

EN BANC

[G.R. No. 209287, July 01, 2014]

MARIA CAROLINA P. ARAULLO, CHAIRPERSON, BAGONG ALYANSANG MAKABAYAN; JUDY M. TAGUIWALO, PROFESSOR, UNIVERSITY OF THE PHILIPPINES DILIMAN, CO-CHAIRPERSON, PAGBABAGO; HENRI KAHN, CONCERNED CITIZENS MOVEMENT; REP. LUZ ILAGAN, GABRIELA WOMEN'S PARTY REPRESENTATIVE; REP. TERRY L. RIDON, KABATAAN PARTYLIST REPRESENTATIVE; REP. CARLOS ISAGANI ZARATE, BAYAN MUNA PARTYLIST REPRESENTATIVE; RENATO M. REYES, JR., SECRETARY GENERAL OF BAYAN; MANUEL K. DAYRIT, CHAIRMAN ANG KAPATIRAN PARTY; VENCER MARI E. CRISOSTOMO, CHAIRPERSON, ANAKBAYAN; VICTOR VILLANUEVA, CONVENOR, YOUTH ACT NOW, PETITIONERS, VS. BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY; AND FLORENCIO B. ABAD, SECRETARY THE DEPARTMENT OF BUDGET AND MANAGEMENT, RESPONDENTS.

[G.R. NO. 209135]

AUGUSTO L. SYJUCO JR., PH.D., PETITIONER, VS. FLORENCIO B. ABAD, IN HIS CAPACITY AS THE SECRETARY OF DEPARTMENT OF BUDGET AND MANAGEMENT; AND HON. FRANKLIN MAGTUNAO DRILON, IN HIS CAPACITY AS THE SENATE PRESIDENT OF TH PHILIPPINES, RESPONDENTS.

[G.R. NO. 209136]

MANUELITO R. LUNA, PETITIONER, VS. SECRETARY FLORENCIO ABAD, IN HIS OFFICIAL CAPACITY AS HEAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; AND EXECUTIVE SECRETARY PAQUITO OCHOA, IN HIS OFFICIAL CAPACITY AS ALTER EGO OF THE PRESIDENT, RESPONDENTS.

[G.R. NO. 209155]

ATTY. JOSE MALVAR VILLEGAS, JR., PETITIONER, VS. THE HONORABLE EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; AND THE SECRETARY O BUDGET AND MANAGEMENT FLORENCIO B. ABAD, RESPONDENTS.

[G.R. NO. 209164]

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), REPRESENTED BY DEAN FROILAN BACUNGAN, BENJAMIN E. DIOKNO AND LEONOR M. BRIONES, PETITIONERS, VS. DEPARTMENT OF BUDGET AND MANAGEMENT AND/OR HON. FLORENCIO B. ABAD, RESPONDENTS.

[G.R. NO. 209260]

INTEGRATED BAR OF THE PHILIPPINES (IBP), PETITIONER, VS. SECRETARY FLORENCIO B. ABAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM), RESPONDENT.

[G.R. NO. 209442]

GRECO ANTONIOUS BEDA B. BELGICA; BISHOP REUBEN M ABANTE AND REV. JOSE L. GONZALEZ, PETITIONERS, VS. PRESIDENT BENIGNO SIMEON

C. AQUINO III, THE SENATE OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT FRANKLIN M. DRILON; THE HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER FELICIANO BELMONTE, JR.; THE EXECUTIVE OFFICE, REPRESENTED BY EXECUTIVE SECRETARY PAQUITO N. OCHOA, J THE DEPARTMENT OF BUDGET AND MANAGEMENT, REPRESENTED BY SECRETARY FLORENCIO ABAD; THE DEPARTMENT OF FINANCE, REPRESENTED BY SECRETARY CESAR V. PURISIMA; AND THE BUREAU OF TREASURY, REPRESENTED BY ROSALIA V. DE LEON, RESPONDENTS.

[G.R. NO. 209517]

CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), REPRESENTED BY ITS 1ST VICE PRESIDENT, SANTIAGO DASMARINAS, JR.; ROSALINDA NARTATES, FOR HERSELF AND AS NATIONAL PRESIDENT OF THE CONSOLIDATED UNION OF EMPLOYEES NATIONAL HOUSING AUTHORITY (CUE-NHA); MANUEL BACLAGON, FOR HIMSELF AND AS PRESIDENT OF THE SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES, DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT CENTRAL OFFICE (SWEAP-DSWD CO); ANTONIA PASCUAL, FOR HERSELF AND AS NATIONAL PRESIDENT OF THE DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION (DAREA); ALBERT MAGALANG, FOR HIMSELF AND AS PRESIDENT OF THE ENVIRONMENT AND MANAGEMENT BUREAU EMPLOYEES UNION (EMBEU); AND MARCIAL ARABA, FOR HIMSELF AND AS PRESIDENT OF THE KAPISANAN PARA SA KAGALINGAN NG MGA KAWANI NG MMDA (KKK-MMDA), PETITIONERS, VS. BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; PAQUITO OCHOA, JR., EXECUTIVE SECRETARY; AND HON. FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, RESPONDENTS.

[G.R. NO. 209569]

VOLUNTEERS AGAINST CRIME AND CORRUPTION (VACC), REPRESENTED BY DANTE L. JIMENEZ, PETITIONER, VS. PAQUITO N. OCHOA, EXECUTIVE SECRETARY, AND FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

For resolution are the consolidated petitions assailing the constitutionality of the Disbursement Acceleration Program (DAP), National Budget Circular (NBC) No. 541, and related issuances of the Department of Budget and Management (DBM) implementing the DAP.

At the core of the controversy is Section 29(1) of Article VI of the 1987 Constitution, a provision of the fundamental law that firmly ordains that “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.” The tenor and context of the challenges posed by the petitioners against the DAP indicate that the DAP contravened this provision by allowing the Executive to allocate public money pooled from programmed and unprogrammed funds of its various agencies in the guise of the President exercising his constitutional authority under Section 25(5) of the 1987 Constitution to transfer funds out of savings to augment the appropriations of offices within the Executive Branch of the Government. But the challenges are further complicated by the interjection of allegations of transfer of funds to agencies or offices outside of the Executive.

Antecedents

What has precipitated the controversy?

On September 25, 2013, Sen. Jinggoy Ejercito Estrada delivered a privilege speech in the Senate of the Philippines to reveal that some Senators, including himself, had been allotted an additional P50 Million each as "incentive" for voting in favor of the impeachment of Chief Justice Renato C. Corona.

Responding to Sen. Estrada's revelation, Secretary Florencio Abad of the DBM issued a public statement entitled *Abad: Releases to Senators Part of Spending Acceleration Program*,^[1] explaining that the funds released to the Senators had been part of the DAP, a program designed by the DBM to ramp up spending to accelerate economic expansion. He clarified that the funds had been released to the Senators based on their letters of request for funding; and that it was not the first time that releases from the DAP had been made because the DAP had already been instituted in 2011 to ramp up spending after sluggish disbursements had caused the growth of the gross domestic product (GDP) to slow down. He explained that the funds under the DAP were usually taken from (1) unreleased appropriations under Personnel Services;^[2] (2) unprogrammed funds; (3) carry-over appropriations unreleased from the previous year; and (4) budgets for slow-moving items or projects that had been realigned to support faster-disbursing projects.

The DBM soon came out to claim in its website^[3] that the DAP releases had been sourced from savings generated by the Government, and from unprogrammed funds; and that the savings had been derived from (1) the pooling of unreleased appropriations, like unreleased Personnel Services^[4] appropriations that would lapse at the end of the year, unreleased appropriations of slow-moving projects and discontinued projects per zero-based budgeting findings;^[5] and (2) the withdrawal of unobligated allotments also for slow-moving programs and projects that had been earlier released to the agencies of the National Government.

The DBM listed the following as the legal bases for the DAP's use of savings,^[6] namely: (1) Section 25(5), Article VI of the 1987 Constitution, which granted to the President the authority to augment an item for his office in the general appropriations law; (2) Section 49 (*Authority to Use Savings for Certain Purposes*) and Section 38 (*Suspension of Expenditure Appropriations*), Chapter 5, Book VI of Executive Order (EO) No. 292 (*Administrative Code of 1987*); and (3) the General Appropriations Acts (GAAs) of 2011, 2012 and 2013, particularly their provisions on the (a) use of savings; (b) meanings of savings and augmentation; and (c) priority in the use of savings.

As for the use of unprogrammed funds under the DAP, the DBM cited as legal bases the special provisions on unprogrammed fund contained in the GAAs of 2011, 2012 and 2013.

The revelation of Sen. Estrada and the reactions of Sec. Abad and the DBM brought the DAP to the consciousness of the Nation for the first time, and made this present controversy inevitable. That the issues against the DAP came at a time when the Nation was still seething in anger over Congressional pork barrel – "an appropriation of government spending meant for localized projects and secured solely or primarily to bring money to a representative's district"^[7] – excited the Nation as heatedly as the pork barrel controversy.

Nine petitions assailing the constitutionality of the DAP and the issuances relating to the DAP were filed within days of each other, as follows: G.R. No. 209135 (Syjuco), on October 7, 2013; G.R. No. 209136 (Luna), on October 7, 2013; G.R. No. 209155 (Villegas),^[8] on October 16, 2013; G.R. No. 209164 (PHILCONSA), on October 8, 2013; G.R. No. 209260 (IBP), on October 16, 2013; G.R. No. 209287 (Araullo), on October 17, 2013; G.R. No. 209442 (Belgica), on October 29, 2013; G.R. No. 209517 (COURAGE), on November 6, 2013; and G.R. No. 209569 (VACC), on November 8, 2013.

In G.R. No. 209287 (Araullo), the petitioners brought to the Court's attention NBC No. 541 (*Adoption of Operational Efficiency Measure – Withdrawal of Agencies' Unobligated Allotments as of June 30, 2012*), alleging that NBC No. 541, which was issued to implement the DAP, directed the withdrawal of unobligated allotments as of June 30, 2012 of government agencies and offices with low levels of obligations, both for continuing and current allotments.

In due time, the respondents filed their Consolidated Comment through the Office of the Solicitor General (OSG).

The Court directed the holding of oral arguments on the significant issues raised and joined.

Issues

Under the Advisory issued on November 14, 2013, the presentations of the parties during the oral arguments were limited to the following, to wit:

Procedural Issue:

A. Whether or not *certiorari*, prohibition, and *mandamus* are proper remedies to assail the constitutionality and validity of the Disbursement Acceleration Program (DAP), National Budget Circular (NBC) No. 541, and all other executive issuances allegedly implementing the DAP. Subsumed in this issue are whether there is a controversy ripe for judicial determination, and the standing of petitioners.

Substantive Issues:

B. Whether or not the DAP violates Sec. 29, Art. VI of the 1987 Constitution, which provides: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

C. Whether or not the DAP, NBC No. 541, and all other executive issuances allegedly implementing the DAP violate Sec. 25(5), Art. VI of the 1987 Constitution insofar as:

(a) They treat the unreleased appropriations and unobligated allotments withdrawn from government agencies as "savings" as the term is used in Sec. 25(5), in relation to the provisions of the GAAs of 2011, 2012 and 2013;

(b) They authorize the disbursement of funds for projects or programs not provided in the GAAs for the Executive Department; and

(c) They "augment" discretionary lump sum appropriations in the GAAs.

D. Whether or not the DAP violates: (1) the Equal Protection Clause, (2) the system of checks and balances, and (3) the principle of public accountability enshrined in the 1987 Constitution considering that it authorizes the release of funds upon the request of legislators.

E. Whether or not factual and legal justification exists to issue a temporary restraining order to restrain the implementation of the DAP, NBC No. 541, and all other executive issuances allegedly implementing the DAP.

In its Consolidated Comment, the OSG raised the matter of unprogrammed funds in order to support its argument regarding the President's power to spend. During the oral arguments, the propriety of releasing unprogrammed funds to support projects under the DAP was considerably discussed. The petitioners in G.R. No. 209287 (Araullo) and G.R. No. 209442 (Belgica) dwelled on unprogrammed funds in their respective memoranda. Hence, an additional issue for the oral arguments is stated as follows:

F. Whether or not the release of unprogrammed funds under the DAP was in accord with the GAAs.

During the oral arguments held on November 19, 2013, the Court directed Sec. Abad to submit a list of savings brought under the DAP that had been sourced from (a) completed programs; (b) discontinued or abandoned programs; (c) unpaid appropriations for compensation; (d) a certified copy of the President's directive dated June 27, 2012 referred to in NBC No. 541; and (e) all

circulars or orders issued in relation to the DAP.^[9]

In compliance, the OSG submitted several documents, as follows:

(1) A certified copy of the Memorandum for the President dated June 25, 2012 (*Omnibus Authority to Consolidate Savings/ Unutilized Balances and their Realignment*);^[10]

(2) Circulars and orders, which the respondents identified as related to the DAP, namely:

- a. NBC No. 528 dated January 3, 2011 (*Guidelines on the Release of Funds for FY 2011*);
- b. NBC No. 535 dated December 29, 2011 (*Guidelines on the Release of Funds for FY 2012*);
- c. NBC No. 541 dated July 18, 2012 (*Adoption of Operational Efficiency Measure – Withdrawal of Agencies’ Unobligated Allotments as of June 30, 2012*);
- d. NBC No. 545 dated January 2, 2013 (*Guidelines on the Release of Funds for FY 2013*);
- e. DBM Circular Letter No. 2004-2 dated January 26, 2004 (*Budgetary Treatment of Commitments/Obligations of the National Government*);
- f. COA-DBM Joint Circular No. 2013-1 dated March 15, 2013 (*Revised Guidelines on the Submission of Quarterly Accountability Reports on Appropriations, Allotments, Obligations and Disbursements*);
- g. NBC No. 440 dated January 30, 1995 (*Adoption of a Simplified Fund Release System in the Government*).

(3) A breakdown of the sources of savings, including savings from discontinued projects and unpaid appropriations for compensation from 2011 to 2013

On January 28, 2014, the OSG, to comply with the Resolution issued on January 21, 2014 directing the respondents to submit the documents not yet submitted in compliance with the directives of the Court or its Members, submitted several evidence packets to aid the Court in understanding the factual bases of the DAP, to wit:

(1) **First Evidence Packet**^[11] – containing seven memoranda issued by the DBM through Sec. Abad, inclusive of annexes, listing in detail the 116 DAP identified projects approved and duly signed by the President, as follows:

- a. Memorandum for the President dated October 12, 2011 (*FY 2011 Proposed Disbursement Acceleration Program (Projects and Sources of Funds)*);
- b. Memorandum for the President dated December 12, 2011 (*Omnibus Authority to Consolidate Savings/Unutilized Balances and its Realignment*);
- c. Memorandum for the President dated June 25, 2012 (*Omnibus Authority to Consolidate Savings/Unutilized Balances and their Realignment*);
- d. Memorandum for the President dated September 4, 2012 (*Release of funds for other priority projects and expenditures of the Government*);