

Case study qwe

Business



Opposing, respondents maintain that the provision is not self-executing but requires an implementing legislation for its enforcement. Corollary, they ask whether the 51% shares form part of the national economy and patrimony covered by the protective mantle of the Constitution. The controversy arose when respondent Government Service Insurance System (GIGS), pursuant to the prevarication program of the Philippine Government under Proclamation No. 50 dated 8 December 1986, decided to sell through public bidding 30% to 51% of the issued and outstanding shares of respondent MUCH.

The winning bidder, or the eventual “strategic partner,” is to provide management expertise and/or an international marketing/reservation system, and financial support to strengthen the profitability and performance of the Manila Hotel.

[2] In a close bidding held on 18 September 1995 only two (2) bidders participated: petitioner Manila Prince Hotel Corporation, a Filipino corporation, which offered to buy 51% of the MUCH or 1 share at PIP. 58 per share, and Renown Bertha, a Malaysian firm, with ITT-Sheraton as its hotel operator, which bid for the same number of shares at PIP.

Requisite approvals from the SSL/MUCH and COP (Committee on Prevarication)/ CHOC (Office of the Government Corporate Counsel) are obtained. “[3] Pending the declaration of Renown Bernhard as the winning bidder/strategic partner and the execution of the necessary contracts, petitioner in a letter to respondent SSL dated 28 September 1995 matched the bid price of PIP. 0 per share tendered by Renown Bertha. [4] In a subsequent letter dated 10 October 1995 petitioner sent a manager’s check

issued by Philter's Bank for Thirty-three Million Pesos as Bid Security to match the bid of the Malaysian Group, Messes.

Renown Bertha x x x x[5] which respondent SSL refused to accept. On 17 October 1995, perhaps apprehensive that respondent SSL has disregarded the tender of the matching bid and that the sale of 51% of the MUCH may be hastened by respondent SSL and consummated with Renown Bertha, petitioner came to this Court on prohibition and mandamus. On 18 October 1995 the Court issued a temporary restraining order enjoining respondents from perfecting and consummating the sale to the Malaysian firm. On 10 September 1996 the instant case was accepted by the Court En Banc after it was referred to it by the First Division.

The case was then set for oral arguments with roomer Chief Justice Unripe M. Fernando and FRR. Joaquin G. Barnes, S. J. , as *mimic curiae*.

In the main, petitioner invokes Sec. 10, second par. , Art. XII, of the 1987 Constitution and submits that the Manila Hotel has been identified with the Filipino nation and has practically become a historical monument which reflects the vibrancy of Philippine heritage and culture. It is a proud legacy of an earlier generation of Filipinos who believed in the nobility and sacredness of independence and its power and capacity to release the full potential of the Filipino people.

To all intents and reposes, it has become a part of the national patrimony. [6] Petitioner also argues that since 51% of the shares of the MUCH carries with it the ownership of the business of the hotel which is owned by

respondent SSL, a government-owned and controlled corporation, ten note
Dustless AT respondent s Dealing a part AT ten tourism industry is
unquestionably a part of the national economy. Thus, any transaction
involving 51% of the shares of stock of the MUCH is clearly covered by the
term national economy, to which Sec. 10, second par. , Art.

XII, 1987 Constitution, applies. [7] It is also the thesis of petitioner that since
Manila Hotel is part of the national patrimony and its business also
unquestionably part of the national economy petitioner should be preferred
after it has matched the bid offer of the Malaysian firm. For the bidding rules
mandate that if for any reason, the Highest Bidder cannot be awarded the
Block of Shares, SSL may offer this to the other Qualified Bidders that have
validly submitted bids provided that these Qualified Bidders are willing to
match the highest bid in terms of price per share. 8] Respondents except.
They maintain that: First, Sec.

0, second par. , Art. XII, of the 1987 Constitution is merely a statement of
principle and policy since it is not a self- executing provision and requires
implementing legislation(s) x x x x Thus, for the said provision to operate,
there must be existing laws “ to lay down conditions under which business
may be done. [9] Second, granting that this provision is self-executing,
Manila Hotel does not fall under the term national patrimony which only
refers to lands of the public domain, waters, minerals, coal, petroleum and
other mineral oils, all forces of potential energy, sheries, forests or timber,
wildlife, flora and fauna and all marine wealth in its territorial sea, and
exclusive marine zone as cited in the first and second paragraphs of Sec. 2,
Art.

XII, 1987 Constitution.

According to respondents, while petitioner speaks of the guests who have slept in the hotel and the events that have transpired therein which make the hotel historic, these alone do not make the hotel fall under the patrimony of the nation. What is more, the mandate of the Constitution is addressed to the State, not to respondent SSL which possesses a personality of its own separate and distinct from the Philippines as a State.

Third, granting that the Manila Hotel forms part of the national patrimony, the constitutional provision invoked is still inapplicable since what is being sold is only 51% of the outstanding shares of the corporation, not the hotel building nor the land upon which the building stands. Certainly, 51% of the equity of the MUCH cannot be considered part of the national patrimony. Moreover, if the disposition of the shares of the MUCH is really contrary to the Constitution, petitioner should have questioned it right from the beginning and not after it had lost in the bidding.

Fourth, the reliance by petitioner on par. V. , subpart. J. 1 of the bidding rules which provides that if for any reason, the Highest Bidder cannot be awarded the Block of Shares, SSL may offer this to the other Qualified Bidders that have validly submitted bids provided that these Qualified Bidders are willing to match the highest bid in terms of price per share, is misplaced.

Respondents postulate that the privilege of submitting a matching bid has not yet arisen since it only takes place if for any reason, the Highest Bidder cannot be awarded the Block of Shares.

It is not tenable by petitioner of a matching bid is premature since Renown Bertha could still very well be awarded the block of shares and the condition giving rise to the exercise of the privilege to submit a matching bid had not yet taken place. Finally, the prayer for prohibition grounded on grave abuse of discretion should fail since respondent SSL did not exercise its discretion in a capricious, whimsical manner, and if ever it did abuse its discretion it was not so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law.

Similarly, the petition for mandamus should fail as petitioner has no clear legal right to what it demands and respondents do not have an imperative duty to perform the act required of them by petitioner. We now resolve. A constitution is a system of fundamental laws for the governance and administration of a nation.

It is Supreme, imperious, absolute and unalterable except by the authority from which it emanates. It has been defined as the fundamental and paramount law of the nation. 10] It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which government is founded. The fundamental conception in other words is that it is a supreme law to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered.

11] Under the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution that law or contract whether

promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect. Thus, since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract.

Admittedly, some constitutions are merely declarations of policies and principles. Their provisions command the legislature to enact laws and carry out the purposes of the framers who merely establish an outline of government providing for the different departments of the governmental machinery and securing certain fundamental and inalienable rights of citizens. [12] A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing.

But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected, is self-executing. Thus a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action. [13] As against constitutions of the past, modern constitutions have been generally based upon a Deterrent principle. They have enacted extensive codes of laws intended to operate directly upon the people in a manner similar to that of statutory enactments, and the function of constitutional conventions has evolved into one more like that of a legislative body. Hence,

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unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the constitution are self-executing.

If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law.

[14] This can be cataclysmic. That is why the prevailing view is, as it has always been, that – x x x x in case of doubt, the Constitution should be considered self-executing rather than non-self-executing x x x x Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective.

These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute. [15] Respondents argue that Sec. 10, second par. , Art.

XII, of the 1987 Constitution is clearly not self-executing, as they quote from discussions on the floor of the 1986 Constitutional Commission – MR..

RODING. Madam President, I am asking this question as the Chairman of the committee on style. If the wording of “ PREFERENCE” given to QUALIFIED FILIPINOS,” can it be understood as a preference to qualified Filipinos visa-a-visa Filipinos who are not qualified.

So, why do we not make it clear? To qualified Filipinos as against aliens? THE PRESIDENT. What is the question of Commissioner Roding? Is it to remove the word “ QUALIFIED? MR.. RODING. NO, no, but say definitely “ TO QUALIFIED FILIPINOS” as against whom? As against aliens or over aliens ? MR.

. KNOLLED. Madam President, I think that is understood. We use the word “ QUALIFIED” because the existing laws or prospective laws will always lay down conditions under which business may be done.

For example, qualifications on UAPITA, qualifications on the setting up of other financial structures, et cetera (underscoring supplied by respondents).

MR.. RODING. It is Just a matter of style. MR..

KNOLLED. Yes. [16] Quell apparently, sec. 10, second par. , AT Art XII Is conduce In sun a way as not to make it appear that it is non-self-executing but simply for purposes of style. But, certainly, the legislature is not precluded from enacting further laws to enforce the constitutional provision so long as the contemplated statute squares with the Constitution.

Minor details may be left to the legislature without impairing the self-executing nature of constitutional provisions. In self-executing constitutional provisions, the legislature may still enact legislation to facilitate the exercise of powers directly granted by the constitution, further the operation of such a provision, prescribe a practice to be used for its enforcement, provide a convenient remedy for the protection of the rights secured or the

determination thereof, or place reasonable safeguards around the exercise of the right.

The mere fact that legislation may supplement and add to or prescribe a penalty for the violation of a self-executing constitutional provision does not render such a provision ineffective in the absence of such legislation. The omission from a constitution of any express provision for a remedy for enforcing a right or liability is not necessarily an indication that it was not intended to be self-executing.

The rule is that a self-executing provision of the constitution does not necessarily exhaust legislative power on the subject, but any legislation must be in harmony with the constitution, further the exercise of constitutional right and make it more available. [17] Subsequent legislation however does not necessarily mean that the subject institutional provision is not, by itself, fully enforceable.

Respondents also argue that the non-self-executing nature of Sec. 10, second par. , of Art. XII is implied from the tenor of the first and third paragraphs of the same section which undoubtedly are not self-executing. [18] The argument is flawed.

If the first and third paragraphs are not self-executing because Congress is still to enact measures to encourage the formation and operation of enterprises fully owned by Filipinos, as in the first paragraph, and the State still needs legislation to regulate and exercise authority over foreign investments within its national Jurisdiction, as in the third paragraph, then a fortiori, by the same logic, the second paragraph can only be self-executing

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as it does not by its language require any legislation in order to give preference to qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony. A constitutional provision may be self-executing in one part and non-self-executing in another. 19] Even the cases cited by respondents holding that certain constitutional provisions are merely statements of principles and policies, which are basically not self-executing and only placed in the Constitution as moral incentives to legislation, not as judicially enforceable rights – are simply not in point. *Basso v. Philippine Amusements and Gaming Corporation*[20] speaks of constitutional provisions on personal dignity,[21] the sanctity of family the vital role of the youth in nation-building,[23] the promotion of social and the values of education. [25] *Toleration v.*

Secretary of Finance[26] refers to constitutional provisions on social justice and human rights[27] and on education. 28] Lastly, *Slovakian, Inc. v.*

Moratorium selects provisions on ten promotion AT general welfare, JUJU ten sanctity AT family the vital role of the youth in nation-building[32] and the promotion of total human liberation and development. [33] A reading of these provisions indeed clearly shows that they are not judicially enforceable constitutional rights but merely guidelines for legislation.

The very terms of the provisions manifest that they are only principles upon which legislations must be based. Rest pips liqueur. On the other hand, Sec. 10, second par. , Art.

XII of the 1987 Constitution is a mandatory, positive command which is complete in itself and which needs no further guidelines or implementing

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laws or rules for its enforcement. From its very words the provision does not require any legislation to put it in operation. It is per SE judicially enforceable.

When our Constitution mandates that [I]n the grant of rights, privileges, and concessions covering national economy and patrimony, the State shall give preference to qualified Filipinos, it means just that – qualified Filipinos shall be preferred. And when our Constitution declares that a right exists in certain specified instances an action may be maintained to enforce such right notwithstanding the absence of any legislation on the subject; consequently, if there is no statute especially enacted to enforce such constitutional right, such right enforces itself by its own inherent potency and puissance, and from which all legislations must take their bearings.

Where there is a right there is a remedy. *ubi jus ibi remedium*.

As regards our national patrimony, a member of the 1986 Constitutional Commission[34] explains – The patrimony of the Nation that should be conserved and developed refers not only to our rich natural resources but also to the cultural heritage of our race. It also refers to our intelligence in arts, sciences and letters. Therefore, we should develop not only our lands, forests, mines and other natural resources but also the mental ability or faculty of our people. We agree.

In its plain and ordinary meaning, the term patrimony pertains to heritage. [35] When the Constitution speaks of national patrimony, it refers not only to the natural resources of the Philippines, as the Constitution could have very

well used the term natural resources, but also to the cultural heritage of the Filipinos.

Manila Hotel has become a landmark – a living testimonial of Philippine heritage. While it was restrictively an American hotel when it first opened in 1912, it immediately evolved to be truly Filipino. Formerly a concourse for the elite, it has since then become the venue of various significant events which have shaped Philippine history.

It was called the Cultural Center of the sass's. It was the site of the festivities during the inauguration of the Philippine Commonwealth. Dubbed as the Official Guest House of the Philippine Government it plays host to dignitaries and official visitors who are accorded the traditional Philippine hospitality.

36] The history of the hotel has been chronicled in the book *The Manila Hotel: The Heart Ana Memory AT a l']* During world war II ten note was converted Day ten Japanese Military Administration into a military headquarters. When the American forces returned to recapture Manila the hotel was selected by the Japanese together with Intramural as the two (2) places for their final stand.

Thereafter, in the sass's and sass's, the hotel became the center of political activities, playing host to almost every political convention. In 1970 the hotel reopened after a renovation and reaped numerous international recognitions, an acknowledgment of the Filipino talent and ingenuity.

In 1986 the hotel was the site off failed coup d' teat where an aspirant for vice-president was “ proclaimed” President of the Philippine Republic. For more than eight (8) decades Manila Hotel has bore mute witness to the
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triumphs and failures, loves and frustrations of the Filipinos; its existence is impressed with public interest; its own historicity associated with our struggle for sovereignty, independence and nationhood. Verily, Manila Hotel has become part of our national economy and patrimony. For sure, 51% of the equity of the MUCH comes within the purview of the constitutional shelter for it comprises the majority and controlling stock, so that anyone who acquires or owns the 51% will have actual control and management of the hotel.

In this instance, 51% of the MUCH cannot be disassociated from the hotel and the land on which the hotel edifice stands. Consequently, we cannot sustain respondents' claim that the Filipino First Policy provision is not applicable since what is being sold is only 51% of the outstanding shares of the reparation, not the Hotel building nor the land upon which the building stands. [38] The argument is pure sophistry. The term qualified Filipinos as used in our Constitution also includes corporations at least 60% of which is owned by Filipinos. This is very clear from the proceedings of the 1986 Constitutional Commission – THE PRESIDENT.

Commissioner Divide is recognized. MR.. DIVIDE. I would like to introduce an amendment to the Knolled amendment.