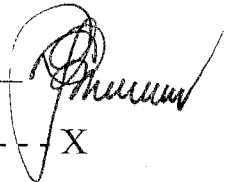


EN BANC

G.R. No. 182734 – 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* v. 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*.

Date Promulgated:

January 10, 2023



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DISSENTING OPINION

ZALAMEDA, J.:

Protection of our country’s sovereignty, territory, and natural resources is a policy that lies at the core of the 1987 Constitution’s provisions on National Economy and Patrimony. Thus, it is understandable, if not commendable, to be vigilant in laying out and explaining the intricacies and boundaries of the rules stated therein. Verily, as the guardian of the Constitution, this Court has the power to rule on what our law is, and ensure that the other branches of the government do not transgress constitutional boundaries. That this Court is able to make definitive rulings on political matters does not mean, however, that it should always introduce itself into “controversial” disputes such as the case at bar. I write this dissent to draw attention to the equally crucial duty to restrain the exercise of this Court’s judicial power in moot and academic cases.

Section 1 of Article VIII of the 1987 Constitution is clear. “Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable xxx.” Plainly, courts are authorized to rule only on cases where it can provide legal, practical, and actual relief to the parties. In the 1936 case of *Angara v.*



Electoral Commission (Angara),¹ this Court has interpreted this Constitutional provision to be an encapsulation of the limits of judicial review, viz.:

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.²

Justice Laurel's disquisition in *Angara* is significant because it enunciates the policy that judicial power is not absolute and should not be used as a tool to assert ascendancy over other branches. Indeed, while this Court is bound by the duty to ensure that the other branches of government do not transgress constitutional limits, it also has the concurrent obligation to respect their competence, authority, and discretion. Thus, courts can only exercise the power of judicial review in a limited sense and upon concurrence of various requisites, one of which is the existence of an actual case or controversy.

One of the ways the Court implements this actual case or controversy rule is by refraining from adjudicating moot and academic cases. A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition.

¹ 63 Phil. 139 (1936).

² *Id.*

Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect since, in the nature of things, it cannot be enforced.³

The theory behind the requisites of judicial review, including the rule against deciding moot cases, is that an ongoing controversy where the self-interests of the parties are clashing, sharpens the issues and enlightens the courts on the facts, legal arguments, and policies that are relevant in resolving the case. When one party can no longer obtain actual relief or the complained act ceases, it is likely that the interested party will no longer exert the same effort as when he stands to be injured by the decision. In such a situation, courts may likely overlook certain matters which may be relevant in adjudicating the case. Likewise, since the controversies may have already resolved itself by the occurrence of some event, the courts will just be rendering advisory opinions which may unnecessarily transcend judicial functions and intrude into purely political functions. If these "advisory" opinions become judicial precedents, the risks and complications are compounded. Further, it is also relevant to highlight that deciding moot controversies divert judicial resources from ongoing controversies needing immediate resolution. Thus, in order to manage such possible difficulties, it is imperative that this Court clarify its basis for deciding moot and academic cases.⁴

At present, jurisprudence is indeed settled that moot cases may still be decided on the merits if: (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.

There are also instances where the Court takes on the role of an educator, and guides the Bench, the Bar, and the public on the constitutional or legal principles involved in a certain case. In *Salonga v. Paño*,⁵ the former Senator Jovito Salonga (Senator Salonga) questioned his arrest and the filing of Information against him for violation of the Revised Anti-Subversion Act on account of the Plaza Miranda bombings. However, before this Court rendered a decision on the case, the charges against Senator Salonga were dropped.⁶ This Court, despite the dismissal of the criminal charges against the Senator, still proceeded to resolve the issue on whether there was a

³ 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.

⁴ See *Cases Moot on Appeal: A Limit on the Judicial Power*, 103 *University of Pennsylvania Law Review*, 772, 796 (1955).

⁵ 219 *Phil.* 402 (1985).

⁶ *Id.*

prima facie case against him, and opined that:

Recent developments in this case serve to focus attention on a not too well-known aspect of the Supreme Court's functions.

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 [the] bench and bar on the extent of protection given by constitutional guarantees.**⁷ (Emphasis supplied.)

I submit that the instant petition should not be exempted from the application of the actual case or controversy requirement. The Joint Marine Seismic Undertaking (JMSU) entered into by the China National Offshore Oil Corporation (CNOOC) and Vietnam Oil and Gas Corporation (PETROVIETNAM) and Philippine National Oil Company (PNOC) has long expired on 30 June 2008. Thus, there is simply no practical value to adjudicating the issues concerning a lifeless agreement.

In this case, the *ponencia* argues that all the four (4) exceptions to the mootness rule are applicable, granting this Court the authority to rule on the substantive issues presented in the petition. *First*, it declared that there is a grave violation of Section 2, Article XII⁸ of the Constitution, since the

⁷ *Id.*

⁸ 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 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.



government allowed foreign-owned corporations to explore Our country's petroleum resources. *Second*, it concluded that the case is of paramount public interest as it involves the alleged exploration of a portion of the South China Sea that the Philippines considers to be part of its territory. *Third*, it cited this Court's duty under Section 2, Article XII of the 1987 Constitution to formulate rules for the guidance of the Bench and the Bar, and the necessity to define the meaning of "exploration" under the Constitution. *Finally*, it declared that similar agreements like the JMSU may be entered into in the future by the government or any of its agencies and/or instrumentalities.⁹

I remain unconvinced that the instant case justifies the non-observance of the mootness principle, thereby allowing this Court to decide the constitutionality of the JMSU. The basic premise of the *ponencia's* decision to take cognizance of the case despite the expiration of the agreement in 2008 is the finding that the activities to be undertaken in the JMSU constitute exploration that violates the requirements of Section 2, Article XII of the 1987 Constitution. With all due respect, although this conclusion is animated by the best objectives, I find that it is based on problematic grounds. Central to the discussion is Section 4.1 of the JMSU, which provides:

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.

In the first place, the nature of the exact activities agreed upon, and actually undertaken by the parties to the JMSU were not sufficiently established. While scientific textbooks provide useful information on what seismic survey means, it remains unclear how the same constitutes as exploration activity. The uncertainty on the meaning of collection and processing of seismic lines is even made more obvious by other provisions in the JMSU, *viz.* :

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**.

x x x x

Article 5.4 The parties shall empower the JOC to:

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

⁹ *Ponencia*, pp. 13-14.

- 5.4.1. Formulate the annual work program and budget;
- 5.4.2. Discuss and determine the manner of data exchange;
- 5.4.3. Arrange **further joint studies**;
- 5.4.4. Formulate the **actual plan** for seismic line acquisition;
- 5.4.5. Sign service contracts for seismic acquisition and processing; and,
- 5.4.6. Ensure interpretation of and evaluation on the relevant data and submit final evaluation report to the Parties. (Emphasis supplied.)

Indeed, respondents insist that the parties to the JMSU merely agreed to undertake a pre-exploration project in the Agreement Area somewhere in the South China Sea. Basing solely on the records of the case, it remains unclear what activities were contemplated to be undertaken and how these activities translate to "exploration" as contemplated under our Constitution. With the agreement terminated more than a decade ago, I am also unsure how this supposed seismic survey was actually carried out by the parties to the JMSU. Without these relevant pieces of information, I cannot, in good faith, join the majority in concluding that the JMSU is unconstitutional.

Further, the *ponencia* assumes that the exploration activity was conducted in our exclusive economic zone. However, the exact location was not fully litigated by the parties. It was merely based on the unrebutted approximation of Prof. Giovanni Tapang of the National Institute of Physics of the University of the Philippines-Diliman of the supposed Agreement Area. To my mind, these lingering doubts and questions on the scope of the JMSU highlight the relevance of observing the actual case or controversy. Indeed, a live or ongoing controversy would have clarified the allegations, sharpened the arguments of the parties, and assisted this Court in its analysis of the provisions of the agreement.

Likewise, I find that it is speculative to say that the instant case is capable of repetition yet evading review. The purpose of this exception is to allow judicial review of claims which are of short duration that they would normally escape scrutiny.¹⁰ In *Madrilejos v. Gatdula*,¹¹ this Court clarified that this exception requires the concurrence of two (2) requisites: the duration of the challenged action is too short to be fully litigated prior to its cessation or expiration, and (2) a reasonable expectation that the same complaining party would be subjected to the same action again. In order for a case to be considered under this exception, the time constraint must be clear. The seminal case of *Roe v. Wade*¹² is an oft-cited example of the time constraint contemplated under this requirement. The petitioner in that case,

¹⁰ Supra note 4.

¹¹ 03 University of Pennsylvania Law Review, 772, 796 (1955).

¹² 410 U.S. 113 (1973).

then a pregnant woman, questioned the anti-abortion statutes of Texas and Georgia based on her constitutional right to terminate pregnancy. When the case reached the Supreme Court of the United States (USSC), her pregnancy was already completed, thus making it moot. The USSC, however, decided the issues presented, stating that the laws prohibiting abortion would continue to inflict wrongs in the future and they would inevitably escape review because of the short period of human gestation compared to court litigation.

The “capable of repetition, yet evading review” exception also requires that there must be a “reasonable expectation” or a “demonstrated probability” that the same controversy will recur involving the same complaining party. In *David v. Macapagal-Arroyo*,¹³ this Court considered the case capable of repetition but evading review given the recurrence of various “emergencies” from the time she assumed office. Meanwhile, in *Belgica v. Ochoa, Jr.*,¹⁴ this Court still entertained and decided the petitions assailing the Priority Development Assistance Fund in the 2013 General Appropriations Act despite its abolition because the preparation and passage of the national budget happen annually.

Going back to the instant Petition, I do not see how the three-year term of the JMSU is too short of a period for it to be fully litigated in court. While I do not dismiss petitioners’ struggles in securing an official copy of the JMSU, with their requests for the JMSU being ignored by both the Department of Foreign Affairs (DFA) and then House of Representatives (HR) Speaker Prospero Nograles (Speaker Nograles), it was not clear from the records why the petition was not filed earlier than a month prior to the JMSU’s expiration. Further, I do not view that the case presented a reasonable expectation or demonstrated probability of repetition. This Court is unaware of any similar agreement entered into by the succeeding administrations involving our natural resources within our territory or even in our exclusive economic zone. Given the foregoing, I find that Our opinion on constitutional issues concerning a terminated agreement whose meaning and scope were not fully ventilated by the parties, is speculative and mere advisory in nature.


To conclude, the Constitution indeed vests this Court the authority to rule, and guide the public on the intricacies of the Constitution and the law, but it is not a license to solve and end all conceivable problems, particularly in controversies that may involve matters beyond the legal realm. While this Court can create impactful precedents in moot cases of public importance, it is relevant to point out that the legislative and the executive action can also accomplish the same or equivalent consequences with laws or executive

¹³ 522 Phil. 705 (2006).

¹⁴ 721 Phil. 416 (2013).

issuances, backed by their own unique powers and perspectives. This is precisely why in a democratic jurisdiction as ours, advisory opinions are generally avoided. This is because We run the risk of overstepping the boundaries of the Constitution which We are also bound to protect. Therefore, it is imperative that whenever this Court decides moot cases, it is ensured that as much as possible, the adverse and complete litigation present in a live controversy is, at least approximated.¹⁵

ACCORDINGLY, I vote to **DENY** the Petition.


RODIL V. ZALAMEDA
Associate Justice

¹⁵ Supra note 4.