Republic of the Philippines
Supreme Court
Baguio City

EN BANC

BAYAN MUNA PARTY-LIST REPRESENTATIVES SATUR C. OCAMPO and TEODORO A. CASIÑO, ANAKPAWIS REPRESENTATIVE CRISPIN B. BELTRAN, GABRIELA WOMEN'S PARTY REPRESENTATIVES LIZA L. MAZA and LUZVIMINDA C. ILAGAN, REP. LORENZO R. TAÑADA III, and REP. TEOFISTO L. GUINGONA III, Petitioners, - versus - **PRESIDENT GLORIA MACAPAGAL-ARROYO, EXECUTIVE SECRETARY EDUARDO R. ERMITA, SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS, SECRETARY OF THE DEPARTMENT OF ENERGY, PHILIPPINE NATIONAL OIL COMPANY, and PHILIPPINE NATIONAL OIL COMPANY EXPLORATION CORPORATION,** Respondents.	**G.R. No. 182734** Present: GESMUNDO, *C.J.*, LEONEN, CAGUIOA, HERNANDO,* LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, Y., DIMAAMPAO, MARQUEZ, KHO, JR., *and* SINGH, *JJ.* Promulgated: January 10, 2023

x----------x

D E C I S I O N

GAERLAN, *J.*:

Before Us is an original action for *certiorari* and prohibition[1] assailing the constitutionality of the Tripartite Agreement for Joint Marine Seismic Undertaking (JMSU) in the Agreement Area in the South China Sea By and Among China National Offshore Oil Corporation (CNOOC) and Vietnam Oil

---

* On leave.
1 With Application for Temporary Restraining Order and/or Preliminary Injunction. *Rollo*, pp. 3-59.

and Gas Corporation (PETROVIETNAM) and Philippine National Oil Company (PNOC).[2]

At the core of the controversy is Section 2, Article XII of the 1987 Philippine Constitution (the 1987 Constitution) which mandates that the exploration, development, and utilization (EDU) of natural resources shall be under the full control and supervision of the State.

The Antecedents

PNOC is the national oil company of the Republic of the Philippines (Republic). CNOOC is the state-owned oil company of the People's Republic of China. PETROVIETNAM is the state-owned oil company of the Socialist Republic of Vietnam.[3]

On March 14, 2005, CNOOC, PETROVIETNAM, and PNOC (collectively, the Parties), with the authorization of their respective Governments, signed the JMSU in Manila, Philippines. The JMSU has a term of three years starting from the date of commencement of its implementation (Agreement Term). According to its fourth whereas clause, its execution is an expression of the Parties' commitment "to pursue efforts to transform the South China Sea into an area of peace, stability, cooperation, and development."[4] Consequently, the Parties desire "to engage in a joint research of petroleum resource potential of a certain area of the South China Sea as a pre-exploration activity."[5] The JMSU shall cover 142,886 square kilometers of the Agreement Area, defined, and marked out by the geographic location and coordinates of the connecting points of the boundary lines in the Annex attached to the agreement.[6] Article 4(1) of the JMSU authorizes the conduct by the Parties of "seismic work" in the Agreement Area, *viz.*:

> 4.1. It is agreed that certain amount of 2D and/or 3D seismic lines shall be collected and processed and certain amount of existing 2D seismic lines shall be reprocessed within the Agreement Term. The seismic work shall be conducted in accordance with the seismic program unanimously approved by the Parties taking into account the safety and protection of the environment in the Agreement Area.[7]

---

2 Id. at 76-89.
3 Id. at 77.
4 Id. at 78.
5 Id.
6 Id. at 78-79.
7 Id. at 80.

For the proper performance of the joint activity,[8] the Parties shall establish a Joint Operating Committee (JOC) as soon as possible after the JMSU is signed. The Parties shall each appoint three representatives to the JOC. The JOC's powers, among others, include the formulation of a Joint Operating Procedure (JOP) for the conduct of the joint activity. As a rule, the Parties agreed to have effective and equal participation in all activities relevant to the implementation of the JMSU.[9] During the Agreement Term and within five years after its expiration, the JMSU itself and all the relevant documents, information, data, and reports with respect to the joint marine seismic undertaking shall not be disclosed by a Party to any other party without the written consent of the rest of the Parties (confidentiality clause).[10] Nevertheless, the last clause of the JMSU states that it shall not be binding on the Parties should any party fail to obtain its government's approval within three months after the date on which it is signed. The latest date of the approvals shall be the effective date of the JMSU, while the date of the commencement of its implementation shall be the first day of the month following its effectivity.[11]

Allegedly, on June 5, 2005, then Department of Energy (DOE) Secretary Raphael P.M. Lotilla issued a six-month term permit (first permit) to the PNOC Exploration Corporation (PNOC-EC), the assignee of the PNOC under Article 9.1 of the JMSU. This permit constituted the Philippine Government's approval of the JMSU. On July 1, 2005, the JMSU commenced to be implemented for the Agreement Term or until July 1, 2008. On December 10, 2005, the first permit expired. On October 4, 2007, the DOE allegedly issued another permit for a six-month term (second permit).[12]

On May 21, 2008, Bayan Muna Party-List Representatives Satur C. Ocampo (Ocampo) and Teodoro A. Casiño, Anakpawis Representative Crispin B. Beltran, Gabriela Women's Party Representatives Liza L. Maza and Luzviminda C. Ilagan, Representative Lorenzo R. Tañada III, and Representative Teofisto L. Guingona III (collectively, petitioners), suing as legislators, taxpayers, and citizens, filed the present petition against President Gloria Macapagal-Arroyo (PGMA), Executive Secretary Eduardo R. Ermita (ES Ermita), the Secretary of the Department of Foreign Affairs (DFA), the Secretary of the DOE, PNOC, and PNOC-EC (collectively, respondents). Petitioners argued that the JMSU is unconstitutional based on two grounds, namely: (1) the JMSU allows large-scale exploration of petroleum and other mineral oils by corporations wholly-owned by foreign states in the archipelagic waters, territorial sea, and exclusive economic zone (EEZ)

---

8 Referring to the Joint Marine Seismic Undertaking.
9 Article 6.1. of the JMSU. *Rollo*, pp. 80-82, see Articles 5 and 6.1 of the JMSU.
10 Id. at 85, see Article 10 of the JMSU.
11 Id. at 88, see Article 11.6 of the JMSU.
12 Id. at 20.

clearly and undisputedly owned by the Republic including the Spratly Islands in violation of Section 2(1), Article XII of the 1987 Constitution; and (2) the JMSU is not covered and sanctioned by any of the allowable and permissible undertakings for the EDU of natural resources under the 1987 Constitution.[13]

Petitioners ascribed grave abuse of discretion amounting to lack or excess of jurisdiction to: (1) PGMA and ES Ermita for authorizing, permitting, and tolerating, both expressly and impliedly, the execution and continued implementation of the JMSU; (2) the DFA Secretary when he participated in the planning, negotiations, and preparation which led to the signing and approval of the JMSU; (3) the DOE Secretary in issuing a permit to the PNOC-EC which constituted the Philippine Government's approval to the JMSU; (4) the PNOC for entering into an agreement with foreign-owned corporations for large-scale exploration of petroleum and mineral oils within Philippine-owned and claimed territory; and (5) the PNOC-EC for being an assignee of the rights and obligations of the PNOC under the JMSU.[14]

Petitioners sought an exception to the rule that a petition for *certiorari* or prohibition should be accompanied by an official or certified true copy of the document subject thereof. They claimed that Ocampo made a formal request to the DFA for the official copy of the JMSU. However, the DFA Secretary referred Ocampo's letter request to then House of Representatives (HR) Speaker Prospero Nograles (Speaker Nograles) because per the PNOC, a copy of the agreement was forwarded to the HR. In view of the JMSU's confidentiality clause, the DFA Secretary claimed that the HR may be in a better position to address the request. Ocampo sent a separate letter to Speaker Nograles and even made a parliamentary inquiry during the HR's plenary session on April 28, 2008. Yet, as of the date of the filing of the petition, he did not receive any reply from Speaker Nograles.[15]

Petitioners averred that a petition for *certiorari* and prohibition is proper to assail the constitutionality of the JMSU. Likewise, direct recourse to Us is justified due to: (1) the serious and grave constitutional questions involved in the case; (2) the repercussions of the unconstitutional acts of respondents on the country's national economy and patrimony, national sovereignty, territorial integrity, and national interest; and (3) the novelty of the issues involved.[16]

Subsequently, petitioners explained that they impleaded PGMA in the petition because the case is a mere special civil action, the purpose of which is

---

13 Id. at 21.
14 Id. at 22-23.
15 Id. at 11-13.
16 Id. at 5-6.

not to subject the president to any penalty, punishment, or damages for her unconstitutional acts. In addition, the exceptions to the doctrine of immunity from suit are present, which are: (1) where the government itself violated its own laws; and (2) to restrain the public officer from enforcing an act claimed to be unconstitutional.[17] Petitioners prayed that We annul the JMSU as well as declare it unconstitutional and void. They also asked that We enjoin the respondents from further implementing the agreement.

Meanwhile, on June 30, 2008, the JMSU expired.[18]

Commenting on the petition, respondents, through the Office of the Solicitor General (OSG), foremost argued that PGMA is not a proper respondent in the petition because the president is immune from suit. Thus, she should be excluded outright as a lead respondent in the case. The OSG alleged that the president and her cabinet members are also not liable for the execution of the JMSU since they are not parties to the agreement. The JMSU was executed by PNOC, a government corporation that possesses a personality separate and distinct from the Republic. Under its charter, the PNOC has the power to enter into contracts, hence the execution of the JMSU is its exclusive corporate act and may not be imputed to the Republic. The doctrine of qualified political agency does not apply.[19]

Respondents insisted that the petition fails to make a case for *certiorari* and prohibition. The execution of a commercial contract within the powers vested in a corporation under its charter is both executive and discretionary in nature. More, the petition does not present a justiciable controversy because the JMSU already expired on June 30, 2008. Per certification[20] from the PNOC-EC, the PNOC has not renewed the JMSU. Moreover, the issues raised in the petition are factual and would require the presentation of evidence, which is not allowed in a petition for *certiorari* and prohibition. Respondents maintained that petitioners' proper remedy is an ordinary civil action for annulment of contracts cognizable by the Regional Trial Courts (RTC).[21]

In their reply, petitioners countered that they did not file the petition to harass PGMA. Instead, the petition was filed for her to perform her official duties and functions in accordance with the 1987 Constitution. They claimed that she is accountable for the execution and implementation of the JMSU because she did not repudiate the act of the DOE Secretary in issuing a permit

---

17 Id. at 9.
18 Id. at 462.
19 Id. at 446-451.
20 Id. at 462.
21 Id. at 451-458.

which constituted the Republic's approval of the agreement. Without such approval, the JMSU would not be binding on the Republic. Therefore, it does not matter that the PNOC is a government-owned and controlled corporation (GOCC) which possesses a personality separate and distinct from the Republic. The fact remains that even if the Parties had already signed the JMSU, the approval of the Republic is needed to make it binding.[22]

As regards the issue of mootness, petitioners argued that all the exceptions to the moot and academic principle are present in this case.[23] They also maintained that the petition does not need a trial on the facts since the *lis mota* of the case is whether the JMSU is unconstitutional. They insisted that the Court may take judicial notice of the fact that as far as the people belonging to the oil and gas industry are concerned, seismic work, survey, or mapping is an integral part of and an exploration method in the exploration process of petroleum and other mineral oils, and not a mere pre-exploration activity.[24]

In Our Resolution[25] dated October 20, 2009, We gave due course to the petition and ordered the parties to submit their respective memoranda. We did not act on petitioners' prayer for an injunctive writ.

The Memorandum[26] of petitioners reiterated the arguments found in their petition and reply. Respondents, in their Memorandum,[27] hastened to add that the JMSU is constitutional. They alleged that: (1) the JMSU involves pre-exploration activities, hence it is not within the ambit of Section 2, Article XII of the 1987 Constitution which contemplates the EDU of natural resources; (2) assuming that the JMSU could be attributed to the State, the pre-exploration activities comply with the constitutional requirement that natural resources shall be within the full control and supervision of the State; and (3) the modalities prescribed in the 1987 Constitution for EDU of natural resources does not apply to the JMSU.[28]

Issues

The petition raises the following issues:

I. Procedural issues:

---

22 Id. at 510-512.
23 Id. at 516.
24 Id. at 520-521.
25 Id. at 523A-523B.
26 Id. at 551-621.
27 Id. at 642-679.
28 Id. at 653-676.

A. Whether the president may be impleaded as a respondent;

B. Whether the writs of *certiorari* and prohibition are proper to assail the constitutionality of the JMSU;

C. Whether the doctrine of hierarchy of courts was violated; and

D. Whether the requisites of judicial review are present.

II. On the merits, whether the JMSU is unconstitutional.

Our Ruling

We grant the petition.

I.

We shall first address the alleged procedural infirmities plaguing the petition.

A
PGMA is an improper party to the petition

At the outset, PGMA is improperly impleaded in the case. Though not expressly reserved in the 1987 Constitution, the rule that the president is immune from suit during his/her tenure remains preserved under our system of government. It is well-understood in jurisprudence that even the framers of the present Constitution did not see the need to expressly state it in the text of the highest law.[29] In *David v. Macapagal-Arroyo*,[30] We explained that it will degrade the dignity of the high office of the president, the head of the state, if he/she can be dragged into court litigations while serving as such. Unlike the legislative and judicial branches, only one constitutes the executive branch, hence anything that impairs his/her usefulness in the discharge of his/her duties necessarily impairs the operations of the government.[31]

Petitioners, however, insist that the case is merely for the issuance of writs of *certiorari* and prohibition, which does not involve the determination

---

29 *Rubrico v. Macapagal-Arroyo*, 627 Phil. 37, 62 (2010), citing Bernas, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 738 (1996) and *Soliven v. Makasiar*, 249 Phil. 394 (1988).

30 522 Phil. 705 (2006).

31 Id. at 764.

of any criminal or administrative liability.[32] Further, the president would not be distracted from her duties since she has the OSG to prepare, read, and file pleadings on her behalf. We are not persuaded.

Similar arguments were raised in *De Lima v. Duterte*,[33] which is a petition for the issuance of a writ of *habeas data* against then-President Rodrigo Roa Duterte and other government officials. We held that presidential immunity does not hinge on the nature of the suit. Its purpose is not intended to immunize the president from liability or accountability but to assure that the exercise of his/her duties is free from any distractions. While indeed a case against the president can be handled by the OSG, any litigation, big or small, naturally serves as a distraction to a party-litigant. A litigant cannot simply leave the course and conduct of the proceedings entirely to his/her counsel. Simply put, the president's immunity from suit has no qualification or restriction. The president cannot be sued while holding such office.[34]

Accordingly, We find it proper to drop PGMA as a respondent in this case considering that she was then the incumbent president when the petition was filed on May 21, 2008.[35]

B

Certiorari and/or prohibition are proper remedies

The writs of *certiorari* and prohibition are proper remedies to assail the constitutionality of the JMSU and to determine whether respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction.

In *Araullo v. Aquino III*,[36] We distinguished between the ordinary nature and function of the writs of *certiorari* and prohibition under Rule 65 of the Rules of Court and the remedies of *certiorari* and prohibition as vehicles to apply Our "expanded *certiorari* jurisdiction"[37] under the second paragraph of Section 1, Article VIII of the 1987 Constitution. The former is confined to errors of jurisdictions committed by a tribunal, board, or officer exercising judicial, quasi-judicial, or ministerial functions (as in the case of prohibition); while the latter is broader in scope and reach as they are remedies to set right, undo and restrain any act of "grave abuse of discretion amounting to lack or

---

32 *Rollo*, p. 509.
33 G.R. No. 227635 (Resolution), October 15, 2019.
34 Id.
35 *Aguinaldo v. Aquino III*, 801 Phil. 492, 521 (2016).
36 752 Phil. 716 (2015).
37 *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 883 (2003).

excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial, or ministerial functions."[38] We declared that petitions for *certiorari* and prohibition are appropriate vehicles to raise constitutional issues and/or prohibit or nullify the acts of legislative and executive officials.

In this light, We reject respondents' argument that the proper remedy is for petitioners to file an ordinary civil suit for annulment of contract in the RTC. The petition not only prays for annulment of contract but imputes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondents, which is within the province of the writs of *certiorari* and prohibition under Our expanded jurisdiction.

C

Direct recourse to Us is justified

This Court, the Court of Appeals, and the RTC have concurrent original jurisdiction over petitions for *certiorari,* prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. However, the doctrine of hierarchy of courts dictates that, as a rule, petitions for the issuance of extraordinary writs should first be filed in the lower-ranked court.[39] Nonetheless, We have in the past allowed direct recourse to Us on the ground of "serious and important reasons"[40] which were summarized in *The Diocese of Bacolod v. Commission on Elections*,[41] to wit:

> (1) When there are genuine issues of constitutionality that must be addressed at the most immediate time.
>
> (2) When the issues involved are of transcendental importance.
>
> (3) Cases of first impression.
>
> (4) The constitutional issues raised are better decided by the Court.
>
> (5) Exigency in certain situations.
>
> (6) The filed petition reviews the act of a constitutional organ.

---

38 *Aguinaldo v. Aquino III*, supra note 35 at 520.

39 *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019.

40 *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 328 (2015).

41 Id. at 331-335.

> (7) When petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression.
>
> (8) The petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[42]

Significantly, We clarified in *Gios-Samar, Inc. v. Department of Transportation and Communications*[43] that the presence of one or more of these "special and important reasons" is not the decisive factor in permitting the invocation of Our original jurisdiction for the issuance of extraordinary writs. Rather, it is the nature of the question raised by the parties in these exceptions that enabled Us to take cognizance of the case. We can only allow direct recourse when the issue before Us involves a pure question of law.

Here, the issue of whether the JMSU violated Section 2, Article XII of the 1987 Constitution not only presents a genuine issue of constitutionality, but also involves a question of law. A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts, or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and probabilities of the situation. Unlike a question of fact, no examination of the probative value of the evidence would be necessary to resolve a question of law.[44]

We could resolve the question on the legality of the JMSU without the need for presentation of evidence. Thus, the direct recourse to Us is justified.

Meanwhile, petitioners' failure to attach a certified true copy of the JMSU does not automatically make the case factual. In *Malixi v. Baltazar*,[45] We explained the reason behind the policy of requiring certified true copies of the judgment or resolutions assailed in a petition for *certiorari* under Rule 65 of the Rules of court, to wit:

---

42 Id. at 335.
43 Supra note 39.
44 *Mandaue Realty & Resources Corp. v. Court of Appeals*, 801 Phil. 27, 36-37 (2016).
45 821 Phil. 423 (2017).

> There is a sound reason behind this policy and it is to ensure that the copy of the judgment or order sought to be reviewed is a faithful reproduction of the original so that the reviewing court would have a definitive basis in its determination of whether the court, body or tribunal which rendered the assailed judgment or order committed grave abuse of discretion.[46] (Citation omitted)

Although what is being assailed here is an agreement and not a judgment or resolution of a court, the rationale is still the same. A certified true copy ensures that the contract challenged before Us is a faithful reproduction of the original. Only a photocopy of the JMSU was attached to the petition. However, respondents did not question the authenticity of the copy attached. It bears emphasis that PNOC could have argued that the photocopy of the JMSU attached to the petition was not a faithful reproduction of the original, but it did not do so. Further, petitioners amply explained that they took steps to secure a certified true copy of the JMSU, to no avail. First, Ocampo requested a copy from the DFA which referred him to the HR because per PNOC, a copy of the agreement was forwarded to the HR. The DFA, also a respondent in this case, did not deny that Ocampo requested a copy of the JMSU and that none was given. Second, Ocampo sent a separate letter to then HR Speaker Nograles and even made a parliamentary inquiry during the HR's plenary session on April 28, 2008. However, as of the date of the filing of the petition, he did not receive any reply from Speaker Nograles.[47] The failure to attach a certified true copy of the JMSU was therefore excusable.[48]

D

Requisites of Judicial Review

For Us to exercise Our power of judicial review, the petition must comply with the following requisites: (1) there is an actual case or controversy; (2) the person challenging the act must have "standing"; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[49]

(i)

Respondents argue that the first requisite is missing because the expiration of the JMSU rendered the case moot and academic.

---

46 Id. at 437, citing *Pinakamasarap Corp. v. National Labor Relations Commission*, 534 Phil. 222, 230 (2006).

47 *Rollo*, pp. 60-61, 64, 71-72.

48 See also *Cadayona v. Court of Appeals*, 381 Phil. 619, 624 (2000).

49 *Francisco, Jr. v. House of Representatives*, supra note 37 at 892.

An actual case or controversy involves a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. A judicial controversy must neither be conjectural nor moot and academic.[50] A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such a case or dismiss it on the ground of mootness.[51]

Nevertheless, the moot and academic principle is not a magic formula that automatically dissuades Us from deciding a case.[52] We have, time and again, decided cases otherwise moot and academic under the following exceptions:

(1) There is a grave violation of the Constitution;

(2) The exceptional character of the situation and the paramount public interest is involved;

(3) The 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.[53]

In *David v. Macapagal-Arroyo*,[54] We assumed jurisdiction over the petitions for *certiorari* and prohibition assailing the constitutionality of the president's declaration of a state of national emergency under Presidential Proclamation (PP) No. 1017, although, during the pendency of the case, the declaration was lifted. We found that all the exceptions to the moot and academic principles are present such as: (1) petitioners alleged that PP No. 1017 and General Order No. 5 which implemented it violate the Constitution; (2) the issues raised affect the public's interest since they involved the freedom of expression, of assembly, and of the press; (3) the Court has the duty to formulate guiding and controlling constitutional precepts; and (4) the contested actions of the respondents are capable of repetition.

In *Araullo v. Aquino III*,[55] We resolved the petitions for *certiorari*, prohibition, and *mandamus* raising the issue of the constitutionality of the Disbursement Acceleration Program (DAP) and the related issuances of the Department of Budget and Management implementing it although it was

---

50 *Balag v. Senate of the Philippines*, 835 Phil. 451, 461 (2018).
51 *David v. Macapagal-Arroyo*, supra note 30 at 753-754.
52 *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, 758 Phil. 724, 749 (2015).
53 Id.
54 Supra note 30.
55 Supra note 36.

discontinued during the pendency of the case. We ruled that all the exceptions to the moot and academic principle were present.

In *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*,[56] We decided the petitions for *certiorari,* prohibition, and *mandamus* involving the validity of Service Contract No. 46, which allowed the exploration, development, and exploitation of petroleum resources within Tañon Strait, as null and void[57] even though the parties had mutually terminated the contract during the pendency of the case. We held that almost all the exceptions for the moot and academic principle are present.

Similarly, We rule that all the four exceptions to the moot and academic principle obtain in this case.

First, the petition alleged that the JMSU gravely violated Section 2, Article XII of the 1987 Constitution since the agreement allowed foreign-owned corporations to explore the country's petroleum resources. Thus, in *Chavez v. Public Estates Authority*,[58] We declared that supervening events, whether intended or accidental, cannot prevent Us from rendering a decision if there is a grave violation of the Constitution. Therein petitioner's principal basis for assailing the renegotiation of the Joint Venture Agreement between PEA and AMARI is its violation of Section 3, Article XII of the Constitution, which prohibits the government from alienating lands of the public domain to private corporations.

Second, the issue in this case is of paramount public interest as it involves the alleged exploration of a portion of the South China Sea which the Philippines considers to be part of its territory. In *Miners Association of the Phils., Inc. v. Factoran, Jr.*,[59] We declared that the EDU of the country's natural resources are matters vital to the public interest and the general welfare of the people. Furthermore, the JMSU and its execution by PNOC is of exceptional character as it was worded as a "pre-exploration" activity among national oil corporations of three countries. In *Narra Nickel Mining & Development Corp. v. Redmont Consolidated Mines Corp.*,[60] We found that the intricate corporate layering utilized by the Canadian company is of exceptional character and involves paramount public interest because it undeniably affects the exploitation of the country's natural resources.

---

56 Supra note 48.
57 Id. at 779.
58 433 Phil. 506, 522 (2002).
59 310 Phil. 113, 137 (1995).
60 733 Phil. 365, 392 (2014).

Third, We have the duty to resolve the novel issue of what constitutes exploration under Section 2, Article XII of the 1987 Constitution for the guidance of the bench and the bar. In *Salonga v. Paño*,[61] We stated that:

> The setting aside or declaring void, in proper cases, of intrusions of State authority into areas reserved by the Bill of Rights for the individual as constitutionally protected spheres where even the awesome powers of Government may not enter at will is not the totality of the Court's functions.
>
> **The Court also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees.**[62] (Emphasis supplied)

More, in *Kilusang Mayo Uno v. Aquino III,*[63] We noted that the third exception to the mootness principle is corollary to Our power under Article VIII, Section 5(5)[64] of the 1987 Constitution. We may determine when there is a need to formulate guiding and controlling constitutional principles or rules in the cases brought before Us. Clamor from party-litigants is not a requirement before We could exercise Our function of educating the bench and the bar.

Fourth, agreements of the same character as the JMSU may be entered into again by the government or any of its agencies and/or instrumentalities.

(ii)

Standing or *locus standi* is the right of appearance in a court of justice on a given question. To determine whether a party has standing, We apply the direct injury test,[65] which dictates that a party challenging the constitutionality of a law, act or statute must show "not only that the law is invalid, but also that he[/she] has sustained or is in immediate or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely

---

61 219 Phil. 402 (1985).

62 Id. at 429-430.

63 G.R. No. 210500, April 2, 2019.

64 SECTION 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

65 *David v. Macapagal-Arroyo*, supra note 30 at 755-757.

that he[/she] suffers thereby in some indefinite way."[66] However, We have recognized cases brought by "non-traditional suitors" or those parties who were not personally injured by the operation of a law or any other government act, provided they met any of the following requirements:

> 1.) For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> 2.) For voters, there must be a showing of obvious interest in the validity of the election law in question;
>
> 3.) For concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
>
> 4.) For legislators, there must be a claim that the official action complained of infringes their prerogatives as legislators.[67]

Petitioners are suing as legislators, taxpayers, and citizens. At the time of the filing of the case, they were incumbent members of the HR. They claimed that the execution and implementation of the JMSU usurped the power of the Congress relative to the country's natural resources under Section 2, Article XII of the 1987 Constitution. They believed that the employment of the word "State" in the provision necessarily includes the participation of Congress in the EDU of natural resources. They claimed that the acts of respondents infringed upon their prerogatives as legislators.[68] We agree.

In *La Bugal-B'laan Tribal Association, Inc. v. Ramos*[69] *(La Bugal)*, We held that the text of Section 2, Article XII expressly provides the mandate of the President and the Congress with respect to the EDU of natural resources. The President is the official constitutionally mandated to enter into agreements with foreign-owned corporations, while the Congress may review the action of the President once it is notified of the contract within 30 days from its execution. Hence, petitioners, as members of the HR, have standing to file the suit.

Likewise, We find that petitioners also have legal standing to sue as taxpayers. They alleged that Article 3 of the JMSU states that each Party shall be responsible for the cost of its personnel designated for the implementation of the agreement; while the expenses for the seismic work and other activities of the JOC shall be shared by the Parties in equal shares. Since the funds of

---

66 *Ifurung v. Carpio-Morales*, 831 Phil. 135, 154 (2018).
67 Id. at 155, citing *Funa v. Agra*, 704 Phil. 205, 218 (2013).
68 *Rollo*, p. 6.
69 486 Phil. 754, 773 (2004).

the PNOC, a GOCC, are appropriated by Congress, the implementation of the unconstitutional JMSU constitutes illegal disbursement of public funds.[70]

Similarly, petitioners have standing to sue as concerned citizens because they were able to show that the issue of the constitutionality of the JMSU involves transcendental importance. In *Francisco, Jr. v. House of Representatives*,[71] We used determinants for the application of the doctrine of transcendental importance which Justice Florentino P. Feliciano stated in his separate opinion in *Kilosbayan, Inc. v. Guingona, Jr.*[72] These are: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.[73] All these are present in this case.

(iii)

In *Calleja v. Executive Secretary*,[74] We clarified that "earliest opportunity" means that the question of unconstitutionality of the act in question should have been immediately raised in the court below. As the present petition was directly filed to Us, We rule that, similar to *Calleja*, the "earliest opportunity" requirement is complied with since the issue of constitutionality of the JMSU was raised at the first instance.

(iv)

The requirement of *lis mota* means that the issue of constitutionality is the heart of the controversy, that is, the case cannot be legally resolved unless the constitutional question is determined.[75]

Here, the relief prayed for by petitioners is the declaration of unconstitutionality of the JMSU. We cannot dispose of the case on some other ground, other than by determining its compliance with the relevant provisions of the 1987 Constitution. Thus, the *lis mota* requirement is complied with.

---

70 *Rollo*, p. 6.
71 Supra note 37.
72 302 Phil. 107 (1994).
73 Id. at 174-175.
74 G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, December 7, 2021.
75 Id.

II.

Before proceeding to the substance of the case, We clarify that the JMSU covers the portion of the South China Sea claimed by the Philippines, China, and Vietnam. The ninth whereas clause of the agreement declared that its signing will not undermine the basic positions held by the Government of each Party on the South China Sea issue. However, petitioners alleged that the Agreement Area is within the EEZ of the Philippines and includes almost 80% of the Spratly Group of Islands.[76] This is not disputed by respondents.

On September 5, 2012, then President Benigno C. Aquino III issued Administrative Order (AO) No. 29 titled, "Naming the West Philippine Sea of the Republic of the Philippines, and for Other Purposes." The AO stated that the maritime areas on the western side of the Philippine archipelago shall be named as the West Philippine Sea, which shall include the Luzon sea as well as the waters around, within and adjacent to the Kalayaan Island Group and Bajo De Masinloc, also known as the Scarborough Shoal.

Notwithstanding AO No. 29, We shall not refer to the Agreement Area as the West Philippine Sea. As admitted by petitioners, no official copy of the map covering the JMSU had been released to the public owing to the confidentiality clause in the agreement. The maps attached to the petition were from (1) an online news article, and (2) made by Prof. Giovanni Tapang, Ph.D. of the National Institute of Physics, University of the Philippines-Diliman based on the coordinates stated on the copy of the map from the said article.[77] As such, We cannot assume that the Agreement Area is included in the West Philippine Sea. We are only certain that based on the attached maps and the non-rebutted claim of petitioners, the Agreement Area is within the Philippines' EEZ. Therefore, whatever natural resources found therein is owned by the Republic.

A
The JMSU involves exploration of petroleum resources

Petitioners assail the validity of the JMSU on the ground that it violates Section 2, Article XII of the 1987 Constitution, which reads:

> **Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural**

---

76 *Rollo*, pp. 19-20 and 90-92.
77 Id. at 19.

> **lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens.** Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.
>
> The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.
>
> The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.
>
> The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.
>
> The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

The first sentence of Section 2 embodies the Regalian doctrine or *Jura Regalia*,[78] which means that all natural resources are owned by the State.[79] The provision also lays down the different modes or ways that the State may undertake in the EDU of natural resources.

According to petitioners, the JMSU is illegal because it allows two foreign corporations wholly-owned by China and Vietnam to undertake large-scale exploration of the country's petroleum resources, while the Constitution reserves the EDU of natural resources to Filipino citizens or corporations or associations at least sixty (60%) percent of whose capital is owned by such citizens. [80] To strengthen their claim that the JMSU involves exploration of

---

78 *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, supra note 69 at 897.
79 *Miners Association of the Phils., Inc. v. Factoran, Jr.*, supra note 59 at 120.
80 *Rollo*, p. 594.

natural resources, they referred to Article 4.1[81] of the agreement, providing for "seismic work" or the collection and processing of 2D and/or 3D seismic lines. They quoted several encyclopedias stating that seismic survey is an exploration method. They prayed that We take judicial notice that based on the available literature, seismic work, survey, or mapping is an integral part of the exploration process of petroleum and mineral oils.[82]

Respondents countered that Section 2, Article XII of the 1987 Constitution does not apply because the provision contemplates EDU of natural resources, whereas the JMSU only involves pre-exploration activities. They maintained that seismic surveying as a method of data acquisition does not by itself amount to exploration. Seismic surveys are not only conducted for purposes of exploration of mineral oils but may be conducted for other purposes sanctioned by international law.[83]

To resolve the opposing legal claims of the parties, We must define the term "exploration" as contemplated in the 1987 Constitution.

We employ the first principle of constitutional construction, that is, *verba legis* or the plain meaning rule, which provides that wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed.[84] Ordinarily, "exploration" means "the activity of searching and finding out about something."[85] Technically, under Republic Act (R.A.) No. 7942 or the Philippine Mining Act of 1995, "[e]xploration means the searching or prospecting for mineral resources by geological, geochemical or geophysical surveys, remote sensing, test pitting, trending, drilling, shaft sinking, tunneling, or any other means for the purpose of determining the existence, extent, quantity and quality thereof and the feasibility of mining them for profit."[86] Additionally, under R.A. No. 387 or the Petroleum Act of 1949,[87] "[e]xploration means all work that have for their object the discovery of petroleum, including, but not restricted to, surveying and mapping, aerial photography, surface geology, geophysical

---

81 4.1. It is agreed that certain amount of 2D and/or 3D seismic lines shall be collected and processed and certain amount of existing 2D seismic lines shall be reprocessed within the Agreement Term. The seismic work shall be conducted in accordance with the seismic program unanimously approved by the Parties taking into account the safety and protection of the environment in the Agreement Area. (Id. at 80.)

82 Id. at 591.

83 Id. at 657.

84 *Francisco, Jr. v. House of Representatives*, supra note 37 at 884.

85 https://dictionary.cambridge.org/dictionary/english/exploration. Last accessed on July 15, 2022.

86 REPUBLIC ACT NO. 7942, Section 3(q).

87 Note that currently Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972 is the general law on exploration, development, and utilization of indigenous petroleum in the Philippines (see *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, supra note 52). However, the Petroleum Act of 1949 remains to be operative as there is no law or case law that declare its express repeal. Implied repeals are frown upon.

investigations, testing of subsurface conditions by means of borings or structural drillings, and all such auxiliary work as are useful in connection with such operations."[88] Thus, exploration, whether used in the ordinary or technical sense pertains to a search or discovery of something.

Applying the foregoing definitions, We rule that the JMSU involves the exploration of the country's natural resources, particularly petroleum. The text of the fifth whereas clause of the JMSU is clear as to the objective of the agreement:

> WHEREAS, the Parties expressed desire to engage in a **joint research of petroleum resource potential** of a certain area of the South China Sea as a pre-exploration activity[.][89] (Emphasis supplied)

The JMSU was executed for the purpose of determining if petroleum exists in the Agreement Area. That the Parties designated the joint research as a "pre-exploration activity" is of no moment. Such designation does not detract from the fact that the intent and aim of the agreement is to discover petroleum which is tantamount to "exploration."

Pursuant to the Petroleum Act of 1949, discovery of petroleum may be done thru surveying and mapping and geophysical investigation. Significantly, the JMSU employs seismic survey, which is a geophysical survey method. The said method is particularly well suited to the investigation of the layered sequences in sedimentary basins that are the primary targets for oil or gas.[90] Seismic surveying can be carried out on land or at sea and is used extensively in offshore geological surveys and the exploration for offshore resources.[91] Other appropriate survey methods for the exploration of fossil fuels (oil, gas, coal) include gravity, magnetic, and electromagnetic surveys.[92]

Respondents argued that seismic survey has many uses in international law and is not confined to petroleum exploration. This might be true, but We are not concerned about these other uses. Instead, We are looking into the purpose of seismic survey in the context of the JMSU. Respondents themselves supplied the answer in their Memorandum, to wit:

> The parties to the JMSU were solely engaged in pre-exploration activities as stipulated in the said Agreement. **Specifically, the parties to the Tripartite Agreement were jointly engaged in "basin evaluation" or**

---

88 REPUBLIC ACT NO. 387, Article 38, as amended by Republic Act No. 3098.
89 *Rollo*, p. 78.
90 Keary, et al., *An Introduction to Geophysical Exploration*, 3rd edition, 2002, p. 2.
91 Id. at 21.
92 Id. at 3.

> **the joint research of petroleum resource potential through the collection and processing/reprocessing of 2D and/or 3D seismic data,** although no 3D seismic data was actually acquired. The general evaluation on a basin-wide scale of the area was conducted with the objective of arriving at a general indication of its petroleum resource potential. x x x[93] (Emphasis supplied)

Undeniably, seismic survey was utilized in the JMSU to discover if petroleum exists in the Agreement Area and not for any other use.

Nevertheless, respondents insisted that while data gathering of seismic lines may be part of the process of determining the existence of mineral resources in large quantities, such act without more, and without the ultimate intent of extracting the resources explored does not amount to exploration.[94] Respondents are grasping at straws. Whether "exploration" is defined in the ordinary sense or under our mining and petroleum laws, intent to extract and/or actual extraction is not a requirement. The end-all and be-all of "exploration" is the search or discovery of the existence of valuable natural resources.

In *Apex Mining Co. Inc. v. Southeast Mindanao Gold Mining Corporation,*[95] We held that an exploration permit issued under Presidential Decree (PD) 463, the old law governing the EDU of mineral resources, does not include the right to extract and utilize the minerals found. Thus:

> Even assuming *arguendo* that SEM obtained the rights attached in EP 133, said rights cannot be considered as property rights protected under the fundamental law.
>
> **An exploration permit does not automatically ripen into a right to extract and utilize the minerals;** much less does it develop into a vested right. **The holder of an exploration permit only has the right to conduct exploration works on the area awarded.** Presidential Decree No. 463 defined exploration as "the examination and investigation of lands supposed to contain valuable minerals, by drilling, trenching, shaft sinking, tunneling, test pitting and other means, for the purpose of probing the presence of mineral deposits and the extent thereof." **Exploration does not include development and exploitation of the minerals found. Development is defined by the same statute as the steps necessarily taken to reach an ore body or mineral deposit so that it can be mined, whereas exploitation is defined as "the extraction and utilization of mineral deposits."** x x x[96] (Emphasis supplied)

---

93 *Rollo*, p. 659.
94 Id. at 657.
95 620 Phil. 100 (2009).
96 Id. at 127.

All told, the JMSU involves exploration of the country's petroleum resources, hence it falls within the ambit of Section 2, Article XII of the 1987 Constitution.

B

The JMSU is unconstitutional

The EDU of natural resources shall be under the full control and supervision of the State. The State may undertake such activities through the following modes:

(1) Directly;

(2) Co-production, joint venture or production-sharing agreements with Filipino citizens or qualified corporations;

(3) Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens; and

(4) For the large-scale exploration, development and utilization of minerals, petroleum and other mineral oils, the President may enter into agreements with foreign-owned corporations involving technical or financial assistance.[97]

For the JMSU to be valid, it must be executed and implemented under one of the four modes stated.[98] Obviously, the JMSU does not fall in the first mode as it was not undertaken solely by the State. It neither involves the second nor the third modes considering that the other parties to the agreement are wholly-owned foreign corporations. The fourth mode is the most feasible route for the JMSU since it allows foreign-owned corporations to participate in the large-scale exploration, development, and utilization of petroleum.

Significantly, in *La Bugal*, We held that the fourth paragraph of Section 2, Article XII of the 1987 Constitution (referring to the fourth mode or Financial and Technical Assistance Agreements [FTAAs]) is an exception to the general norm established in the first paragraph of Section 2 which limits or reserves to Filipino citizens and corporations at least 60 percent owned by such citizens the EDU of natural resources. We also declared in the same case that the fourth mode is not restricted to financial or technical agreements but

---

97 *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, supra note 69 at 790-791.

98 Id. See also the Concurring Opinion of Associate Justice Marvic Mario Victor F. Leonen in *Baguio v. Heirs of Abello*, G.R. Nos. 192956 & 193032, July 24, 2019.

actually pertains to service contracts albeit with safeguards to avoid the abuses prevalent under the 1973 Constitution.[99] Thus:

> Applying familiar principles of constitutional construction to the phrase *agreements involving either technical or financial assistance*, the framers' choice of words does not indicate the intent to exclude other modes of assistance, **but rather implies that there are *other things* being included or possibly being made part of the agreement, apart from financial or technical assistance. The drafters avoided the use of restrictive and stringent phraseology; a *verba legis* scrutiny of Section 2 of Article XII of the Constitution discloses not even a hint of a desire to *prohibit* foreign involvement in the management or operation of mining activities, or to *eradicate* service contracts.** Such moves would necessarily imply an underlying drastic shift in fundamental economic and developmental policies of the State. That change requires a much more definite and irrefutable basis than mere omission of the words "service contract" from the new Constitution.
>
> Furthermore, a *literal and restrictive interpretation of this paragraph leads to logical inconsistencies*. A constitutional provision specifically allowing foreign-owned corporations to render financial or technical *assistance* in respect of mining or any other commercial activity was clearly unnecessary; **the provision was meant to refer to more than mere financial or technical assistance.**
>
> Also, if paragraph 4 permits only agreements for financial or technical assistance, there would be no point in requiring that they be "*based on real contributions to the economic growth and general welfare of the country.*" And considering that there were various long-term service contracts still in force and effect at the time the new Charter was being drafted, the absence of any transitory provisions to govern the termination and closing-out of the then existing service contracts strongly militates against the theory that the mere omission of "service contracts" signaled their prohibition by the new Constitution.[100] (Emphasis supplied)

The threshold issue is whether the JMSU qualifies under the fourth mode. We rule in the negative.

The JMSU is neither an FTAA nor a service contract. First, it does not involve any financial or technical assistance between and among the PNOC, the CNOOC, and PETROVIETNAM. Under Article 3 thereof, each of the parties will shoulder the costs of its own personnel designated for the implementation of the agreement and as to the seismic work, they will share the cost in equal shares. There is also no provision in the agreement relating to any technical assistance. Second, the JMSU is not a service contract as the term is defined in Presidential Decree (PD) No. 87 or the Oil Exploration and

---

99 *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, supra note 69 at 814.

100 Id. at 904-905.

Development Act of 1972, which is the general law on exploration, development, and utilization of indigenous petroleum in the Philippines.[101] In a service contract, service and technology are furnished by the service contractor for which it shall be entitled to the stipulated service fee while financing is provided by the Government to which all petroleum produced shall belong.[102] Respondents themselves admitted that the JMSU is not a service contract[103] and upon this assertion they averred that they cannot be compelled to comply with the modalities prescribed in the Constitution. However, as stated earlier, the JMSU involves exploration activities, thus it must comply with Section 2, Article XII of the 1987 Constitution.

Assuming *arguendo* that the JMSU is a service contract, still, it does not satisfy the standards that We laid down in *La Bugal*, which are as follows:

> Such service contracts may be entered into *only with respect to minerals, petroleum and other mineral oils*. The grant thereof is subject to several safeguards, among which are these requirements:
>
> (1) The service contract shall be crafted in accordance with a general law that will set standard or uniform terms, conditions and requirements, presumably to attain a certain uniformity in provisions and avoid the possible insertion of terms disadvantageous to the country.
>
> (2) The President shall be the signatory for the government because, supposedly before an agreement is presented to the President for signature, it will have been vetted several times over at different levels to ensure that it conforms to law and can withstand public scrutiny.
>
> (3) Within thirty days of the executed agreement, the President shall report it to Congress to give that branch of government an opportunity to look over the agreement and interpose timely objections, if any.[104]

It is glaring that the JMSU does not meet the second and third conditions. Even respondents argued that the agreement is signed not by the president but by the PNOC through its president and chief executive officer.

In fine, the JMSU is unconstitutional for allowing wholly-owned foreign corporations to participate in the exploration of the country's natural resources without observing the safeguards provided in Section 2, Article XII of the 1987 Constitution.

---

101 See *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, supra note 52 at 762.

102 PRESIDENTIAL DECREE NO. 87, Section 6.

103 *Rollo*, p. 673.

104 *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, supra note 69 at 815.

C

JMSU is not similar with the MOU with the Government of Australia

Respondents compared the JMSU with the Republic's Memorandum of Understanding (MOU) with the Government of Australia. They alleged that the MOU allowed an Australian survey vessel to operate in Philippine waters to gather seismic data and provide expertise to the Philippine Government in the development of domestic energy resources. They cited Opinion No. 157, s. of 1990 of the Department of Justice (DOJ) which declared that the MOU envisions pre-exploration activities which are not covered by the limitation found in Section 2, Article XII of the 1987 Constitution.[105] The relevant portions of the DOJ Opinion read:

> **It appears that the proposed offshore seismic project aims to provide data and expertise to the Philippine Government in the determination and development of significant domestic energy resources and to provide training in data gathering, processing and interpretation technique which would enable the Office of Energy Affairs (OEA) to conduct similar projects in the future and to administer petroleum exploration and development activities effectively.** The project proposal is proposed to be covered by a Memorandum of Understanding (MOU) between the Government of the Republic of the Philippines and the Government of Australia and which MOU should specifically address the following concerns: (1) the need for the Australian survey vessel to operate in the Philippine waters in order to gather the seismic data (2) the proposal of the Australian Government that Australian oil exploration and service companies, together with their Philippine counterparts, be given preference in obtaining service contract over the areas covered by the seismic program.
>
> **We find no legal objection to the project proposal and the execution of an MOU covering it. As we see it, the project proposal which involves data gathering, processing and interpretation techniques envisions pre-exploration activities which are not covered by the aforequoted Constitutional limitation.**
>
> **The project proposal is in the nature of a government-to-government assistance or cooperation under which the Australian Government would undertake to provide funding in the amount of $2.67 million out of the project's estimated cost of $2.73 million.** The balance would be provided by the Philippine Government in the form of staff cost and other ancillary support. The project was initiated by the Philippine Government to promote its oil and gas exploration activities which are being hampered by its lack of infrastructure and limited finances.[106] (Emphasis supplied)

---

105 *Rollo*, pp. 559-560.

106 Id. at 660.

Consequently, respondents maintained that the JMSU was undertaken to address the lack of infrastructure and expertise to secure the country's oil and gas exploration activities. They also asserted that the JMSU was executed under the same modality as that of the pre-exploration activity with that of the Government of Australia.[107]

Respondents are mistaken. First, the JMSU and the MOU have different objectives. The JMSU is a joint undertaking to determine if petroleum exists in a certain area of the South China Sea while the MOU, as stated in the DOJ Opinion quoted, "aims to provide data and expertise to the Philippine Government in the determination and development of significant domestic energy resources and to provide training in data gathering, processing and interpretation technique which would enable the Office of Energy Affairs (OEA) to conduct similar projects in the future and to administer petroleum exploration and development activities effectively." The Government of Australia also provided most of the funding for the MOU.[108] In contrast, the JMSU does not state that CNOOC and PETROVIETNAM would provide any training or assistance to PNOC for the exploration of the country's natural resources. Second, the JMSU was entered into by the PNOC with its counterpart national oil companies in China and Vietnam; whereas, the MOU was proposed to be entered into between the Government of the Philippines itself and the Government of Australia.

In any event, even assuming that the MOU and the JMSU are of the same nature, We are not bound by the opinion of the DOJ. More importantly, the constitutionality of the MOU is not the subject of the case before Us.

D

The State has no full control and supervision under the JMSU

Petitioners next argued that even assuming that the activities under the JMSU are pre-exploratory, the agreement is still unconstitutional because under Article 11.2 thereof all the information acquired for the fulfillment of the seismic work and their interpretation shall be jointly owned by the Parties. For petitioners, the provision subjected the Republic's dominion or ownership of the petroleum and other mineral oils in the Agreement Area to a compromise or concession with foreign governments, thereby effectively conceding or forfeiting its ownership over the said natural resources.[109]

---

107 Id. at 662.
108 Id. at 660.
109 Id. at 39.

Respondents countered that petitioners confused the scientific data generated from an international cooperative effort between government corporations with the ownership of natural resources from which such data was derived.[110] The acquisition of preliminary scientific data to determine the possibility of the existence of natural resources is not equivalent to the acquisition of rights over those petroleum resources. According to respondents providing access to the scientific data generated in the JMSU does not diminish the State's full control and supervision over its resources. They explained that: (1) the agreement do not impinge on the ownership over the islands, waters, and resources in the South China Sea since it explicitly provides in its ninth whereas clause that its signing will not undermine the basic positions held by the Government of each Party on the South China Sea issue; (2) the agreement is between government corporations that have personalities distinct from the national government; (3) the agreement on the treatment of the data generated from the JMSU is an exercise of the State's power of auto-limitation under international law; (4) assuming that the JMSU may be attributed to the Republic, it is part of the cooperative efforts to undertake a marine scientific research under Article 239, Part III of the United Nations Convention on the Law of the Sea (UNCLOS); and (5) the JMSU is the realization of the intent of the Declaration on the Conduct of Parties in the South China Sea dated November 4, 2002 to prevent the escalation of conflict and to encourage the parties to explore or undertake cooperative activities pending a comprehensive settlement and durable settlement of the disputes in the area.[111]

In a nutshell, respondents' arguments may be grouped into two. On one hand, the JMSU does not involve the national government but government corporations of the Philippines, China, and Vietnam. On the other hand, even if the Republic is involved, it could allow the activities under the JMSU pursuant to the State's power of auto-limitation under international law. In case, the JMSU is treated as an international agreement, the State had expressed its consent to share information on the Agreement Area without conceding full ownership, control, and supervision of its natural resources.[112]

The questions that arise are: (1) whether the information acquired from the seismic survey in the Agreement Area may be legally shared by the PNOC to CNOOC and PETROVIETNAM; and (2) whether by sharing the said information, the State has effectively lost supervision and control of the country's petroleum resources in the Agreement Area.

Preliminarily, We find that the government approved the JMSU although the President is not a signatory to the agreement. Under the eighth

---

110 Id. at 664.
111 Id. at 665-668.
112 Id. at 670.

whereas clause of the JMSU, it was declared by the parties that "**under the authorization of the Philippine Government**, PNOC has the exclusive right to sign this Agreement with CNOOC and PETROVIETNAM for a joint marine seismic undertaking with the Agreement Area."[113] This was not disputed by respondents. More, Article 11.6 of the JMSU states:

> 11.6 After the Agreement is signed, it shall be approved by the Parties' respective governments. The latest date of such approvals shall be the effective date of the Agreement. The Parties agree that the first day of the month following the effective date of the Agreement shall be the date of commencement of the implementation of the Agreement. The Agreement shall not be binding on the Parties should any Party fail to obtain its government's approval within three (3) months after the date on which the Agreement is signed."[114]

On this score, petitioners claimed that the government gave its approval of the JMSU thru a permit issued by the DOE Secretary on June 10, 2005. Respondents did not deny this as they only insisted that they are not parties to the agreement except for PNOC.[115] Significantly, the execution, implementation, and expiration of the JMSU are undisputed. Hence, it is undeniable that the government gave its approval. Otherwise, the agreement will not be effective as stated in Article 11.6. The Government's approval of the JMSU is the operative act which made the agreement binding on the Parties. It is safe to assume that the government read the terms of the JMSU before concurring thereon. Considering the foregoing, We hold that although the JMSU was only signed by the PNOC, the same also binds the Government.

Answering the questions posed, *First*, We rule that the PNOC and/or the Government cannot legally share the information acquired in the Agreement. The information regarding on the existence/non-existence of petroleum in the Agreement Area is a product of exploration. It is part of the exploration itself inasmuch as the petroleum discovered. The fact that under the JMSU, CNOOC and PETROVIETNAM were not granted rights to extract or to share in the petroleum resources is immaterial. Extraction is not a part of exploration but is already within the realm of "utilization" of natural resources.[116]

As former Supreme Court Associate Justice Antonio T. Carpio noted in his dissenting opinion in *La Bugal*, "[t]he State cannot allow foreign corporations, except as contractual agents under the full control and

---

113 Id. at 78.
114 Id. at 88.
115 Id. at 645.
116 See *Apex Mining Co. Inc. v. Southeast Mindanao Gold Mining Corporation*, supra note 95.

supervision of the State, to explore our natural resources because information derived from such exploration may have national security implications."[117]

Subsequently, the argument of respondents that the JMSU is just entered into among government corporations (that of the Philippines, China, and Vietnam) further highlight the unconstitutionality of the agreement. In the first place, the PNOC has no power to enter into contracts involving the exploration of the country's petroleum resources with foreign-owned corporations. Even as We earlier found that the Government gave its approval of the JMSU through the DOE, Section 2, Article XII of the 1987 Constitution expressly reserves to the President the power to enter into contracts involving the EDU of natural resources with foreign-owned corporations. Such power cannot be delegated to another public official or government agency and/or instrumentality. The doctrine of qualified political agency does not apply.[118] It is the President who exercises the power of control in the EDU of the national resources on behalf of the State.[119]

We also reject respondents' invocation of the State's power of auto-limitation or that property of a state-force due to which it has exclusive capacity of legal self-determination and self-restriction. Pursuant to this, the "State may, by its consent, express or implied, submit to a restriction of its sovereign rights."[120] Here, the consent of the State to the alleged restriction of its sovereign rights over the Agreement Area is wanting because the President did not personally sign the JMSU.

Similarly, We cannot sustain the validity of the JMSU even if we treat it as an international agreement. This is because in our system of government, the President, being the head of the State, is the chief architect of our foreign policy.[121] The JMSU was not also concurred in by at least two-thirds of all the members of the Senate.[122]

Second, We rule that the PNOC and/or the government, in agreeing that the information about our natural resources shall be jointly owned by CNOOC and PETROVIETNAM, illegally compromised the control and supervision of the State over such information. Article 11.2 and 11.4 of the JMSU provide:

---

117 *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, supra note 69 at 1036.
118 *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, supra note 52 at 766.
119 *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, supra note 69 at 773.
120 *Reagan v. Commissioner of Internal Revenue*, 141 Phil. 621, 625 (1969).
121 *Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, March 16, 2021, citing *Pimentel Jr. v. Executive Secretary*, 501 Phil. 303, 313 (2005).
122 1987 CONSTITUTION, Article VII, Section 21.

> 11.2 All the data and information acquired for the fulfillment of the Seismic Work referred to in Article 4 hereof and their interpretation shall be **jointly owned by the Parties**. In the event any Party wishes to sell or disclose the above-mentioned data and information after the expiration of the confidentiality term, **prior written consent thereof shall be obtained from the rest of the Parties.**
>
> x x x x
>
> 11.4 **The Parties' rights, interest and obligations under the Agreement shall be on equal basis.**[123] (Emphasis supplied)

It is apparent from the foregoing that the PNOC bargained away the State's supposed full control of all the information acquired from the seismic survey as the consent of CNOOC and PETROVIETNAM would be necessary before any information derived therefrom may be disclosed.

In their last attempt to maintain the constitutionality of the JMSU, respondents claimed that it was signed to foster international cooperation and to prevent the escalation of conflict in the South China Sea. These intentions are noble, and it is not for Us to question the wisdom behind the State's foreign policy. Nevertheless, as early as *Angara v. The Electoral Commission*,[124] We declared that the Supreme Court is the final arbiter that checks the other departments in the exercise of their power to determine the law, and to declare executive and legislative acts void if violative of the Constitution. By virtue of Our role as the guardian of the Constitution,[125] We hereby declare the JMSU unconstitutional for failure to comply with Section 2, Article XII of the 1987 Constitution.

WHEREFORE, the petition is **GRANTED**. The Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea By and Among China National Offshore Oil Corporation and Vietnam Oil and Gas Corporation and Philippine National Oil Company is declared **UNCONSTITUTIONAL and VOID**.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

---

123 *Rollo*, pp. 85-87.
124 63 Phil. 139, 156-157 (1936).
125 *Bengzon v. Drilon*, 284 Phil. 245, 260 (1992).

WE CONCUR:

See separate concurring opinion

ALEXANDER G. GESMUNDO
Chief Justice

See separate concurring opinion

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On leave)
RAMON PAUL L. HERNANDO
Associate Justice

Pls. see Dissent.

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

Please see Dissenting Opinion

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice