

## **EN BANC**

**[ G.R. No. 197422, November 03, 2020 ]**

**REP. EDCCEL C. LAGMAN, PETITIONER, VS. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR. AND DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO B. ABAD, RESPONDENTS.**

**[G.R. No. 197950]**

**PROSPERO A. PICHAY, JR., PETITIONER, VS. GOVERNANCE COMMISSION FOR GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., AND DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO B. ABAD, RESPONDENTS.**

### **DECISION**

**LEONEN, J.:**

Congress may legislate changes to aspects of public offices which exist by virtue of the same exercise of legislative power. These changes are valid when done in good faith and pursuant to clear policy objectives.

This Court resolves the consolidated Petitions in G.R. No. 197422<sup>[1]</sup> and G.R. No. 197950,<sup>[2]</sup> which both assail Republic Act No. 10149 as unconstitutional. G.R. No. 197422 is a Petition for Certiorari and Prohibition under Rule 65 filed by Representative Edcel C. Lagman on July 15, 2011. G.R. No. 197950 is a Petition for Certiorari and Prohibition with prayer for temporary restraining order and preliminary injunction, filed by Prospero A. Pichay, Jr. on August 22, 2011.

Petitioners allege, among others, that the statute violates the affected officials' right to security of tenure, unduly delegates legislative powers, arrogates a constitutional commission's jurisdiction, and breaches the equal protection clause.

Congressional inquiries into the activities of some government-owned or controlled corporations (GOCCs) revealed several excesses and inefficiencies that drained government finances. Some of the uncovered excesses and inefficiencies involved the "obscene bonuses" received by the board of directors of some GOCCs, despite the GOCCs poor financial condition.<sup>[3]</sup> Certain GOCCs were also found to be implementing "excessively generous retirement schemes,"<sup>[4]</sup> most notably in the Manila Economic and Cultural Office, where directors could retire after only two years of service, at the rate P600,000.00 per year of service.<sup>[5]</sup>

Inquiries in 2009 alone highlighted the GOCCs' mounting debt despite accounting for 28% of national expenditures. Moreover, GOCCs' assets were valued at P5.557

trillion, exceeding the national government's assets of P2.879 trillion.<sup>[6]</sup> Of the P475.296-billion inter-agency receivables, 91% or P433.383 billion were due from GOCCs.<sup>[7]</sup> Despite these inefficiencies, GOCCs still declared approximately P14.6 billion in dividends, and received subsidies worth around P7.6 billion, or greater than their tax liability of around P6.7 billion.<sup>[8]</sup>

To address these abuses, Republic Act No. 10149,<sup>[9]</sup> or the GOCC Governance Act, was signed into law on June 6, 2011.<sup>[10]</sup>

The law is primarily geared towards optimizing the State's "ownership rights in GOCCs and to promote growth by ensuring that operations are consistent with national development policies and programs."<sup>[11]</sup>

As such, the law created the Governance Commission for GOCCs (Governance Commission), an agency attached to the Office of the President. It is empowered, among others, to evaluate the performance and determine the relevance of GOCCs, and to ascertain whether these GOCCs should be reorganized, merged, streamlined, abolished, or privatized, in consultation with the department or agency to which they are attached.<sup>[12]</sup>

On July 15 and August 22, 2011, Representative Edcel C. Lagman (Lagman) and Prospero A. Pichay, Jr. (Pichay) filed their respective Petitions for Certiorari and Prohibition assailing the constitutionality of Republic Act No. 10149. The Lagman Petition<sup>[13]</sup> was docketed as G.R. No. 197422, while the Pichay Petition<sup>[14]</sup> was docketed as G.R. No. 197950.

Impleaded as respondents for both petitions were the following: the Governance Commission; former Executive Secretary Paquito N. Ochoa, Jr., who was directed to execute Republic Act No. 10149; and former Finance Secretary Cesar V. Purisima and former Budget and Management Secretary Florencio B. Abad, as *ex-officio* members tasked with the release of funding and support for the initial operations of the Governance Commission.

Respondents filed their separate Comments.<sup>[15]</sup> Petitioner Lagman filed his Reply.<sup>[16]</sup>

On February 7, 2012, the cases were consolidated. Each petitioner filed his Memorandum;<sup>[17]</sup> and respondents, in turn, filed their Consolidated Memorandum.<sup>[18]</sup>

In G.R. No. 197422, petitioner Lagman submits that he has presented an actual case and has legal standing to invoke judicial review.<sup>[19]</sup>

As to an actual case, he notes that the patent violations of the Constitution—violation of the security of tenure of public officials, undue delegation of legislative powers, and derogation of the Civil Service Commission's powers<sup>[20]</sup>—are actual controversies,<sup>[21]</sup> and not anticipatory, since the assailed law is already being implemented.<sup>[22]</sup>

As for legal standing, petitioner Lagman submits that he has substantial interest as a legislator.<sup>[23]</sup> Just the same, he contends that the Petition should be exempt from the rule on hierarchy of courts, "in the interest of justice" and the case raising issues of paramount public interest and transcendental importance.<sup>[24]</sup>

He adds that there is "no plain, speedy and adequate remedy available" to assail Republic Act No. 10149.<sup>[25]</sup> He claims that he filed the Petition out of urgency, due to the impending removal of the GOCC officers.<sup>[26]</sup>

On substantive matters, petitioner Lagman assails Republic Act No. 10149 as unconstitutional for violating the security of tenure<sup>[27]</sup> of officials, trustees, and directors of GOCCs with original charters. The law shortens the directors' terms to one year, and provides in Section 17,<sup>[28]</sup> paragraph 3 that the terms of incumbent chief executive officers (CEOs) and appointive board members shall only be up to June 30, 2011.<sup>[29]</sup> This pre-termination or shortening of term allegedly infringes on the security of tenure of those with fixed terms under the GOCCs' special charters,<sup>[30]</sup> and is "an outright removal" of the affected incumbents "without cause and without due process."<sup>[31]</sup>

Petitioner Lagman also assails Section 5<sup>[32]</sup> of Republic Act No. 10149<sup>[33]</sup> as an undue delegation of legislative powers.<sup>[34]</sup> The law delegates to the Governance Commission the power to "create, reorganize, streamline, merge, abolish and privatize"<sup>[35]</sup> GOCCs with original charters,<sup>[36]</sup> and allows it "to recommend, for the President's sole approval, the abolition and privatization of GOCCs chartered under special law."<sup>[37]</sup> These powers, he argues, transgress on exclusively legislative powers.<sup>[38]</sup>

Even if such power could be validly delegated, petitioner Lagman argues that Section 5 fails to provide sufficient guidelines or definitive standards. Thus, it is still an undue delegation of legislative power.<sup>[39]</sup>

Petitioner Lagman further argues that other provisions of the law also form undue delegation of legislative powers. Sections 5(h),<sup>[40]</sup> 8,<sup>[41]</sup> 9,<sup>[42]</sup> and 23<sup>[43]</sup> of Republic Act No. 10149 give to the Governance Commission and the President Congress's power<sup>[44]</sup> to fix the salaries, emoluments, and allowances of officials of the GOCCs with original charters,<sup>[45]</sup> through the Compensation and Position Classification System that the Governance Commission is authorized to develop.<sup>[46]</sup>

Petitioner Lagman insists that the Governance Commission diminishes,<sup>[47]</sup> if not supplants, the constitutional<sup>[48]</sup> jurisdiction of the Civil Service Commission<sup>[49]</sup> over GOCCs with original charters.<sup>[50]</sup> He points out that the law makes final the qualifications and appointments in GOCCs, set by the Governance Commission, without the approval of the Civil Service Commission.<sup>[51]</sup>

In G.R. No. 197950, petitioner Pichay seeks to declare Republic Act No. 10149 unconstitutional for being an undue delegation of legislative power, violating the separation of powers, and going against the equal protection clause.<sup>[52]</sup> Pichay is

the former chairperson of the Local Water Utilities Administration, a GOCC created under Presidential Decree No. 198, as amended.<sup>[53]</sup>

Petitioner Pichay contends that Section 5 of Republic Act No. 10149 in validly delegates legislative power by empowering the Governance Commission to abolish GOCCs.<sup>[54]</sup> He contends that the phrase "the best interest of the State" is not a *sufficient* standard for the Governance Commission to abolish, reorganize, merge, streamline or privatize GOCCs.<sup>[55]</sup> This delegation, moreover, allegedly violates the principle of separation of powers.<sup>[56]</sup>

Petitioner Pichay further alleges that there is no reasonable basis for excluding some GOCCs from Republic Act No. 10149.<sup>[57]</sup> He states that the law exempted a total of 13,968 GOCCs from its coverage.<sup>[58]</sup> Among these, he notes the arbitrary exclusion of local water districts and economic zones, saying that<sup>[59]</sup> this does not rest on substantial distinctions<sup>[60]</sup> and is not germane to the purpose of the law.<sup>[61]</sup> Hence, he claims that the law violates the equal protection clause.<sup>[62]</sup>

Petitioner Pichay further contends that Republic Act No. 10149, as a general law, cannot amend GOCC charters, which are special laws.<sup>[63]</sup>

Finally, petitioner Pichay submits that the issue is of transcendental importance, meriting the *locus standi* requirement to be relaxed.<sup>[64]</sup> Moreover, he claims that he may sue as taxpayer, as the assailed law provides for appropriation of public funds, found in Section 29.<sup>[65]</sup>

Respondents, through the Office of the Solicitor General, claim that the Petitions do not show any actual case that calls for judicial review. They point out that the Petitions were brought after Republic Act No. 10149's enactment and before any governmental action prejudicial to the affected parties. They submit that this Court should refrain from passing upon the constitutionality of Republic Act No. 10149 until an actual case arises.<sup>[66]</sup>

Respondents further contend that the requisite of legal standing is lacking, as petitioners were neither CEOs nor members of any GOCC board who have the legal standing of an aggrieved party.<sup>[67]</sup>

They note that petitioner Lagman did not specify which powers of Congress were or would be infringed upon;<sup>[68]</sup> and contend that it is Lagman, rather, who undermines the collective will and wisdom of Congress in enacting Republic Act No. 10149.<sup>[69]</sup> Likewise, petitioner Pichay supposedly failed to show direct injury, as he was no longer holding any position in the Local Water Utilities Administration when he filed his Petition. In any case, even without Republic Act No. 10149, the Local Water Utilities Administration is an attached agency of the Office of the President, always subject to the President's power to reorganize under the Administrative Code.<sup>[70]</sup>

Respondents also fault petitioners for failing to show that the cases raise issues of transcendental importance.<sup>[71]</sup> At any rate, they maintain that the assailed law is presumed constitutional until a clear breach of the Constitution is shown.<sup>[72]</sup>

Respondents further argue that petitioners failed to show that there was no appeal or any "plain, speedy, and adequate remedy" if Republic Act No. 10149 were to be implemented.<sup>[73]</sup> They also assert that the Petitions do not impute grave abuse of discretion, even while seeking to declare the law unconstitutional, thus, making them actions for declaratory relief, over which this Court has no original jurisdiction.<sup>[74]</sup> Further, the petitions filed directly before the Court violate the rule on judicial hierarchy.<sup>[75]</sup>

Respondents submit that considering the "laudable purpose"<sup>[76]</sup> of the law and the government's good faith to restructure the GOCCs, Republic Act No. 10149 must prevail over the unwarranted fear that the affected officials' security of tenure were violated.<sup>[77]</sup>

Respondents aver that Article IX-B, Section 2(3) of the Constitution and Book V, Title I-A, Chapter 6, Section 46 of the Administrative Code give protection from removal, dismissal, or suspension without lawful cause only to an "employee" or "officer"<sup>[78]</sup>—which appointive members of the Board of GOCCs are not.<sup>[79]</sup> Hence, they are not covered by the law.<sup>[80]</sup>

Furthermore, respondents contend that the right to security of tenure is unavailing for incumbent CEOs and appointive members of the Board of GOCCs whose terms of office are fixed by law.<sup>[81]</sup> They contend that Congress's power to create a public office includes the power to abolish it and limit the terms of its officials.<sup>[82]</sup> According to respondents, by reducing the terms of office of all incumbent CEOs and appointive members of the Board of GOCCs to June 30, 2011,<sup>[83]</sup> Congress merely expressed its will to supersede the GOCC charters which provide different terms.<sup>[84]</sup> Incidentally, respondents argue that "term" is different from "tenure," and the affected officials would not be "removed" as they would hold their office until their new terms expire on June 30, 2011.<sup>[85]</sup>

Even assuming that they were "removed," as argued by petitioner Lagman,<sup>[86]</sup> respondents submit that Republic Act No. 10149 constitutes "good cause," which justifies the alleged removal of affected GOCC officers.<sup>[87]</sup> Respondents dismiss as unfounded<sup>[88]</sup> the concern that the law "lumped together both the errant and blameless officials[.]"<sup>[89]</sup> They point out that under the law, incumbent officials who have satisfactory performance may be reappointed, or allowed to hold over until their successors have been appointed.<sup>[90]</sup> At any rate, respondents argue that the affected officials have no vested right to their offices.<sup>[91]</sup>

Respondents contend that Section 5 of Republic Act No. 10149 merely delegated to the Governance Commission the power to ascertain facts to determine if the reorganization, abolition, merger, streamlining, or privatization of GOCCs would be proper. In other words, they explain, the abolition or reorganization was already determined by Congress, and the Governance Commission merely implements this decision based on certain standards set in Section 5 and the legislative policy in Section 2.<sup>[92]</sup>