

## EN BANC

[ G.R. No. 193462, February 04, 2014 ]

**DENNIS A.B. FUNA, PETITIONER, VS. MANILA ECONOMIC AND CULTURAL OFFICE AND THE COMMISSION ON AUDIT, RESPONDENTS.**

### DECISION

**PEREZ, J.:**

This is a petition for *mandamus*<sup>[1]</sup> to compel:

- 1.) the Commission on Audit (COA) to audit and examine the funds of the Manila Economic and Cultural Office (MECO), *and*
- 2.) the MECO to submit to such audit and examination.

The antecedents:

#### Prelude

The aftermath of the Chinese civil war<sup>[2]</sup> left the country of China with two (2) governments in a stalemate espousing competing assertions of sovereignty.<sup>[3]</sup> On one hand is the communist People's Republic of China (PROC) which controls the mainland territories, and on the other hand is the nationalist Republic of China (ROC) which controls the island of Taiwan. For a better part of the past century, both the PROC and ROC adhered to a policy of "*One China*" *i.e.*, the view that there is only one legitimate government in China, but differed in their respective interpretation as to which that government is.<sup>[4]</sup>

With the existence of two governments having conflicting claims of sovereignty over one country, came the question as to which of the two is deserving of recognition as that country's legitimate government. Even after its relocation to Taiwan, the ROC used to enjoy diplomatic recognition from a majority of the world's states, partly due to being a founding member of the United Nations (UN).<sup>[5]</sup> The number of states partial to the PROC's version of the *One China* policy, however, gradually increased in the 1960s and 70s, most notably after the UN General Assembly adopted the monumental *Resolution 2758* in 1971.<sup>[6]</sup> Since then, almost all of the states that had erstwhile recognized the ROC as the legitimate government of China, terminated their official relations with the said government, in favor of establishing diplomatic relations with the PROC.<sup>[7]</sup> The Philippines is one of such states.

The Philippines formally ended its official diplomatic relations with the government in Taiwan on 9 June 1975, when the country and the PROC expressed mutual recognition thru the *Joint Communiqué of the Government of the Republic of the*

*Philippines and the Government of the People's Republic of China* (Joint Communiqué).<sup>[8]</sup>

Under the Joint Communiqué, the Philippines categorically stated its adherence to the *One China* policy of the PROC. The pertinent portion of the Joint Communiqué reads:<sup>[9]</sup>

The Philippine Government recognizes the **Government of the People's Republic of China as the sole legal government of China**, fully understands and respects the position of the Chinese Government that there is but **one China and that Taiwan is an integral part of Chinese territory, and decides to remove all its official representations from Taiwan within one month from the date of signature of this communiqué**. (Emphasis supplied)

The Philippines' commitment to the *One China* policy of the PROC, however, did not preclude the country from keeping unofficial relations with Taiwan on a "*people-to-people*" basis.<sup>[10]</sup> Maintaining ties with Taiwan that is permissible by the terms of the Joint Communiqué, however, necessarily required the Philippines, and Taiwan, to course any such relations thru offices outside of the *official* or governmental organs.

Hence, despite ending their diplomatic ties, the people of Taiwan and of the Philippines maintained an unofficial relationship facilitated by the offices of the Taipei Economic and Cultural Office, for the former, and the MECO, for the latter.<sup>[11]</sup>

The MECO<sup>[12]</sup> was organized on 16 December 1997 as a non-stock, non-profit corporation under Batas Pambansa Blg. 68 or the Corporation Code.<sup>[13]</sup> The purposes underlying the incorporation of MECO, as stated in its articles of incorporation,<sup>[14]</sup> are as follows:

1. **To establish and develop the commercial and industrial interests of Filipino nationals here and abroad, and assist on all measures designed to promote and maintain the trade relations of the country with the citizens of other foreign countries;**
2. To receive and accept grants and subsidies that are reasonably necessary in carrying out the corporate purposes provided they are not subject to conditions defeatist for or incompatible with said purpose;
3. To acquire by purchase, lease or by any gratuitous title real and personal properties as may be necessary for the use and need of the corporation, and to dispose of the same in like manner when they are no longer needed or useful; and
4. To do and perform any and all acts which are deemed reasonably necessary to carry out the purposes. (Emphasis supplied)

From the moment it was incorporated, the MECO became the corporate entity "*entrusted*" by the Philippine government with the responsibility of fostering "*friendly*" and "*unofficial*" relations with the people of Taiwan, particularly in the areas of trade, economic cooperation, investment, cultural, scientific and educational exchanges.<sup>[15]</sup> To enable it to carry out such responsibility, the MECO was

"authorized" by the government to perform certain "*consular and other functions*" that relates to the promotion, protection and facilitation of Philippine interests in Taiwan.<sup>[16]</sup>

At present, it is the MECO that oversees the rights and interests of Overseas Filipino Workers (OFWs) in Taiwan; promotes the Philippines as a tourist and investment destination for the Taiwanese; and facilitates the travel of Filipinos and Taiwanese from Taiwan to the Philippines, and *vice versa*.<sup>[17]</sup>

### *Facts Leading to the Mandamus Petition*

On 23 August 2010, petitioner sent a letter<sup>[18]</sup> to the COA requesting for a "*copy of the latest financial and audit report*" of the MECO invoking, for that purpose, his "*constitutional right to information on matters of public concern*." The petitioner made the request on the belief that the MECO, being under the "*operational supervision*" of the Department of Trade and Industry (DTI), is a government owned and controlled corporation (GOCC) and thus subject to the audit jurisdiction of the COA.<sup>[19]</sup>

Petitioner's letter was received by COA Assistant Commissioner Jaime P. Naranjo, the following day.

On 25 August 2010, Assistant Commissioner Naranjo issued a *memorandum*<sup>[20]</sup> referring the petitioner's request to COA Assistant Commissioner Emma M. Espina for "*further disposition*." In this *memorandum*, however, Assistant Commissioner Naranjo revealed that the MECO was "*not among the agencies audited by any of the three Clusters of the Corporate Government Sector*."<sup>[21]</sup>

On 7 September 2010, petitioner learned about the 25 August 2010 *memorandum* and its contents.

### *Mandamus Petition*

Taking the 25 August 2010 *memorandum* as an admission that the COA had never audited and examined the accounts of the MECO, the petitioner filed the instant petition for *mandamus* on 8 September 2010. Petitioner filed the suit in his capacities as "*taxpayer, concerned citizen, a member of the Philippine Bar and law book author*."<sup>[22]</sup> He impleaded both the COA and the MECO.

Petitioner posits that by failing to audit the accounts of the MECO, the COA is neglecting its duty under Section 2(1), Article IX-D of the Constitution to audit the accounts of an otherwise *bona fide* GOCC or government instrumentality. It is the adamant claim of the petitioner that the MECO is a GOCC *without* an original charter or, at least, a government instrumentality, the funds of which partake the nature of public funds.<sup>[23]</sup>

According to petitioner, the MECO possesses all the essential characteristics of a GOCC and an instrumentality under the Executive Order No. (EO) 292, s. 1987 or the Administrative Code: it is a non-stock corporation *vested with governmental functions relating to public needs; it is controlled by the government thru a board of directors appointed by the President of the Philippines*; and while not integrated within the executive departmental framework, it is nonetheless *under the operational and policy supervision of the DTI*.<sup>[24]</sup> As petitioner substantiates:

1. The MECO is vested with government functions. It performs functions that are equivalent to those of an embassy or a consulate of the Philippine government.  
[25] A reading of the authorized functions of the MECO as found in EO No. 15, s. 2001, reveals that they are substantially the same functions performed by the Department of Foreign Affairs (DFA), through its diplomatic and consular missions, per the Administrative Code.[26]
2. The MECO is controlled by the government. It is the President of the Philippines that actually appoints the directors of the MECO, albeit indirectly, by way of “*desire letters*” addressed to the MECO’s board of directors.[27] An illustration of this exercise is the assumption by Mr. Antonio Basilio as chairman of the board of directors of the MECO in 2001, which was accomplished when former President Gloria Macapagal-Arroyo, through a memorandum[28] dated 20 February 2001, expressed her “*desire*” to the board of directors of the MECO for the election of Mr. Basilio as chairman.[29]
3. The MECO is under the operational and policy supervision of the DTI. The MECO was placed under the operational supervision of the DTI by EO No. 328, s. of 2004, and again under the policy supervision of the same department by EO No. 426, s. 2005.[30]

To further bolster his position that the accounts of the MECO ought to be audited by the COA, the petitioner calls attention to the practice, allegedly prevailing in the United States of America, wherein the American Institute in Taiwan (AIT)—the counterpart entity of the MECO in the United States—is supposedly audited by that country’s Comptroller General.[31] Petitioner claims that this practice had been confirmed in a decision of the United States Court of Appeals for the District of Columbia Circuit, in the case of *Wood, Jr., ex rel. United States of America v. The American Institute in Taiwan, et al.*[32]

#### *The Position of the MECO*

The MECO prays for the dismissal of the *mandamus* petition on procedural and substantial grounds.

On procedure, the MECO argues that the *mandamus* petition was prematurely filed.  
[33]

The MECO posits that a cause of action for *mandamus* to compel the performance of a ministerial duty required by law only ripens once there has been a refusal by the tribunal, board or officer concerned to perform such a duty.[34] The MECO claims that there was, in this case, no such refusal either on its part or on the COA’s because the petitioner never made any demand for it to submit to an audit by the COA or for the COA to perform such an audit, prior to filing the instant *mandamus* petition.[35] The MECO further points out that the only “demand” that the petitioner made was his request to the COA for a copy of the MECO’s latest financial and audit report—which request was not even finally disposed of by the time the instant petition was filed.[36]

On the petition’s merits, the MECO denies the petitioner’s claim that it is a GOCC or a government instrumentality.[37] While performing public functions, the MECO

maintains that it is not owned or controlled by the government, and its funds are private funds.<sup>[38]</sup> The MECO explains:

1. It is *not* owned or controlled by the government. Contrary to the allegations of the petitioner, the President of the Philippines does not appoint its board of directors.<sup>[39]</sup> The “*desire letter*” that the President transmits is merely recommendatory and not binding on the corporation.<sup>[40]</sup> As a corporation organized under the Corporation Code, matters relating to the election of its directors and officers, as well as its membership, are governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws.<sup>[41]</sup> Thus, it is the directors who elect the corporation’s officers; the members who elect the directors; and the directors who admit the members by way of a unanimous resolution. All of its officers, directors, and members are private individuals and are not government officials.<sup>[42]</sup>
2. The government merely has *policy* supervision over it. Policy supervision is a lesser form of supervision wherein the government’s oversight is limited only to ensuring that the corporation’s activities are in tune with the country’s commitments under the *One China* policy of the PROC.<sup>[43]</sup> The day-to-day operations of the corporation, however, remain to be controlled by its duly elected board of directors.<sup>[44]</sup>

The MECO emphasizes that categorizing it as a GOCC or a government instrumentality can potentially violate the country’s commitment to the *One China* policy of the PROC.<sup>[45]</sup> Thus, the MECO cautions against applying to the present *mandamus* petition the pronouncement in the *Wood* decision regarding the alleged auditability of the AIT in the United States.<sup>[46]</sup>

#### *The Position of the COA*

The COA, on the other hand, advances that the *mandamus* petition ought to be dismissed on procedural grounds and on the ground of mootness.

The COA argues that the *mandamus* petition suffers from the following procedural defects:

1. The petitioner lacks *locus standi* to bring the suit. The COA claims that the petitioner has not shown, at least in a concrete manner, that he had been aggrieved or prejudiced by its failure to audit the accounts of the MECO.<sup>[47]</sup>
2. The petition was filed in violation of the doctrine of hierarchy of courts. The COA faults the filing of the instant *mandamus* petition directly with this Court, when such petition could have very well been presented, at the first instance, before the Court of Appeals or any Regional Trial Court.<sup>[48]</sup> The COA claims that the petitioner was not able to provide compelling reasons to justify a direct resort to the Supreme Court.<sup>[49]</sup>

At any rate, the COA argues that the instant petition already became *moot* when COA Chairperson Maria Gracia M. Pulido-Tan (Pulido-Tan) issued *Office Order No. 2011-698*<sup>[50]</sup> on 6 October 2011.<sup>[51]</sup> The COA notes that under *Office Order No. 2011-698*, Chairperson Pulido-Tan already directed a team of auditors to proceed to