G.R. Nos. 171947-48 - METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF EDUCATION, CULTURE AND SPORTS, DEPARTMENT OF HEALTH, DEPARTMENT OF AGRICULTURE, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, DEPARTMENT OF BUDGET AND MANAGEMENT, PHILIPPINE COAST GUARD, PHILIPPINE NATIONAL POLICE MARITIME GROUP, and DEPARMENT OF THE INTERIOR AND LOCAL GOVERNMENT vs. CONCERNED RESIDENTS OF MANILA BAY, represented and joined by DIVINA V. ILAS, SABINIANO ALBARRACIN, MANUEL SANTOS, JR., DINAH DELA PEÑA, PAUL DENNIS QUINTERO, MA. VICTORIA LLENOS, DONNA CALOZA, FATIMA QUITAIN, VENICE SEGARRA, FRITZIE TANGKIA, SARAH JOELLE LINTAG, HANNIBAL AUGUSTUS BOBIS, FELIMON SANTIAGUEL, and JAIME AGUSTIN R. OPOSA

Promulgated:

February 15, 2011

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DISSENTING OPINION

SERENO, J.:

"The judicial whistle needs to be blown for a purpose and with caution. It needs to be remembered that the Court cannot run the government. The Court has the duty of implementing constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation."[1]

These are the words of Justice Anand of the Supreme Court of India, from which court the idea of a continuing mandatory injunction for environmental cases was drawn by the Philippine Supreme Court. These words express alarm that the Indian judiciary has already taken on the role of running the government in environmental cases. A similar situation would result in the Philippines were the majority Resolution to be adopted. Despite having the best of intentions to ensure compliance by petitioners with their corresponding statutory mandates in an urgent manner, this Court has unfortunately encroached upon prerogatives solely to be exercised by the President and by Congress.

On 18 December 2008, the Court promulgated its decision in MMDA v. Concerned Residents of Manila Bay, G.R. Nos. 171947-48, denying the petition of the government agencies, defendants in Civil Case No. 1851-99. It held that the Court of Appeals, subject to some modifications, was correct in affirming the 13 September 2002 Decision of the Regional Trial Court in Civil Case No. 1851-99. It ordered "the abovenamed defendant-government agencies to clean up, rehabilitate, and preserve Manila Bay, and restore and maintain its waters to SB level (Class B sea waters per Water Classification Tables under DENR Administrative Order No. 34 [1990]) to make them fit for swimming, skin-diving, and other forms of contact recreation."

The Court further issued each of the aforementioned agencies specific orders to comply with their statutory mandate.[2] Pursuant to the judgment above, the Court established its own Manila Bay Advisory Committee. Upon the recommendations of the said Committee, the present Resolution was issued. It encompasses several of the specific instructions laid out by the court in the original case, but also goes further by requiring reports and updates from the said government agencies, and setting deadlines for the submission thereof.

I find these directives in the Majority Resolution patently irreconcilable with basic constitutional doctrines and with the legislative mechanisms already in place, such as the Administrative Code and the Local Government Code, which explicitly grant control and supervision over these agencies to the

President alone, and to no one else. For these reasons, I respectfully dissent from the Majority Resolution.

In issuing these directives, the Court has encroached upon the exclusive authority of the Executive Department and violated the doctrine of Separation of Powers

The Resolution assigned the Department of Natural Resources as the primary agency for environment protection and required the implementation of its Operational Plan for the Manila Bay Coastal Strategy. It ordered the DENR to submit the updated operational plan directly to the Court; to summarize data on the quality of Manila Bay waters; and to "submit the names and addresses of persons and companies…that generate toxic or hazardous waste on or before September 30, 2011."

The Department of the Interior and Local Government is directed to "order the Mayors of all cities in Metro Manila; the Governors of Rizal, Laguna, Cavite, Bulacan, Pampanga and Bataan; and the Mayors of all the cities and towns in said provinces to inspect all factories, commercial establishments and private homes along the banks of the major river systems…" to determine if they have wastewater treatment facilities, on or before 30 June 2011. The LGUs are given a deadline of 30 September 2011 to finish the inspection. In cooperation with the Department of Public Works and Highways (DPWH), these local governments are required to submit their plan for the removal of informal settlers and encroachments which are in violation of Republic Act No. 7279. The said demolition must take place not later than 31 December 2012.

The Metropolitan Waterworks and Sewerage System (MWSS) is required to submit its plans for the construction of wastewater treatment facilities in areas where needed, the completion period for which shall not go beyond the year 2020. On or before 30 June 2011, the MWSS is further required to have its two concessionaires submit a report on the amount collected as sewerage fees. The Local Water Utilities Administration (LWUA) is ordered to submit on or before 30 September 2011 its plan to install and operate sewerage and sanitation facilities in the towns and cities where needed, which must be fully implemented by 31 December 2020.

The Department of Agriculture and the Bureau of Aquatic Fisheries and Resources are ordered to submit on or before 30 June 2011 a list of areas where marine life in Manila Bay has improved, and the

assistance extended to different Local Government Units in this regard. The Philippine Ports Authority (PPA) is ordered to report the names, make, and capacity of each ship that would dock in PPA ports; the days they docked and the days they were at sea; the activities of the concessionaire that would collect solid and liquid ship-generated waste, the volume, treatment and disposal sites for such wastes; and the violators that PPA has apprehended.

The Department of Health (DOH) is required to submit the names and addresses of septic and sludge companies that have no treatment facilities. The said agency must also require companies to procure a "license to operate" issued by the DOH. The Metropolitan Manila Development Authority (MMDA) and the seventeen (17) LGUs in Metro Manila must submit a report on the "amount of garbage collected per district…vis-à-vis the average amount of garbage disposed monthly in landfills and dumpsites." MMDA must also submit a plan for the removal of informal settlers and encroachments along NCR Rivers which violate R.A. No. 7279.

Clearly, the Court has no authority to issue these directives. They fall squarely under the domain of the executive branch of the state. The issuance of specific instructions to subordinate agencies in the implementation of policy mandates in all laws, not just those that protect the environment, is an exercise of the power of supervision and control – the sole province of the Office of the President.

Both the 1987 Constitution and Executive Order No. 292, or the Administrative Code of the Philippines, state:

Exercise of Executive Power. - The Executive power shall be vested in the President.[3]

Power of Control.- The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.[4]

In Anak Mindanao Party-list Group v. Executive Secretary,[5] this Court has already asserted that the enforcement of all laws is the sole domain of the Executive. The Court pronounced that the express constitutional grant of authority to the Executive is broad and encompassing, such that it justifies reorganization measures[6] initiated by the President. The Court said:

While Congress is vested with the power to enact laws, the President executes the laws. The executive power is vested in the President. It is generally defined as the power to enforce and administer the laws. It is the power of carrying the laws into practical operation and enforcing their due observance.

As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising and enforcement of laws for the maintenance of general peace and public order. Thus, he is granted administrative power over bureaus and offices under his control to enable him to discharge his duties effectively.

To herein petitioner agencies impleaded below, this Court has given very specific instructions to report the progress and status of their operations directly to the latter. The Court also required the agencies to apprise it of any noncompliance with the standards set forth by different laws as to environment protection. This move is tantamount to making these agencies accountable to the Court instead of the President. The very occupation streamlined especially for the technical and practical expertise of the Executive Branch is being usurped without regard for the delineations of power in the Constitution. In fact, the issuance of the Resolution itself is in direct contravention of the President's exclusive power to issue administrative orders, as shown thus:

Administrative Orders. - Acts of the President which relate to particular aspect of governmental operations in pursuance of his duties as administrative head shall be promulgated in administrative orders.[7]

The Court's discussion in Ople v. Torres[8] pertaining to the extent and breadth of administrative power bestowed upon the President is apt:

Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations.

… … …

An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy.

The implementation of the policy laid out by the legislature – in the Philippine Clean Water Act of 2004, the Toxic and Hazardous Waste Act or Republic Act 6969, the Environment Code, and other laws geared towards environment protection – is under the competence of the President. Achieved thereby is a uniform standard of administrative efficiency. And since it is through administrative orders promulgated by the President that specific operational aspects for these policies are laid out, the Resolution of this Court overlaps with the President's administrative power. No matter how urgent and laudatory the cause of environment protection has become, it cannot but yield to the higher mandate of separation of powers and the mechanisms laid out by the people through the Constitution.

One of the directives is that which requires local governments to conduct inspection of homes and establishments along the riverbanks, and to submit a plan for the removal of certain informal settlers. Not content with arrogating unto itself the powers of "control" and "supervision" granted by the Administrative Code to the President over said petitioner administrative agencies, the Court is also violating the latter's general supervisory authority over local governments:

Sec. 18. General Supervision Over Local Governments. - The President shall exercise general supervision over local governments.[9]

Sec. 25. National Supervision over Local Government Units.—(a) Consistent with the basic policy on local autonomy, the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions.[10]

The powers expressly vested in any branch of the Government shall not be exercised by, nor delegated to, any other branch of the Government, except to the extent authorized by the Constitution.[11]

As has often been repeated by this Court, the doctrine of separation of powers is the very wellspring from which the Court draws its legitimacy. Former Chief Justice Reynato S. Puno has traced its origin and rationale as inhering in the republican system of government:

The principle of separation of powers prevents the concentration of legislative, executive, and judicial powers to a single branch of government by deftly allocating their exercise to the three branches of government...

In his famed treatise, The Spirit of the Laws, Montesquieu authoritatively analyzed the nature of executive, legislative and judicial powers and with a formidable foresight counselled that any combination of these powers would create a system with an inherent tendency towards tyrannical actions…

Again, there is no liberty, if the judiciary power be not separated from the legislative and the executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and that of trying the causes of individuals. [12]

Nor is there merit in the contention that these directives will speed up the rehabilitation of Manila Bay better than if said rehabilitation were left to the appropriate agencies. Expediency is never a reason to abandon legitimacy. “The Separation of Powers often impairs efficiency, in terms of dispatch and the immediate functioning of government. It is the long-term staying power of government that is enhanced by the mutual accommodation required by the separation of powers.”[13]

Mandamus does not lie to compel a discretionary act.

In G.R. Nos. 171947-48, the Court explicitly admitted that “[w]hile the implementation of the MMDA’s mandated tasks may entail a decision-making process, the enforcement of the law or the very act of doing what the law exacts to be done is ministerial in nature and may be compelled by mandamus.”[14] In denying the appeal of petitioners and affirming the Decision of the RTC, the Court of Appeals stressed that the trial court’s Decision did not require petitioners to do tasks outside of their usual basic functions under existing laws.[15]

In its revised Resolution, the Court is now setting deadlines for the implementation of policy formulations which require decision-making by the agencies. It has confused an order enjoining a duty, with an order outlining specific technical rules on how to perform such a duty. Assuming without conceding that mandamus were availing under Rule 65, the Court can only require a particular action, but it cannot provide for the means to accomplish such action. It is at this point where the demarcation of the general act of “cleaning up the Manila Bay” has become blurred, so much so that the Court now engages in the slippery slope of overseeing technical details.

In Sps. Abaga v. Sps. Panes[16] the Court said:

From the foregoing Rule, there are two situations when a writ of mandamus may issue: (1) when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled. The "duty" mentioned in the first situation is a ministerial duty, not a discretionary duty, requiring the exercise of judgment…In short, for mandamus to lie, the duty sought to be compelled to be performed must be a ministerial duty, not a discretionary duty, and the petitioner must show that he has a well-defined, clear and certain right.

Discretion, on the other hand, is a faculty conferred upon a court or official by which he may decide the question either way and still be right.[17]

The duty being enjoined in mandamus must be one according to the terms defined in the law itself. Thus, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by mandamus to act, but not to act one way or the other. This is the end of any participation by the Court, if it is authorized to participate at all.

In setting a deadline for the accomplishment of these directives, not only has the Court provided the means of accomplishing the task required, it has actually gone beyond the standards set by the law. There is nothing in the Environment Code, the Administrative Code, or the Constitution which grants this authority to the judiciary. It is already settled that, "If the law imposes a duty upon a public officer and gives him the right to decide when and how the duty shall be performed, such duty is not ministerial."[18]

In Alvarez v. PICOP Resources,[19] the Court ruled that,

As an extraordinary writ, the remedy of mandamus lies only to compel an officer to perform a ministerial duty, not a discretionary one; mandamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any

manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

The Constitution does not authorize the courts to “monitor” the execution of their decisions.

It is an oft-repeated rule that the Court has no power to issue advisory opinions, much less “directives” requiring progress reports from the parties respecting the execution of its decisions. The requirements of “actual case or controversy” and “justiciability” have long been established in order to limit the exercise of judicial review. While its dedication to the implementation of the fallo in G.R. 171947-48 is admirable, the Court’s power cannot spill over to actual encroachment upon both the “control” and police powers of the State under the guise of a “continuing mandamus.”

In G.R. 171947-48, the Court said: “Under what other judicial discipline describes as ‘continuing mandamus,’ the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference.”

Needless to say, the “continuing mandamus” in this case runs counter to principles of “actual case or controversy” and other requisites for judicial review. In fact, the Supreme Court is in danger of acting as a “super-administrator”[20] – the scenario presently unfolding in India where the supposed remedy originated. There the remedy was first used in Vineet Narain and Others v. Union of India,[21] a public interest case for corruption filed against high-level officials. Since then, the remedy has been applied to environmental cases as an oversight and control power by which the Supreme Court of India has created committees (i.e. the Environment Pollution Authority and the Central Empowered Committee in forest cases) and allowed these committees to act as the policing agencies.[22] But the most significant judicial intervention in this regard was the series of orders promulgated by the Court in T.N. Godavarman v. Union of India.[23]

Although the Writ Petition filed by Godavarman was an attempt to seek directions from the Court regarding curbing the illegal felling of trees, the Supreme Court went further to make policy determinations in an attempt to improve the country’s forests. The Court Order suspending felling of trees that did not adhere to state government working plans resulted in effectively freezing the country’s timber industry. The Supreme Court completely banned tree felling in certain north-eastern

states to any part of the country. The court's role was even more pronounced in its later directions. While maintaining the ban on felling of trees in the seven northeast states, the court directed the state governments to gather, process, sell, and otherwise manage the already felled timber in the manner its specified the Supreme Court became the supervisor of all forest issues, ranging from controlling, pricing and transport of timber to management of forest revenue, as well as implementation of its orders.[24]

Thus, while it was originally intended to assert public rights in the face of government inaction and neglect, the remedy is now facing serious criticism as it has spiraled out of control.[25] In fact, even Justice J. S. Verma, who penned the majority opinion in Vineet Narain in which 'continuing mandamus' first made its appearance, subsequently pronounced that "judicial activism should be neither judicial ad hocism nor judicial tyranny."[26] Justice B.N. Srikrishna observed that judges now seem to want to engage themselves with boundless enthusiasm in complex socio-economic issues raising myriads of facts and ideological issues that cannot be managed by "judicially manageable standards."[27] Even Former Chief Justice A. S. Anand, a known defender of judicial activism, has warned against the tendency towards "judicial adventurism," reiterating the principle that "the role of the judge is that of a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play."[28]

Unless our own Supreme Court learns to curb its excesses and apply to this case the standards for judicial review it has developed over the years and applied to co-equal branches, the scenario in India could very well play out in the Philippines. The Court must try to maintain a healthy balance between the departments, precisely as the Constitution mandates, by delineating its "deft strokes and bold lines,"[29] ever so conscious of the requirements of actual case and controversy. While, admittedly, there are certain flaws in the operation and implementation of the laws, the judiciary cannot take the initiative to compensate for such perceived inaction.

The Court stated in Tolentino v. Secretary of Finance:[30]

Disregard of the essential limits imposed by the case and controversy requirement can in the long run only result in undermining our authority as a court of law. For, as judges, what we are called upon to render is judgment according to law, not according to what may appear to be the opinion of the day…

Hence, “over nothing but cases and controversies can courts exercise jurisdiction, and it is to make the exercise of that jurisdiction effective that they are allowed to pass upon constitutional questions.”[31] Admirable though the sentiments of the Court may be, it must act within jurisdictional limits. These limits are founded upon the traditional requirement of a cause of action: “the act or omission by which a party violates a right of another.”[32] In constitutional cases, for every writ or remedy, there must be a clear pronouncement of the corresponding right which has been infringed. Only then can there surface that “clear concreteness provided when a question emerges precisely framed and necessary for decision from a clash of adversary argument exploring every aspect of a multifaceted situation embracing conflicting and demanding interests.”[33]

Unfortunately, the Court fails to distinguish between a pronouncement on violation of rights on one hand, and non-performance of duties vis-à-vis operational instructions, on the other. Moreover, it also dabbles in an interpretation of constitutional rights in a manner that is dangerously pre-emptive of legally available remedies.

The “continuing mandamus” palpably overlaps with the power of congressional oversight.

Article 6, Section 22 of the 1987 Constitution states:

The heads of department may upon their own initiative, with the consent of the President, or upon the request of either House, or as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the state or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

This provision pertains to the power to conduct a question hour, the objective of which is to obtain information in pursuit of Congress’ oversight function. Macalintal v. Comelec[34] discussed the scope of

congressional oversight in full. Oversight refers to the power of the legislative department to check, monitor and ensure that the laws it has enacted are enforced:

The power of Congress does not end with the finished task of legislation. Concomitant with its principal power to legislate is the auxiliary power to ensure that the laws it enacts are faithfully executed. As well stressed by one scholar, the legislature "fixes the main lines of substantive policy and is entitled to see that administrative policy is in harmony with it; it establishes the volume and purpose of public expenditures and ensures their legality and propriety; it must be satisfied that internal administrative controls are operating to secure economy and efficiency; and it informs itself of the conditions of administration of remedial measure.

… … …

Clearly, oversight concerns post-enactment measures undertaken by Congress: (a) to monitor bureaucratic compliance with program objectives, (b) to determine whether agencies are properly administered, (c) to eliminate executive waste and dishonesty, (d) to prevent executive usurpation of legislative authority, and (d) to assess executive conformity with the congressional perception of public interest.

… … …

Congress, thus, uses its oversight power to make sure that the administrative agencies perform their functions within the authority delegated to them.

Macalintal v. Comelec further discusses that legislative supervision under the oversight power connotes a continuing and informed awareness on the part of Congress regarding executive operations in a given administrative area. Because the power to legislate includes the power to ensure that the laws are enforced, this monitoring power has been granted by the Constitution to the legislature. In cases of executive non-implementation of statutes, the courts cannot justify the use of "continuing mandamus," as it would by its very definition overlap with the monitoring power under congressional oversight. The Resolution does not only encroach upon the general supervisory function of the Executive, it also diminished and arrogated unto itself the power of congressional oversight.

Conclusion

This Court cannot nobly defend the environmental rights of generations of Filipinos enshrined in the Constitution while in the same breath eroding the foundations of that very instrument from which it draws its power. While the remedy of "continuing mandamus" has evolved out of a Third World jurisdiction similar to ours, we cannot overstep the boundaries laid down by the rule of law. Otherwise, this Court would rush recklessly beyond the delimitations precisely put in place to safeguard excesses of power. The tribunal, considered by many citizens as the last guardian of fundamental rights, would then resemble nothing more than an idol with feet of clay: strong in appearance, but weak in foundation.

…The Court becomes a conscience by acting to remind us of limitation on power, even judicial power, and the interrelation of good purposes with good means. Morality is not an end dissociated from means. There is a morality of morality, which respects the limitation of office and the fallibility of the human mind…self-limitation is the first mark of the master. That, too is part of the role of the conscience.[35]

The majority Resolution would, at the same time, cast the light of scrutiny more harshly on judicial action in which the Court's timely exercise of its powers is called for – as in the cases of prisoners languishing in jail whose cases await speedy resolution by this Court. There would then be nothing to stop the executive and the legislative departments from considering as fair game the judiciary's own accountability in its clearly delineated department.

MARIA LOURDES P. A. SERENO

Associate Justice

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[1] Justice Dr. A.S. Anand, Supreme Court of India,"Judicial Review – Judicial Activism – Need for Caution," in Soli Sorabjee's Law and Justice: An Anthology, Universal Law Publishing Company, (2003), at 377. Also in Justice A.S. Anand, Millenium Law Lecture Series, Thursday, October 21, 1999, Kochi, Kerala, available at http://airwebworld.com/articles/index.php. (visited 17 November 2010)

[2] "In particular: (1) Pursuant to Sec. 4 of EO 192, assigning the DENR as the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, and Sec. 19 of RA 9275, designating the DENR as the primary government agency responsible for its enforcement and implementation, the DENR is directed to fully implement its Operational Plan for the Manila Bay Coastal Strategy for the rehabilitation, restoration, and conservation of the Manila Bay at the earliest possible time. It is ordered to call regular coordination meetings with concerned government departments and agencies to ensure the successful implementation of the aforesaid plan of action in accordance with its indicated completion schedules.

(2) Pursuant to Title XII (Local Government) of the Administrative Code of 1987 and Sec. 25 of the Local Government Code of 1991, the DILG, in exercising the President's power of general supervision and its duty to promulgate guidelines in establishing waste management programs under Sec. 43 of the Philippine Environment Code (PD 1152), shall direct all LGUs in Metro Manila, Rizal, Laguna, Cavite, Bulacan, Pampanga, and Bataan to inspect all factories, commercial establishments, and private homes along the banks of the major river systems in their respective areas of jurisdiction, such as but not limited to the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other minor rivers and waterways that eventually discharge water into the Manila Bay; and the lands abutting the bay, to determine whether they have wastewater treatment facilities or hygienic septic tanks as prescribed by existing laws, ordinances, and rules and regulations. If none be found, these LGUs shall be ordered to require non-complying establishments and homes to set up said facilities or septic tanks within a reasonable time to prevent industrial wastes, sewage water, and human wastes from flowing into these rivers,

waterways, esteros, and the Manila Bay, under pain of closure or imposition of fines and other sanctions.

(3) As mandated by Sec. 8 of RA 9275, the MWSS is directed to provide, install, operate, and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time.

(4) Pursuant to RA 9275, the LWUA, through the local water districts and in coordination with the DENR, is ordered to provide, install, operate, and maintain sewerage and sanitation facilities and the efficient and safe collection, treatment, and disposal of sewage in the provinces of Laguna, Cavite, Bulacan, Pampanga, and Bataan where needed at the earliest possible time.

(5) Pursuant to Sec. 65 of RA 8550, the DA, through the BFAR, is ordered to improve and restore the marine life of the Manila Bay. It is also directed to assist the LGUs in Metro Manila, Rizal, Cavite, Laguna, Bulacan, Pampanga, and Bataan in developing, using recognized methods, the fisheries and aquatic resources in the Manila Bay.

(6) The PCG, pursuant to Secs. 4 and 6 of PD 979, and the PNP Maritime Group, in accordance with Sec. 124 of RA 8550, in coordination with each other, shall apprehend violators of PD 979, RA 8550, and other existing laws and regulations designed to prevent marine pollution in the Manila Bay.

(7) Pursuant to Secs. 2 and 6-c of EO 513 and the International Convention for the Prevention of Pollution from Ships, the PPA is ordered to immediately adopt such measures to prevent the discharge and dumping of solid and liquid wastes and other ship-generated wastes into the Manila Bay waters from vessels docked at ports and apprehend the violators.

(8) The MMDA, as the lead agency and implementor of programs and projects for flood control projects and drainage services in Metro Manila, in coordination with the DPWH, DILG, affected LGUs, PNP Maritime Group, Housing and Urban Development Coordinating Council (HUDCC), and other agencies, shall dismantle and remove all structures, constructions, and other encroachments established or built in violation of RA 7279, and other applicable laws along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and esteros in Metro Manila. The DPWH, as the principal implementor of programs and projects for flood control services in the rest of the country more particularly in Bulacan, Bataan,

Pampanga, Cavite, and Laguna, in coordination with the DILG, affected LGUs, PNP Maritime Group, HUDCC, and other concerned government agencies, shall remove and demolish all structures, constructions, and other encroachments built in breach of RA 7279 and other applicable laws along the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other rivers, connecting waterways, and esteros that discharge wastewater into the Manila Bay.

In addition, the MMDA is ordered to establish, operate, and maintain a sanitary landfill, as prescribed by RA 9003, within a period of one (1) year from finality of this Decision. On matters within its territorial jurisdiction and in connection with the discharge of its duties on the maintenance of sanitary landfills and like undertakings, it is also ordered to cause the apprehension and filing of the appropriate criminal cases against violators of the respective penal provisions of RA 9003, Sec. 27 of RA 9275 (the Clean Water Act), and other existing laws on pollution.

(9) The DOH shall, as directed by Art. 76 of PD 1067 and Sec. 8 of RA 9275, within one (1) year from finality of this Decision, determine if all licensed septic and sludge companies have the proper facilities for the treatment and disposal of fecal sludge and sewage coming from septic tanks. The DOH shall give the companies, if found to be non-complying, a reasonable time within which to set up the necessary facilities under pain of cancellation of its environmental sanitation clearance.

(10) Pursuant to Sec. 53 of PD 1152, Sec. 118 of RA 8550, and Sec. 56 of RA 9003, the DepEd shall integrate lessons on pollution prevention, waste management, environmental protection, and like subjects in the school curricula of all levels to inculcate in the minds and hearts of students and, through them, their parents and friends, the importance of their duty toward achieving and maintaining a balanced and healthful ecosystem in the Manila Bay and the entire Philippine archipelago.

(11) The DBM shall consider incorporating an adequate budget in the General Appropriations Act of 2010 and succeeding years to cover the expenses relating to the cleanup, restoration, and preservation of the water quality of the Manila Bay, in line with the country's development objective to attain economic growth in a manner consistent with the protection, preservation, and revival of our marine waters.

(12) The heads of petitioners-agencies MMDA, DENR, DepEd, DOH, DA, DPWH, DBM, PCG, PNP Maritime Group, DILG, and also of MWSS, LWUA, and PPA, in line with the principle of "continuing

mandamus," shall, from finality of this Decision, each submit to the Court a quarterly progressive report of the activities undertaken in accordance with this Decision.

No costs.

SO ORDERED."

[3] E.O. 292, Book II, Chapter 3, Sec. 11; and 1987 Constitution, Art. 7, Sec. 1.

[4] E.O. 292, Book III, Chapter 1, Sec. 1; and 1987 Constitution, Art. 7, Sec. 17.

[5] G.R. No. 166052, 29 August 2007, 531 SCRA 583.

[6] E.O. 379 and 364 were promulgated, placing the Presidential Commission for the Urban Poor (PCUP) under the supervision and control of the DAR, and the National Commission on Indigenous Peoples (NCIP) as an attached agency under the Department of Agrarian Reform.

[7] E.O. 292, Book 3, Title 1, Chapter 2, Sec 3.

[8]G.R. No. 127685, 23 July 1998, 293 SCRA 141.

[9]1987 Constitution, Art. 2 on State Policies.

[10]E.O. 292, Book 3, Title 1, Chapter 6, Sec. 25.

[11]E.O 292, Book 2, Chapter 1, Sec 1(8).

[12]C.J. Reynato S. Puno, Separate Concurring Opinion, Macalintal v. Comelec, G.R. No .157013, 10 July 2003, 405 SCRA 614.

[13]United States v. American Tel. &Tel Co., 567 F 2d 121 (1977), citing J. Brandeis, Separate Dissenting Opinion, Myers v. United States, US 52 293, 47 (1926).

[14]P. 12, MMDA v. Concerned Residents of Manila Bay, G.R. Nos. 171947-48, 15 December 2008, 574 SCRA 661.

[15]Id. at 9.

[16]G.R. No. 147044, 24 August 2007, 531 SCRA 56, 62- 63.

[17]Asuncion v. De Yriarte, 28 Phil 67.

[18]Meralco Securities v. Savellano, L-36748, 23 October 1982, 117 SCRA 804.

[19]G.R. No. 162243, 29 November 2006, 508 SCRA 498.

[20]A term used by Manu Nair, correspondent of The International Environment News, describing the Supreme Court of India in the Forest Conservation Case. Available at http://www.abanet.org/intlaw/committees/business_regulation/environment/nairreportjune05.pdf. (visited 17 November 2010)

[21]1996 SC (2) 199 JT 1996 (1) 708 1996 SCALE (1) SP 31.

[22]Rajeev Davan, Supreme Court advocate, Supreme Court of India, Judicial Excessivism, available at http://www.indiaenvironmentportal.org.in/content/judicialexcessivism. (visited 17 November 2010)

[23]T.N. Godavarman Thirumulkpad v. Union of India & Ors (1997) 2 SCC 267.

[24]Supra note 20 at page 2.

[25]Abhaykumar Dilip Ostwal, Supreme Court advocate, Supreme Court of India, Judicial Activism and Self-Restraint, available at http://airwebworld.com/articles/index.php. (visited 17 November 2010)

[26]Justice J.S. Verma, "Judicial activism should be neither judicial ad hocism nor judicial tyranny", as published in The Indian Express, 06th April 2007 (http://www.indianexpress.com).

[27] Justice B.N. Srikrishna, "Skinning a Cat" (2005) 8 SCC (J) 3.

[28]Supra note 1.

[29]A phrase used by Justice Laurel in Angara v. Electoral Commission, 63 Phil. 130 (1936).

[30]G.R. No. 115525, 25 August 1994, 435 SCRA 630, holding that judicial inquiry whether the formal requirements for the enactment of statutes — beyond those prescribed by the Constitution — have been observed, is precluded by the principle of separation of powers.

[31]Vicente V. Mendoza, "The Nature and Function of Judicial Review," 31 IBP Journal 1 (2005).

[32]Rules of Court, Rule 2, Sec. 2.

[33]United States v. Fruehauf, 365 U.S. 146, 157 (1968).

[34]Macalintal v. Comelec, G.R. No .157013, 10 July 2003, 405 SCRA 614.

[35]Paul Freund, quoting Justice Brandeis, in Law and Justice 36 (1968).