVES FOR LGUs INSTITUTIONAL AND CAPABILITY BUILDING IN ACCORDANCE WITH THE IMPLEMENTING GUIDELINES AND MECHANICS AS PROMULGATED BY THE COMMITTEE.

These OCD resolutions were approved by then President Estrada on October 6, 1999.

Under the allocation scheme adopted pursuant to Resolution No. OCD-99-005, the five billion pesos LGSEF was to be allocated as follows:

1. The PhP4 Billion of the LGSEF shall be allocated in accordance with the allocation scheme and implementing guidelines and mechanics promulgated and adopted by the OCD. To wit:
 - a. The first PhP2 Billion of the LGSEF shall be allocated in accordance with the codal formula sharing scheme as prescribed under the 1991 Local Government Code;
 - b. The second PhP2 Billion of the LGSEF shall be allocated in accordance with a modified 1992 cost of devolution fund (CODEF) sharing scheme, as recommended by the respective leagues of provinces, cities and municipalities to the OCD. The modified CODEF sharing formula is as follows:

Province	:	40%
Cities	:	20%
Municipalities:		40%

This is applied to the P2 Billion after the approved amounts granted to individual provinces, cities and municipalities as assistance to cover decrease in 1999 IRA share due to reduction in land area have been taken out.

2. The remaining PhP1 Billion of the LGSEF shall be earmarked to support local affirmative action projects and other priority initiatives submitted by LGUs to the Oversight Committee on Devolution for approval in accordance with its prescribed guidelines as promulgated and adopted by the OCD.

In Resolution No. OCD-99-003, the Oversight Committee set aside the one billion pesos or 20% of the LGSEF to support Local Affirmative Action Projects (LAAPs) of LGUs. This remaining amount was intended to "respond to the urgent need for additional funds assistance, otherwise not available within the parameters of other existing fund sources." For LGUs to be eligible for funding under the one-billion-peso portion of the LGSEF, the OCD promulgated the following:

III. CRITERIA FOR ELIGIBILITY:

1. LGUs (province, city, municipality, or barangay), individually or by group or multi-LGUs or leagues of LGUs, especially those belonging to the 5th and 6th class, may access the fund to support any projects or activities that satisfy any of the aforecited purposes. A barangay may also access this fund directly or through their respective municipality or city.
2. The proposed project/activity should be need-based, a local priority, with high development impact and are congruent with the socio-cultural, economic and development agenda of the Estrada Administration, such as food security, poverty alleviation, electrification, and peace and order, among others.
3. Eligible for funding under this fund are projects arising from, but not limited to, the following areas of concern:
 - a. delivery of local health and sanitation services, hospital services and other tertiary services;
 - b. delivery of social welfare services;
 - c. provision of socio-cultural services and facilities for youth and community development;
 - d. provision of agricultural and on-site related research;
 - e. improvement of community-based forestry projects and other local projects on environment and natural resources protection and conservation;
 - f. improvement of tourism facilities and promotion of tourism;
 - g. peace and order and public safety;
 - h. construction, repair and maintenance of public works and infrastructure, including public buildings and facilities for public use, especially those destroyed or damaged by man-made or natural calamities and disaster as well as facilities for water supply, flood control and river dikes;
 - i. provision of local electrification facilities;
 - j. livelihood and food production services, facilities and equipment;
 - k. other projects that may be authorized by the OCD consistent with the aforementioned objectives and guidelines;
4. Except on extremely meritorious cases, as may be determined by the Oversight Committee on Devolution, this portion of the LGSEF shall not be used in expenditures for personal costs or benefits under existing laws applicable to governments. Generally, this fund shall cover the following objects of expenditures for programs, projects and activities arising from the implementation of devolved and regular functions and services:
 - a. acquisition/procurement of supplies and materials critical to the full and effective implementation of devolved programs, projects and activities;
 - b. repair and/or improvement of facilities;
 - c. repair and/or upgrading of equipment;
 - d. acquisition of basic equipment;

- e. construction of additional or new facilities;
 - f. counterpart contribution to joint arrangements or collective projects among groups of municipalities, cities and/or provinces related to devolution and delivery of basic services.
5. To be eligible for funding, an LGU or group of LGU shall submit to the Oversight Committee on Devolution through the Department of Interior and Local Governments, within the prescribed schedule and timeframe, a Letter Request for Funding Support from the Affirmative Action Program under the LGSEF, duly signed by the concerned LGU(s) and endorsed by cooperators and/or beneficiaries, as well as the duly signed Resolution of Endorsement by the respective Sanggunian(s) of the LGUs concerned. The LGU-proponent shall also be required to submit the Project Request (PR), using OCD Project Request Form No. 99-02, that details the following:
- (a) general description or brief of the project;
 - (b) objectives and justifications for undertaking the project, which should highlight the benefits to the locality and the expected impact to the local program/project arising from the full and efficient implementation of social services and facilities, at the local levels;
 - (c) target outputs or key result areas;
 - (d) schedule of activities and details of requirements;
 - (e) total cost requirement of the project;
 - (f) proponent's counterpart funding share, if any, and identified source(s) of counterpart funds for the full implementation of the project;
 - (g) requested amount of project cost to be covered by the LGSEF.

Further, under the guidelines formulated by the Oversight Committee as contained in Attachment - Resolution No. OCD-99-003, the LGUs were required to identify the projects eligible for funding under the one-billion- peso portion of the LGSEF and submit the project proposals thereof and other documentary requirements to the DILG for appraisal. The project proposals that passed the DILG's appraisal would then be submitted to the Oversight Committee for review, evaluation and approval. Upon its approval, the Oversight Committee would then serve notice to the DBM for the preparation of the Special Allotment Release Order (SARO) and Notice of Cash Allocation (NCA) to effect the release of funds to the said LGUs.

The LGSEF in the GAA of 2000

Under Rep. Act No. 8760, otherwise known as the GAA of 2000, the amount of P111,778,000,000 was allotted as the share of the LGUs in the internal revenue taxes. As in the GAA of 1999, the GAA of 2000 contained a proviso earmarking five billion pesos of the IRA for the LGSEF. This proviso, found in Item No. 1, Special Provisions, Title XXXVII – A. Internal Revenue Allotment, was similarly worded as that contained in the GAA of 1999.

The Oversight Committee, in its Resolution No. OCD-2000-023 dated June 22, 2000,