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(G.R. No. 91649. May 14, 1991)

ATTORNEYS HUMBERTO BASCO, EDILBERTO BALCE, SOCRATES MARANAN AND LORENZO SANCHEZ, *petitioners*, *vs.* PHILIPPINE AMUSEMENTS AND GAMING CORPORATION (PAGCOR), *respondent*.

SYLLABUS

1. **STATUTORY CONSTRUCTION; PRESUMPTION OF VALIDITY OF STATUTE; MUST BE INDULGED IN FAVOR OF ITS CONSTITUTIONALITY.--** As We enter upon the task of passing on the validity of an act of a co-equal and coordinate branch of the government. We need not be reminded of the time-honored principle, deeply ingrained in our jurisprudence, that a statute is presumed to be valid. Every presumption must be indulged in favor of its constitutionality. This is not to say that We approach Our task with diffidence or timidity. Where it is clear that the legislature or the executive for that matter, has over-stepped the limits of its authority under the constitution, We should not hesitate to wield the axe and let it fall heavily, as fall it must, on the offending statute (Lozano *v.* Martinez, *supra*). In Victoriano *v.* Elizalde Rope Workers' Union, et. al, 59 SCRA 54, the Court thru Mr. Justice Zaldivar underscored the - ". . . thoroughly established principle which must be followed in all cases where questions of constitutionality as obtain in the instant cases are involved. All presumptions are indulged in favor of constitutionality; one who attacks a statute alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld and the challenger must negate all possible basis; that the courts are not concerned with the wisdom, justice, policy or expediency of a statute and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted." (Danner v. Hass, 194 N.W. 2nd 534, 539; Spurbeck *v.* Statton, 106 N.W. 2nd 660, 663; 59 SCRA 66; see also e.g. Salas *v.*

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Jarencio, 46 SCRA 734, 739 [1970]; Peralta v. Commission on Elections, 82 SCRA 30, 55 [1978]; and Heirs of Ordona v. Reyes, 125 SCRA 220, 241-242 [1983] cited in Citizens Alliance for Consumer Protection v. Energy Regulatory Board, 162 SCRA 521, 540)

2. ID.; IN NULLIFYING A LAW, IT MUST BE SHOWN THAT THERE IS A CLEAR AND UNEQUIVOCAL BREACH OF THE CONSTITUTION.-- Every law has in its favor the presumption of constitutionality (Yu Cong Eng v. Trinidad, 47 Phil. 387; Salas v. Jarencio, 48 SCRA 734; Peralta v. Comelec, 82 SCRA 30; Abbas v. Comelec, 179 SCRA 287). Therefore, for PD. 1869 to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution, not merely a doubtful and equivocal one. In other words, the grounds for nullity must be clear and beyond reasonable doubt. (Peralta v. Comelec, *Supra*) Those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis for such a declaration. Otherwise, their petition must fail. Based on the grounds raised by petitioners to challenge the constitutionality of P.D. 1869, the Court finds that petitioners have failed to overcome the presumption. The dismissal of this petition is therefore, inevitable. But as to whether P.D. 1869 remains a wise legislation considering the issues of "morality, monopoly, trend to free enterprise, privatization as well as the state principles on social justice, role of youth and educational values" being raised, is up for Congress to determine.

3. POLITICAL LAW; JUDICIAL DEPARTMENT; TECHNICALITIES OF PROCEDURE MAYBE BRUSHED ASIDE FOR THE PROPER EXERCISE OF ITS POWERS.-- Considering however the importance to the public of the case at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the court has brushed aside technicalities of procedure and has taken cognizance of this petition. (Kapatiran ng mga Naglilingkod Sa Pamahalaan ng Pilipinas Inc. v. Tan, 163 SCRA 371). "With particular regard to the requirement of proper party as applied in the cases before Us, We hold that the same is satisfied by the petitioners and intervenors because each of them

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has sustained or is in danger of sustaining an immediate injury as a result of the acts or measures complained of. And even if, strictly speaking they are not covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised. "In the first Emergency Powers Cases, ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they were involving only an indirect and general interest shared in common with the public. The Court dismissed the objection that they were not proper parties and ruled that `the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must technicalities of procedure.` We have since then applied the exception in many other cases." (Association of Small Landowners in the Philippines, Inc. *v.* Sec. of Agrarian Reform, 175 SCRA 343).

4. ID.; ID.; NO POWER TO SETTLE POLICY ISSUES.-- Anent petitioners' claim that PD 1869 is contrary to the "avowed trend of the Cory Government away from monopolies and crony economy and toward free enterprise and privatization" suffice it to state that this is not ground for this Court to nullify P.D. 1869. If, indeed, PD 1869 runs counter to the government's policies then it is for the Executive Department to recommend to Congress its repeal or amendment. "The judiciary does not settle policy issues. The Court can only declare what the law is and not what the law should be. Under our system of government, policy issues are within the domain of the political branches of government and of the people themselves as the repository of all state power." (Valmonte *v.* Belmonte, Jr., 170 SCRA 256).

5. ID.; CONCEPT OF POLICE POWER; CONSTRUED.-- The concept of police power is well-established in this jurisdiction. It has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare" (Edu *vs.* Ericta, 35 SCRA 481, 487). As defined, it consists of (1) an imposition or restraint upon liberty or property, (2) in order to foster the common good. It is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensive embrace. (Philippine Association of Service Exporters, Inc. *v.* Drilon, 163 SCRA 386). Its

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scope, ever-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuming the greatest benefits. (Edu *v.* Ericta, supra) It finds no specific Constitutional grant for the plain reason that it does not owe its origin to the charter. Along with the taxing power and eminent domain, it is inborn in the very fact of statehood and sovereignty. It is a fundamental attribute of government that has enabled it to perform the most vital functions of governance. Marshall, to whom the expression has been credited, refers to it succinctly as the plenary power of the state "to govern its citizens". (Tribe, American Constitutional Law, 323, 1978). The police power of the State is a power co-extensive with self-protection and is most aptly termed the "law of overwhelming necessity." (Rubi *v.* Provincial Board of Mindoro, 39 Phil. 660, 708) It is "the most essential, insistent, and illimitable of powers." (Smith Bell & Co. *v.* National, 40 Phil. 136) It is a dynamic force that enables the state to meet the exigencies of the winds of change.

6. **PHILIPPINE AMUSEMENT AND GAMING CORPORATION (P.D. NO. 1869); PURPOSE FOR ITS CREATION.**-- P.D. 1869 was enacted pursuant to the policy of the government to "regulate and centralize thru an appropriate institution all games of chance authorized by existing franchise or permitted by law" (1st whereas clause, PD 1869). As was subsequently proved, regulating and centralizing gambling operations in one corporate entity - the PAGCOR, was beneficial not just to the Government but to society in general. It is a reliable source of much needed revenue for the cash strapped Government. It provided funds for social impact projects and subjected gambling to "close scrutiny, regulation, supervision and control of the Government" (4th Whereas Clause, PD 1869). With the creation of PAGCOR and the direct intervention of the Government, the evil practices and corruptions that go with gambling will be minimized if not totally eradicated. Public welfare, then, lies at the bottom of the enactment of PD 1896.

7. **ID.; DOES NOT CONSTITUTE A WAIVER OF THE RIGHT OF LOCAL GOVERNMENT TO IMPOSE TAXES AND LOCAL FEES; REASONS THEREFOR.**-- Petitioners contend that P.D. 1869 constitutes a waiver of the right of the City of Manila to impose taxes and legal fees; that the exemption clause in P.D. 1869 is violative of the principle of local

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autonomy. They must be referring to Section 13 par. (2) of P.D. 1869 which exempts PAGCOR, as the franchise holder from paying any "tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local." Their contention stated herein above is without merit for the following reasons: (a) The City of Manila, being a mere Municipal corporation has no inherent right to impose taxes. Thus, "the Charter or statute must plainly show an intent to confer that power or the municipality cannot assume it." Its "power to tax" therefore must always yield to a legislative act which is superior having been passed upon by the state itself which has the "inherent power to tax." (b) The Charter of the City of Manila is subject to control by Congress. It should be stressed that "municipal corporations are mere creatures of Congress" which has the power to "create and abolish municipal corporations" due to its "general legislative powers." Congress, therefore, has the power of control over Local governments. And if Congress can grant the City of Manila the power to tax certain matters, it can also provide for exemptions or even take back the power. (c) The City of Manila's power to impose license fees on gambling, has long been revoked. As early as 1975, the power of local governments to regulate gambling thru the grant of "franchise, licenses or permits" was withdrawn by P.D. No. 771 and was vested exclusively on the National Government. Therefore, only the National Government has the power to issue "licenses or permits" for the operation of gambling. Necessarily, the power to demand or collect license fees which is a consequence of the issuance of "licenses or permits" is no longer vested in the City of Manila. (d) Local governments have no power to tax instrumentalities of the National Government. PAGCOR is a Government owned or controlled corporation with an original charter, PD 1869. All of its shares of stocks are owned by the National Government. In addition to its corporate powers (Sec.3, Title II, PD 1869) it also exercises regulatory powers.

8. ID.; EXEMPT FROM LOCAL TAXES; REASONS THEREOF.-- PAGCOR has a dual role, to operate and to regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by a mere Local government. "The states have no power by taxation or

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otherwise, to retard, impede, burden or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the federal government" (MC Culloch *v.* Maryland, 4 Wheat 316, 4 L Ed. 579). This doctrines emanates from the "supremacy" of the National Government over local governments. "Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (Johnson *v.* Maryland, 254 US 51) and it can be agreed that *no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal responsibilities, or even to seriously burden it in the accomplishment of them.*" (Antieau, Modern Constitutional Law, Vol. 2, p. 140, italics supplied). Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as "a tool for regulation" (U.S. *v.* Sanchez, 340 US 42). The power to tax which was called by Justice Marshall as the "power to destroy" (Mc Culloch v. Maryland, supra) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it.

9. ID.; NOT A VIOLATION OF THE LOCAL AUTONOMY CLAUSE IN THE CONSTITUTION.-- The power of local government to "impose taxes and fees" is always subject to "limitations" which Congress may provide by law. Since PD 1869 remains an "operative" law until "amended, repealed or revoked" (Sec. 3, Art. XVIII, 1987 Constitution), its "exemption clause" remains as an exception to the exercise of the power of local governments to impose taxes and fees. It cannot therefore be violative but rather is consistent with the principle of local autonomy. Besides, the principle of local autonomy under the 1987 Constitution simply means "decentralization" (III Records of the 1987 Constitutional Commission, pp. 435-436, as cited in Bernas, The Constitution of the Republic of the Philippines, Vol. II, First Ed., 1988, p. 374). It does not make local governments sovereign within the state or an "imperium in imperio." Local Government has been described as a political subdivision of a nation or state which is constituted by law and has substantial control of local affairs. In a unitary system of government, such as the government under the Philippine Constitution, local governments can only be an *intra*

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sovereign subdivision **of one** ***sovereign nation,*** **it cannot be an** ***imperium*** **in** ***imperio.*** **Local government in such a system can only mean a measure of decentralization of the function of government. (italics supplied) As to what state powers should be "decentralized" and what may be delegated to local government units remains a matter of policy, which concerns wisdom. It is therefore a political question. (Citizens Alliance for Consumer Protection *v.* Energy Regulatory Board, 162 SCRA 539). What is settled is that the matter of regulating, taxing or otherwise dealing with gambling is a State concern and hence, it is the sole prerogative of the State to retain it or delegate it to local governments.**

10. ID.; NOT A VIOLATION OF EQUAL PROTECTION CLAUSE.-- Petitioners next contend that P.D. 1869 violates the equal protection clause of the Constitution, because "it legalized PAGCOR - conducted gambling, while most gambling are outlawed together with prostitution, drug trafficking and other vices." We, likewise, find no valid ground to sustain this contention. The petitioners' posture ignores the well-accepted meaning of the clause "equal protection of the laws." The clause does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is not unreasonable or arbitrary (Itchong *v.* Hernandez, 101 Phil. 1155). A law does not have to operate in equal force on all persons or things to be conformable to Article III, Section 1 of the Constitution (DECS *v.* San Diego, G.R. No. 89572, December 21, 1989). The "equal protection clause" does not prohibit the Legislature from establishing classes of individuals or objects upon which different rules shall operate (Laurel *v.* Misa, 43 O.G. 2847). The Constitution does not require situations which are different in fact or opinion to be treated in law as though they were the same (Gomez *v.* Palomar, 25 SCRA 827). Just how P.D. 1869 in legalizing gambling conducted by PAGCOR is violative of the equal protection is not clearly explained in the petition. The mere fact that some gambling activities like cockfighting (P.D. 449) horse racing (R.A. 306 as amended by RA 983), sweepstakes, lotteries and races (RA 1169 as amended by B.P. 42) are legalized under certain conditions, while others are prohibited, does not render the applicable laws, P.D. 1869 for one, unconstitutional. "If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied." (Gomez *v.* Palomar, 25 SCRA 827). "The equal protection clause of the 14th

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Amendment does not mean that all occupations called by the same name must be treated the same way; the state may do what it can to prevent which is deemed as evil and stop short of those cases in which harm to the few concerned is not less than the harm to the public that would insure if the rule laid down were made mathematically exact." (Dominican Hotel *v.* Arizana, 249 US 2651).

11. **ID.; PRESUMED VALID AND CONSTITUTIONAL.--** As this Court held in Citizens' Alliance for Consumer Protection *v.* Energy Regulatory Board, 162 SCRA 521 - "Presidential Decree No. 1956, as amended by Executive Order No. 137 has, in any case, in its favor the presumption of validity and constitutionality which petitioners Valmonte and the KMU have not overturned. Petitioners have not undertaken to identify the provisions in the Constitution which they claim to have been violated by that statute. This Court, however, is not compelled to speculate and to imagine how the assailed legislation may possibly offend some provision of the Constitution. The Court notes, further, in this respect that petitioner have in the main put in question the wisdom, justice and expediency of the establishment of the OPSF, issues which are not properly addressed to this Court and which this Court may not constitutionally pass upon. Those issues should be addressed rather to the political departments of government: the President and the Congress."

PADILLA, *J.*, *separate concurring:*

1. **POLITICAL LAW; LEGISLATIVE AND EXECUTIVE DEPARTMENT; VESTED WITH POWER TO DECIDE STATE POLICY.--** Justice Padilla concurs in the result of the learned decision penned by his brother Mr. Justice Paras. This means that he agrees with the decision insofar as it holds that the prohibition, control, and regulation of the entire activity known as gambling properly pertain to "*state policy*." It is therefore, the political departments of government, namely, the legislative and the executive that should decide on what government should do in the entire area of gambling, and assume full responsibility to the people for such policy. The courts, as the decision states, cannot inquire into the wisdom, morality or expediency of policies adopted by the political departments of government in areas which fall within their authority, except only when such policies pose a clear and present danger to the life, liberty or property of the individual. This case does not involve such a factual situation.

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2. ID.; LEGISLATIVE DEPARTMENT; MUST OUTLAW ALL FORMS OF GAMBLING, AS A FUNDAMENTAL STATE OF POLICY; REASON THEREFOR.-- Justice Padilla hastens to make of record that he does not subscribe to gambling in any form. It demeans the human personality, destroys self-confidence and eviscerates one's self-respect, which in the long run will corrode whatever is left of the Filipino moral character. Gambling has wrecked and will continue to wreck families and homes; it is an antithesis to individual reliance and reliability as well as personal industry which are the touchstones of real economic progress and national development. Gambling is reprehensible whether maintained by government or privatized. The revenues realized by the government out of "legalized" gambling will, in the long run, be more than offset and negated by the irreparable damage to the people's moral values. Also, the moral standing of the government in its repeated avowals against "illegal gambling" is fatally flawed and becomes untenable when it itself engages in the very activity it seeks to eradicate. One can go through the Court's decision today and mentally replace the activity referred to therein as *gambling*, which is legal only because it is authorized by law and run by the government, with the activity known as *prostitution*. Would prostitution be any less reprehensible were it to be authorized by law, franchised, and "regulated" by the government, in return for the substantial revenues it would yield the government to carry its laudable projects, such as infrastructure and social amelioration? The question, he believes, answers itself. He submits that the sooner the legislative department outlaws all forms of gambling, *as a fundamental state policy*, and the sooner the executive implements such policy, the better it will be for the nation.

APPEARANCES OF COUNSEL

H. B. Basco and Associates and Valmonte Law Offices for petitioners.

The Solicitor General and Government Corporate Counsel for respondents.

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DECISION

PARAS, *J.*:

A TV ad proudly announces:

"The new PAGCOR -- responding through responsible gaming."

But the petitioners think otherwise, that is why, they filed the instant petition seeking to annul the Philippine Amusement and Gaming Corporation (PAGCOR) Charter - PD 1869, because it is allegedly contrary to morals, public policy and order, and because --

"A. It constitutes a waiver of a right prejudicial to a third person with a right recognized by law. It waived the Manila City government's right to impose taxes and license fees, which is recognized by law;

"B. For the same reason stated in the immediately preceding paragraph, the law has intruded into the local government's right to impose local taxes and license fees. This, in contravention of the constitutionally enshrined principle of local autonomy;

"C. It violates the equal protection clause of the constitution in that it legalizes PAGCOR - conducted gambling, while most other forms of gambling are outlawed, together with prostitution, drug trafficking and other vices;

"C. It violates the avowed trend of the Cory government away from monopolistic and crony economy, and toward free enterprise and privatization." (p. 2, Amended Petition; p. 7, *Rollo*)

In their Second Amended Petition, petitioners also claim that PD 1869 is contrary to the declared national policy of the "new restored democracy" and the people's will as expressed in the 1987 Constitution. The decree is said to have a "gambling objective" and therefore is contrary to Section 11, 12 and 13 of Article II, Sec. 1 of Article VIII and Section 3 (2) of Article XIV, of the present Constitution (p. 3, Second Amended Petition; p. 21, *Rollo*).

The procedural issue is whether petitioners, as taxpayers and practicing lawyers (petitioner Basco being also the Chairman of the Committee on Laws of the City Council of Manila), can question and seek the annulment of PD 1869 on the alleged grounds mentioned above.

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The Philippine Amusements and Gaming Corporation (PAGCOR) was created by virtue of P.D. 1067-A dated January 1, 1977 and was granted a franchise under P.D. 1067-B also dated January 1, 1977 "to establish, operate and maintain gambling casinos on land or water within the territorial jurisdiction of the Philippines." Its operation was originally conducted in the well known floating casino "Philippine Tourist." The operation was considered a success for it proved to be a potential source of revenue to fund infrastructure and socio-economic projects, thus, P.D. 1399 was passed on June 2, 1978 for PAGCOR to fully attain this objective.

Subsequently, on July 11, 1983 PAGCOR was created under P.D. 1869 to enable the Government to regulate and centralize all games of chance authorized by existing franchise or permitted by law, under the following declared policy --

"Section 1. *Declaration of Policy*. It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:

"(a) To centralize and integrate the right and authority to operate and conduct games of chance into one corporate entity to be controlled, administered and supervised by the Government.

"(b) To establish and operate clubs and casinos, for amusement and recreation, including sports gaming pools, (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will: (1) generate sources of additional revenue to fund infrastructure and socio-civic projects, such as flood control programs, beautification, sewerage and sewage projects, Tulungan ng Bayan Centers, Nutritional Programs, Population Control and such other essential public services; (2) create recreation and integrated facilities which will expand and improve the country's existing tourist attractions; and (3) minimize, if not totally eradicate, all the evils, malpractices and corruptions that are normally prevalent on the conduct and operation of gambling clubs and casinos without direct governmentinvolvement." (Section 1, P.D. 1869)

To attain these objectives PAGCOR is given territorial jurisdiction all over the Philippines. Under its Charter's repealing clause, all laws, decrees, executive orders, rules and regulations,

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inconsistent therewith, are accordingly repealed, amended or modified.

It is reported that PAGCOR is the third largest source of government revenue, next to the Bureau of Internal Revenue and the Bureau of Customs. In 1989 alone, PAGCOR earned P3.43 Billion, and directly remitted to the National Government a total of P2.5 Billion in form of franchise tax, government's income share, the President's Social Fund and Host Cities' share. In addition, PAGCOR sponsored other socio-cultural and charitable projects on its own or in cooperation with various governmental agencies, and other private associations and organizations. In its 3 1/2 years of operation under the present administration, PAGCOR remitted to the government a total of P6.2 Billion. As of December 31, 1989 PAGCOR was employing 4,494 employees in its nine (9) casinos nationwide, directly supporting the livelihood of Four Thousand Four Hundred Ninety-Four (4,494) families.

But the petitioners, are questioning the validity of P.D. No. 1869. They allege that the same is "null and void" for being "contrary to morals, public policy and public order," monopolistic and tends toward "crony economy", and is violative of the equal protection clause and local autonomy as well as for running counter to the state policies enunciated in Sections 11 (Personal Dignity and Human Rights), 12 (Family) and 13 (Role of Youth) of Article II, Section 1 (Social Justice) of Article XIII and Section 2 (Educational Values) of Article XIV of the 1987 Constitution.

This challenge to P.D. No. 1869 deserves a searching and thorough scrutiny and the most deliberate consideration by the Court, involving as it does the exercise of what has been described as "the highest and most delicate function which belongs to the judicial department of the government." (State v. Manuel, 20 N.C. 144, Lozano v. Martinez, 146 SCRA 323).

As We enter upon the task of passing on the validity of an act of a co-equal and coordinate branch of the government We need not be reminded of the time-honored principle, deeply ingrained in our jurisprudence, that a statute is presumed to be valid. Every presumption must be indulged in favor of its constitutionality. This is not to say that We approach Our task with diffidence or timidity.

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Where it is clear that the legislature or the executive for that matter, has over-stepped the limits of its authority under the constitution, We should not hesitate to weild the axe and let it fall heavily, as fall it must, on the offending statute (Lozano *v.* Martinez *supra*).

In Victoriano *v.* Elizalde Rope Workers' Union, et. al, 59 SCRA 54, the Court thru Mr. Justice Zaldivar underscored the --

"... thoroughly established principle which must be followed in all cases where questions of constitutionality as obtain in the instant cases are involved. All presumptions are indulged in favor of constitutionality; one who attacks a statute alleging unconstitutionality must prove its invalidty beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld and the challenger must negate all possible basis; that the courts are not concerned with the wisdom, justice, policy or expediency of a statute and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted." (Danner *v.* Hass, 194 N.W. 2nd 534, 539; Spurbeck *v.* Statton 106 N.W. 2nd 660, 663; 59 SCRA 66; see also e.g. Salas *v.* Jarencio, 46 SCRA 734, 739 [1970]; Peralta *v.* Commission on Elections, 82 SCRA 30, 55 [1978]; and Heirs of Ordona *v.* Reyes, 125 SCRA 220, 241-242 [1983] cited in Citizens Alliance for Consumer Protection *v.* Energy Regulatory Board, 162 SCRA 521, 540)

Of course, there is first, the procedural issue. The respondents are questioning the legal personality of petitioners to file the instant petition.

Considering however the importance to the public of the case at bar, and in keeping with the Court's duty, under the 1987 Constituion, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the Court has brushed aside technicalities of procedure and has taken cognizance of this petition. (Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. *v.* Tan, 163 SCRA 371)

"With particular regard to the requirement of proper party as applied in the cases before Us, We hold that the same is satisfied by the petitioners and intervenors because each of them has sustained or is in danger of sustaining an immediate injury as a result of the acts or measures complained of. And even if, strictly speaking they are not

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covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised.

"In the first Emergency Powers Cases, ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they were involving only an indirect and general interest shared in common with the public. The Court dismissed the objection that they were not proper parties and ruled that 'the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must technicalities of procedure.' We have since then applied the exception in many other cases." (Association of Small Landowners in the Philippines, Inc. *v.* Sec. of Agrarian Reform, 175 SCRA 343).

Having disposed of the procedural issue, We will now discuss the substantive issues raised.

Gambling in all its forms, unless allowed by law, is generally prohibited. But the prohibition of gambling does not mean that the Government cannot regulate it in the exercise of its police power.

The concept of police power is well-established in this jurisdiction. It has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." (Edu *v.* Ericta, 35 SCRA 481, 487) As defined, it consists of (1) an imposition or restraint upon liberty or property, (2) in order to foster the common good. It is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensive embrace. (Philippine Association of Service Exporters, Inc. *v.* Drilon, 163 SCRA 386).

Its scope, ever-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuming the greatest benefits. (Edu *v.* Ericta, *supra*)

It finds no specific Constitutional grant for the plain reason that it does not owe its origin to the charter. Along with the taxing power and eminent domain, it is inborn in the very fact of statehood and sovereignty. It is a fundamental attribute of government that has

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enabled it to perform the most vital functions of governance. Marshall, to whom the expression has been credited, refers to it succintly as the plenary power of the state "to govern its citizens". (Tribe, American Constitutional Law, 323, 1978). The police power of the State is a power co-extensive with self-protection, and is most aptly termed the "law of overwhelming necessity." (Rubi *v.* Provincial Board of Mindoro, 39 Phil. 660, 708) It is "the most essential, insistent, and illimitable of powers." (Smith Bell & Co. *v.* National, 40 Phil. 136) It is a dynamic force that enables the state to meet the exigencies of the winds of change.

What was the reason behind the enactment of P.D. 1869?

P.D. 1869 was enacted pursuant to the policy of the government to "regulate and centralize thru an appropriate institution all games of chance authorized by existing franchise or permitted by law (1st whereas clause, PD 1869). As was subsequently proved, regulating and centralizing gambling operations in one corporate entity - the PAGCOR, was beneficial not just to the Government but to society in general. It is a reliable source of much needed revenue for the cash strapped Government. It provided funds for social impact projects and subjected gambling to "close scrutiny, regulation, supervision and control of the Government" (4th Whereas Clause, PD 1869). With the creation of PAGCOR and the direct intervention of the Government, the evil practices and corruptions that go with gambling will be minimized if not totally eradicated. Public welfare, then, lies at the bottom of the enactment of PD 1896.

Petitioners contend that P.D. 1869 constitutes a waiver of the right of the City of Manila to impose taxes and legal fees; that the exemption clause in P.D. 1869 is violative of the principle of local autonomy. They must be referring to Section 13 par. (2) of P.D. 1869 which exempts PAGCOR, as the franchise holder from paying any "tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local."

"(2) Income and other taxes. - (a) Franchise Holder: No tax of any kind or form, income or otherwise as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except

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a franchise tax of five (5%) percent of the gross revenues or earnings derived by the Corporation from its operations under this franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority" (Section 13 [2]).

Their contention stated hereinabove is without merit for the following reasons:

(a) The City of Manila, being a mere Municipal corporation has no inherent right to impose taxes (Icard *v.* City of Baguio, 83 Phil. 870; City of Iloilo *v.* Villanueva, 105 Phil. 337; Santos *v.* Municipality of Caloocan, 7 SCRA 643). Thus, "the Charter or statute must plainly show an intent to confer that power or the municipality cannot assume it" (Medina *v.* City of Baguio, 12 SCRA 62). Its "power to tax" therefore must always yield to a legislative act which is superior having been passed upon by the state itself which has the "inherent power to tax" (Bernas, the Revised [1973] Philippine Constitution, Vol. 1, 1983 ed., p. 445).

(b) The Charter of the City of Manila is subject to control by Congress. It should be stressed that "municipal corporations are mere creatures of Congress" (Unson *v.* Lacson, G.R. No. 7909, January 18, 1957) which has the power to "create and abolish municipal corporations" due to its "general legislative powers" (Asuncion *v.* Yriantes, 28 Phil. 67; Merdanillo *v.* Orandia, 5 SCRA 541). Congress, therefore, has the power of control over Local governments (Hebron *v.* Reyes, G.R. No. 9124, July 2, 1950). And if Congress can grant the City of Manila the power to tax certain matters, it can also provide for exemptions or even take back the power.

(c) The City of Manila's power to impose license fees on gambling, has long been revoked. As early as 1975, the power of local governments to regulate gambling thru the grant of "franchise, licenses or permits" was withdrawn by P.D. No. 771 and was vested exclusively on the National Government, thus:

"Section 1. Any provision of law to the contrary notwithstanding, the authority of chartered cities and other local governments to issue license, permit or other form of franchise to operate, maintain and establish horse

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and dog race tracks, jai-alai and other forms of gambling is hereby revoked.

"Section 2. Hereafter, all permits or franchises to operate, maintain and establish, horse and dog race tracks, jai-alai and other forms of gambling shall be issued by the national government upon proper application and verification of the qualification of the applicant...."

Therefore, only the National Government has the power to issue "licenses or permits" for the operation of gambling. Necessarily, the power to demand or collect license fees which is a consequence of the issuance of "licensesor permits" is no longer vested in the City of Manila.

(d) Local governments have no power to tax instrumentalities of the National Government. PAGCOR is a government owned or controlled corporation with an original charter, PD 1869. All of its shares of stocks are owned by the National Government. In addition to its corporate powers (Sec. 3, Title II, PD 1869) it also exercises regulatory powers, thus:

"Sec. 9. Regulatory Power. - The Corporation shall maintain a Registry of the affiliated entities, and shall exercise all the powers, authority and the responsibilities vested in the Securities and Exchange Commission over such affiliating entities mentioned under the preceding section, including, but not limited to amendments of Articles of Incorporation and By-Laws, changes in corporate term, structure, capitalization and other matters concerning the operation of the affiliation, entities, the provisions of the Corporation Code of the Philippines to the contrary notwithstanding, except only with respect to original incorporation."

PAGCOR has a dual role, to operate and to regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by a mere Local government.

"The states have no power by taxation or otherwise, to retard, impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in

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the federal government." (MC Culloch *v.* Maryland, 4 Wheat 316, 4 L Ed. 579)

This doctrine emanates from the "supremacy" of the National Government over local governments.

"Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (Johnson *v.* Maryland, 254 US 51) and it can be agreed that *no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal responsibilities, or even to seriously burden it in the accomplishment of them.*" (Antieau, Modern Constitutional Law, Vol. 2, p. 140, italics supplied)

Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as "a tool for regulation" (U.S. *v.* Sanchez, 340 US 42).

The power to tax which was called by Justice Marshall as the "power to destroy" (Mc Culloch *v.* Maryland, *supra*) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it.

(e) Petitioners also argue that the Local Autonomy Clause of the Constitution will be violated by P.D. 1869. This is a pointless argument. Article X of the 1987 Constitution (on Local Autonomy) provides:

"Sec. 5. Each local government unit shall have the power to create its own source of revenue and to levy taxes, fees, and other charges *subject to such guidelines and limitation as the congress may provide*, consistent with the basic policy on local autonomy. Such taxes, fees and charges shall accrue exclusively to the local government." (italics supplied)

The power of local government to "impose taxes and fees" is always subject to "limitations" which Congress may provide by law. Since PD 1869 remains an "operative" law until "amended, repealed or revoked" (Sec. 3, Art. XVIII, 1987 Constitution), its "exemption clause" remains as an exception to the exercise of the power of local governments to impose taxes and fees. It cannot

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therefore be violative but rather is consistent with the principle of local autonomy.

Besides, the principle of local autonomy under the 1987 Constitution simply means "decentralization" (III Records of the 1987 Constitutional Commission, pp. 435-436, as cited in Bernas, The Constitution of the Republic of the Philippines, Vol. II, First Ed., 1988, p. 374). It does not make local governments sovereign within the state or an "*imperium in imperio.*"

"Local Government has been described as a political subdivision of a nation or state which is constituted by law and has substantial control of local affairs. In a unitary system of government, such as the government under the Philippine Constitution, local governments can only be an *intra sovereign subdivision* of one *sovereign nation*, it cannot be an *imperium* in *imperio*. Local government in such a system can only mean a measure of decentralization of the function of government. (italics supplied)

As to what state powers should be "decentralized" and what may be delegated to local government units remains a matter of policy, which concerns wisdom. It is therefore a political question. (Citizens Alliance for Consumer Protection *v.* Energy Regulatory Board, 162 SCRA 539).

What is settled is that the matter of regulating, taxing or otherwise dealing with gambling is a State concern and hence, it is the sole prerogative of the State to retain it or delegate it to local governments.

"As *gambling* is usually an *offense against the State, legislative grant or express charter power is generally necessary to empower the local corporation to deal with the subject.* . . . In the absence of express grant of power to enact, *ordinance provisions on this subject which are inconsistent with the state laws are void.*" (Ligan *v.* Gadsden, Ala App. 107 So. 733 *Ex-Parte* Solomon, 9, Cals. 440, 27 PAC 757 following *in re* Ah You, 88 Cal. 99, 25 PAC 974, 22 Am St. Rep. 280, 11 LRA 480, as cited in Mc Quinllan Vol. 3 *ibid*, p. 548, italics supplied)

Petitioners next contend that P.D. 1869 violates the equal protection clause of the Constitution, because "it legalized PAGCOR - conducted gambling, while most gambling are outlawed together with prostitution, drug trafficking and other vices" (p. 82, *Rollo*).

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We, likewise, find no valid ground to sustain this contention. The petitioners' posture ignores the well-accepted meaning of the clause "equal protection of the laws." The clause does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is not unreasonable or arbitrary (Itchong *v.* Hernandez, 101 Phil. 1155). A law does not have to operate in equal force on all persons or things to be conformable to Article III, Section 1 of the Constitution (DECS *v.* San Diego, G.R. No. 89572, December 21, 1989).

The "equal protection clause" does not prohibit the Legislature from establishing classes of individuals or objects upon which different rules shall operate (Laurel *v.* Misa, 43 O.G. 2847). The Constitution does not require situations which are different in fact or opinion to be treated in law as though they were the same (Gomez *v.* Palomar, 25 SCRA 827).

Just how P.D. 1869 in legalizing gambling conducted by PAGCOR is violative of the equal protection is not clearly explained in the petition. The mere fact that some gambling activities like cockfighting (P.D. 449) horse racing (R.A. 306 as amended by RA 983), sweepstakes, lotteries and races (RA 1169 as amended by B.P. 42) are legalized under certain conditions, while others are prohibited, does not render the applicable laws, P.D. 1869 for one, unconstitutional.

"If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. (Gomez *v.* Palomar, 25 SCRA 827)

"The equal protection clause of the 14th Amendment does not mean that all occupations called by the same name must be treated the same way; the state may do what it can to prevent which is deemed as evil and stop short of those cases in which harm to the few concerned is not less than the harm to the public that would insure if the rule laid down were made mathematically exact." (Dominican Hotel *v.* Arizana, 249 US 2651).

Anent petitioners' claim that PD 1869 is contrary to the "avowed trend of the Cory Government away from monopolies and crony economy and toward free enterprise and privatization" suffice it to state that this is not a ground for this Court to nullify P.D. 1869. If, indeed, PD 1869 runs counter to the government's policies then it is

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for the Executive Department to recommend to Congress its repeal or amendment.

"The judiciary does not settle policy issues. The Court can only declare what the law is and not what the law should be. Under our system of government, policy issues are within the domain of the political branches of government and of the people themselves as the repository of all state power." (Valmonte *v.* Belmonte, Jr., 170 SCRA 2565).

On the issue of "monopoly," however, the Constitution provides that:

"Sec. 19. The State shall regulate or prohibit monopolies when public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed." (Art. XII, National Economy and Patrimony)

It should be noted that, as the provision is worded, monopolies are not necessarily prohibited by the Constitution. The state must still decide whether public interest demands that monopolies be regulated or prohibited. Again, this is a matter of policy for the Legislature to decide.

On petitioners' allegation that P.D. 1869 violates Sections 11 (Personality Dignity) 12 (Family) and 13 (Role of Youth) of Article II; Section 13 (Social Justice) of Article XIII and Section 2 (Educational Values) of Article XIV of the 1987 Constitution, suffice it to state also that these are merely statements of principles and policies. As such, they are basically not self-executing, meaning a law should be passed by Congress to clearly define and effectuate such principles.

"In general, therefore, the 1935 provisions were not intended to be self-executing principles ready for enforcement through the courts. They were rather directives addressed to the executive and the legislature. If the executive and the legislature failed to heed the directives of the articles the available remedy was not judicial or political. The electorate could express their displeasure with the failure of the executive and the legislature through the language of the ballot." (Bernas, Vol. II, p. 2)

Every law has in its favor the presumption of constitutionality (Yu Cong Eng *v.* Trinidad, 47 Phil. 387; Salas *v.* Jarencio, 48 SCRA 734; Peralta *v.* Comelec, 82 SCRA 30; Abbas *v.* Comelec, 179 SCRA 287). Therefore, for PD. 1869 to be nullified, it must be shown that

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there is a clear and unequivocal breach of the Constitution, not merely a doubtful and equivocal one. In other words, the grounds for nullity must be clear and beyond reasonable doubt. (Peralta v. Comelec, *supra*) Those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis for such a declaration. Otherwise, their petition must fail. Based on the grounds raised by petitioners to challenge the constitutionality of P.D. 1869, the Court finds that petitioners have failed to overcome the presumption. The dismissal of this petition is therefore, inevitable. But as to whether P.D. 1869 remains a wise legislation considering the issues of "morality, monopoly, trend to free enterprise, privatization as well as the state principles on social justice, role of youth and educational values" being raised, is up for Congress to determine.

As this Court held in Citizens' Alliance for Consumer Protection v. Energy Regulatory Board, 162 SCRA 521 --

"Presidential Decree No. 1956, as amended by Executive Order No. 137 has, in any case, in its favor the presumption of validity and constitutionality which petitioners Valmonte and the KMU have not overturned. Petitioners have not undertaken to identify the provisions in the Constitution which they claim to have been violated by that statute. This Court, however, is not compelled to speculate and to imagine how the assailed legislation may possibly offend some provision of the Constitution. The Court notes, further, in this respect that petitioners have in the main put in question the wisdom, justice and expediency of the establishment of the OPSF, issues which are not properly addressed to this Court and which this Court may not constitutionally pass upon. Those issues should be addressed rather to the political departments of government: the President and the Congress."

Parenthethically, We wish to state that gambling is generally immoral, and this is precisely so when the gambling resorted to is excessive. This excessiveness necessarily depends not only on the financial resources of the gambler and his family but also on his mental, social, and spiritual outlook on life. However, the mere fact that some persons may have lost their material fortunes, mental control, physical health, or even their lives does not necessarily mean that the same are directly attributable to gambling. *Gambling may have been the antecedent, but certainly not necessarily the cause.*

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For the same consequences could have been preceded by an overdose of food, drink, exercise, work, and even sex.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado and *Davide, Jr., JJ.*, concur.

Melencio-Herrera, J., concurs in the result with Justice Padilla.

Padilla, J., concurs in a separate opinion.

PADILLA, *J., concurring in the result:*

I concur in the result of the learned decision penned by my brother Mr. Justice Paras. This means that I agree with the decision insofar as it holds that the prohibition, control, and regulation of the entire activity known as gambling properly pertain to "*state policy.*" It is therefore, the political departments of government, namely, the legislative and the executive that should decide on what government should do in the entire area of gambling, and assume full responsibility to the people for such policy.

The courts, as the decision states, cannot inquire into the wisdom, morality or expediency of policies adopted by the political departments of government in areas which fall within their authority, except only when such policies pose a clear and present danger to the life, liberty or property of the individual. This case does not involve such a factual situation.

However, I hasten to make of record that I does not subscribe to gambling in any form. It demeans the human personality, destroys self-confidence and eviscerates one's self-respect, which in the long run will corrode whatever is left of the Filipino moral character. Gambling has wrecked and will continue to wreck families and homes; it is an antithesis to individual reliance and reliability as well as personal industry which are the touchstones of real economic progress and national development.

Gambling is reprehensible whether maintained by government or privatized. The revenues realized by the government out of

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"legalized" gambling will, in the long run, be more than offset and negated by the irreparable damage to the people's moral values.

Also, the moral standing of the government in its repeated avowals against "illegal gambling" is fatally flawed and becomes untenable when it itself engages in the very activity it seeks to eradicate.

One can go through the Court's decision today and mentally replace the activity referred to therein as *gambling*, which is legal only because it is authorized by law and run by the government, with the activity known as *prostitution*. Would prostitution be any less reprehensible were it to be authorized by law, franchised, and "regulated" by the government, in return for the substantial revenues it would yield the government to carry its laudable projects, such as infrastructure and social amelioration? The question, he believes, answers itself. He submits that the sooner the legislative department outlaws all forms of gambling, *as a fundamental state policy*, and the sooner the executive implements such policy, the better it will be for the nation.

THIRD DIVISION

(G.R. No. 91988. May 14, 1991)

ALLIED LEASING & FINANCE CORPORATION, *petitioner, vs.* HONORABLE COURT OF APPEALS, HON. MILAGROS V. CAGUIOA, Judge, RTC-Pasig, Metro Manila, Branch 165, EMETERIO SIA and LUCIA SIA doing business under the name and style of EMILUZ PRINTING INDUSTRIES, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTION; *CERTIORARI*; YARDSTICK TO MEASURE TIMELINESS OF PETITION THEREFOR IS THE REASONABLENESS**