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producing returned checks and letters and an accounting to offset Exhibits D and D-24 totalling ₱45,648.44."

The Court therefore declares correct the pronouncement of both the Trial Court and the Court of Appeals that Circle's motion for new trial — entitled "Verified Urgent Motion to Set Aside, *etc.*" — was defective, not only because it failed to allege either by separate affidavit or in the body of the motion itself, *the particular facts claimed to constitute the fraud, accident, mistake or excusable negligence* entitling it to relief, but also because it failed to demonstrate with any degree of persuasiveness, by affirmative averments, either in its aforesaid motion or in any other pleading, that it had in its favor a meritorious defense to the action for annulment of the foreclosure sale on the ground that the mortgage debt had been fully paid.

WHEREFORE, the Decision of the Court of Appeals in AC-G.R. CV No. 07269 promulgated on July 31, 1986, is AFFIRMED, with costs against the petitioner.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and *Medialdea, JJ.*, concur.

THIRD DIVISION

[G.R. No. 80767. April 22, 1991]

BOY SCOUTS OF THE PHILIPPINES, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, FORTUNATO ESGUERRA, ROBERTO MALABORBOR, ESTANISLAO MISA, VICENTE EVANGELISTA, and MARCELINO GARCIA,** *respondents.*

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SYLLABUS

1. **POLITICAL LAW; COMMONWEALTH ACT NO. 111 AS AMENDED BY PRESIDENTIAL DECREE NO. 460; BOY SCOUTS OF THE PHILIPPINES; FUNCTION, WITH PUBLIC ASPECT.** — BSP's functions as set out in its statutory charter do have a public aspect. BSP's functions do relate to the fostering of the public virtues of citizenship and patriotism and the general improvement of the moral spirit and fiber of our youth. The social value of activities like those to which the BSP dedicates itself by statutory mandate have in fact, been accorded constitutional recognition (Article II of the 1987 Constitution). The public character of BSP's functions and activities must be conceded, for they pertain to the educational, civic and social development of the youth which constitutes a very substantial and important part of the nation.

2. **ID.; ID.; ID.; NATIONAL EXECUTIVE BOARD; SUBSTANTIAL GOVERNMENTAL PARTICIPATION IN THE CHOICE OF MEMBERS.** — The second aspect that the Court must take into account relates to the governance of the BSP. The composition of the National Executive Board of the BSP includes, as noted from Section 5 of its charter quoted earlier, seven (7) Secretaries of Executive Departments. The includes seven (7) Secretaries (now six [6] in view of the abolition of the Department of Youth and Sports and merger thereof into the Department of Education, Culture and Sports) by themselves do not constitute a majority of the members of the National Executive Board. We must note at the same time that the appointments of members of the National Executive Board, except only the appointments of the Regional Chairman and Scouts of Senior age from the various Scout Regions, are subject to ratification and confirmation by the Chief Scout, who is the President of the Philippines. Vacancies to the Board are filled by a majority vote of the remaining members thereof, but again subject to ratification and confirmation by the Chief Scout. We must assume that such confirmation or ratification involves the exercise of choice or discretion on the part of ratifying or confirming power. It does appear therefore that there is substantial governmental (*i.e.*, Presidential) participation or intervention in the choice of the majority of the members of the National Executive Board of the BSP.

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3. ID.; ID.; ID.; CHARACTER OF ASSETS AND FUNDS. — The third aspect relates to the character of the assets and funds of the BSP. The original assets of the BSP were acquired by purchase or gift or other equitable arrangement with the Boy Scouts of America, of which the BSP was part before the establishment of the Commonwealth of the Philippines. The BSP charter, however, does not indicate that such assets were public or statal in character or had originated from the Government or the State. According to petitioner BSP, its operating funds used for carrying out its purposes and programs, are derived principally from membership dues paid by the Boy Scouts themselves and from property rentals. In this respect, the BSP appears similar to private non-stock, non-profit corporations, although its charter expressly envisages donations and contributions to it from the Government and any of its agencies and instrumentalities. We note only that BSP funds have not apparently heretofore been regarded as public funds by the Commission on Audit, considering that such funds have not been audited by the Commission.

4. ID.; ID.; ID.; A GOVERNMENT-CONTROLLED CORPORATION AND INSTRUMENTALITY OF THE GOVERNMENT. — While the BSP may be seen to be a mixed type of entity, combining aspects of both public and private entities, we believe that considering the character of its purposes and its functions, the statutory designation of the BSP as "a public corporation" and the substantial participation of the Government in the selection of members of the National Executive Board of the BSP, the BSP, as presently constituted under its charter, is a government-controlled corporation within the meaning of Article IX (B) (2) (1) of the Constitution. We are fortified in this conclusion when we note that the Administrative Code of 1987 designates the BSP as one of the attached agencies of the Department of Education, Culture and Sports ("DECS"). We believe that the BSP is appropriately regarded as "a government instrumentality" under the 1987 Administrative Code.

5. ID.; ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; AGENCY OF THE GOVERNMENT, DEFINED. — An "agency of the Government" is defined as referring to any of the various units of the Government including a department, bureau, office, instrumentality, government-owned

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or controlled corporation, or local government or distinct unit therein.

6. **ID.; ID.; ID.; GOVERNMENT INSTRUMENTALITY, DEFINED.** — "Government instrumentality" is in turn defined in the 1987 Administrative Code in the following manner: "*Instrumentality* — refers to any agency of the National Government, not *integrated within the department framework*, vested with special functions or jurisdiction by law, *endowed with some if not all corporate powers*, administering special funds, and *enjoying operational autonomy, usually through a charter. This term includes* regulatory agencies, *chartered institutions and government-owned or controlled corporations*."

7. **ID.; ID.; ID.; CHARTERED INSTITUTION, DEFINED.** — The same Code describes a "chartered institution" in the following terms: "*Chartered institution* — refers to any *agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives*. This term includes the state universities and colleges, and the monetary authority of the State."

8. **ID.; ID.; ID.; EMPLOYEE, EMBRACED WITHIN THE CIVIL SERVICE.** — It thus appears that the BSP may be regarded as both a "government controlled corporation with an original charter" and as an "instrumentality" of the Government within the meaning of Article IX (B) (2) (1) of the Constitution. It follows that the employees of petitioner BSP are embraced within the Civil Service and are accordingly governed by the Civil Service Law and Regulations.

9. **LABOR & SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION; WITHOUT JURISDICTION OVER ILLEGAL DISMISSAL OF EMPLOYEE OF THE BOY SCOUTS OF THE PHILIPPINES.** — In view of the foregoing, we hold that both the Labor Arbiter and public respondent NLRC had no jurisdiction over the complaint filed by private respondents in NLRC Case No. 1637-84; neither labor agency had before it any matter which could validly have been passed upon by it in the exercise of original or appellate jurisdiction. The appealed Decision and Resolution in this case, having been rendered without jurisdiction, vested no rights and imposed no liabilities upon any of the parties here involved.

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10. REMEDIAL LAW; SUPREME COURT; MAY *MOTU PROPIO* TAKE COGNIZANCE OF THE ISSUE OF EXISTENCE OR ABSENCE OF JURISDICTION. — That neither party had expressly raised the issue of jurisdiction in the pleadings poses no obstacle to this ruling of the Court, which may *motu proprio* take cognizance of the issue of existence or absence of jurisdiction and pass upon the same.

APPEARANCES OF COUNSEL

Julio O. Lopez for petitioner.

D E C I S I O N

FELICIANO, *J.*:

This Petition for *Certiorari* is directed at (1) the Decision,[1] dated 27 February 1987, and (2) the Resolution[2] dated 16 October 1987, both issued by the National Labor Relations Commission ("NLRC") in Case No. 1637-84.

Private respondents Fortunato C. Esguerra, Roberto O. Malaborbor, Estanislao M. Misa, Vicente N. Evangelista and Marcelino P. Garcia, had all been rank-and-file employees of petitioner Boy Scouts of the Philippines ("BSP"). At the time of termination of their services in February 1985, private respondents were stationed at the BSP Camp in Makiling, Los Baños, Laguna.

The events which led to such termination of services are as follows:

On 19 October 1984, the Secretary-General of petitioner BSP issued Special Orders Nos. 80, 81, 83, 84 and 85 addressed separately to the five (5) private respondents, informing them that on 20 November 1984, they were to be transferred from the BSP Camp in Makiling to the BSP Land Grant in Asuncion, Davao del Norte. These Orders were opposed by private

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[1] *Rollo*, pp. 49-53.

[2] *Id.*, pp. 83-86.

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respondents who, on 4 November 1984, appealed the matter to the BSP National President.

On 6 November 1984, petitioner BSP conducted a pre-transfer briefing at its National Headquarters in Manila. Private respondents were in attendance during the briefing and they were there assured that their transfer to Davao del Norte would not involve any diminution in salary, and that each of them would receive a relocation allowance equivalent to one (1) month's basic pay. This assurance, however, failed to persuade private respondents to abandon their opposition to the transfer orders issued by the BSP Secretary-General.

On 13 November 1984, a complaint[3] (docketed as NLRC Case No. 16-84J) for illegal transfer was filed with the then Ministry of Labor and Employment, Sub-Regional Arbitration Branch IV, San Pablo City, Laguna. Private respondents there sought to enjoin implementation of Special Orders Nos. 80, 81, 83, 84 and 85, alleging, among other things, that said orders were "indubitable and irrefutable action[s] prejudicial not only to [them] but to [their] families and [would] seriously affect [their] economic stability and solvency considering the present cost of living."

On 21 November 1984 (or the day immediately following the date of scheduled transfer), the BSP Camp Manager in Makiling issued a Memorandum requiring the five (5) private respondents to explain why they should not be charged administratively for insubordination. The Memorandum was a direct result of the refusal by private respondents, two (2) days earlier, to accept from petitioner BSP their respective boat tickets to Davao del Norte and their relocation allowances.

Meanwhile, in a letter of the same date, the BSP National President informed private respondents that their refusal to comply with the Special Orders was not sufficiently justified and constituted rank disobedience. Memoranda subsequently issued by the BSP Secretary-General stressed that such refusal as well as the explanations proffered therefor, were unacceptable and

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[3] Annex "A" of Petition, *Rollo*, pp. 21-22.

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could altogether result in termination of employment with petitioner BSP. These warnings notwithstanding, private respondents continued pertinaciously to disobey the disputed transfer orders.

Petitioner BSP consequently imposed a five-day suspension on the five (5) private respondents, in the latter part of January 1985. Subsequently, by Special Order dated 12 February 1985 issued by the BSP Secretary-General, private respondents' services were ordered terminated effective 15 February 1985.

On 22 February 1985, private respondents amended their original complaint to include charges of illegal dismissal and unfair labor practice against petitioner BSP.[4] The Labor Arbiter thereafter proceeded to hear the complaint.

In a decision[5] dated 31 July 1985, the Labor Arbiter ordered the dismissal of private respondents' complaint for lack of merit.

On 27 February 1987, however, the ruling of the Labor Arbiter was reversed by public respondent NLRC, which held that private respondents had been illegally dismissed by petitioner BSP. The dispositive portion of the NLRC decision read:

"WHEREFORE, premises considered, the Decision appealed from is hereby SET ASIDE and a new one entered ordering the respondent-appellee [petitioner BSP] to reinstate the complainants-appellants [private respondents] to their former positions without loss of seniority rights and other benefits appurtenant thereto and with full backwages from the time they were illegally dismissed from the service up to the date of their actual reinstatement.

SO ORDERED."

The Court notes at the outset that in the Position Paper[6] filed by petitioner BSP with the Labor Arbiter, it was alleged in the second paragraph thereof, that petitioner is a "civic service, non-stock and non-profit organization, relying mostly [on] government and public support, *existing under and by virtue of Commonwealth Act. No. 111, as amended, by Presidential*

[4] Annex "C" of Petition, *Rollo*, p. 29.

[5] Annex "D" of Petition, *Rollo*, pp. 31-37.

[6] Annex "B" of Petition, *Rollo*, pp. 23-28.

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Decree No. 460 x x x." A similar allegation was contained in the Brief for Appellee[7] and in the Petition[8] and Memorandum[9] filed by petitioner BSP with public respondent NLRC and this Court, respectively. The same allegation, moreover, appeared in the Comment[10] (also treated as the Memorandum) submitted to this Court by the Solicitor General on behalf of public respondent NLRC; for their part, private respondents stated in their Appeal Memorandum[11] with the NLRC that petitioner BSP is "*by mandate of law a Public Corporation*," a statement reiterated by them in their Memorandum[12] before this Court.

In a Resolution dated 9 August 1989, this Court required the parties and the Office of the Government Corporate Counsel to file a comment on the question of whether or not petitioner BSP is in fact a government-owned or controlled corporation.

Petitioner, private respondents, the Office of the Solicitor General and the Office of the Government Corporate Counsel filed their respective comments.

The central issue is whether or not the BSP is embraced within the Civil Service as that term is defined in Article IX (B) (2) (1) of the 1987 Constitution which reads as follows:

"The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

x x x x x x x x x"

The answer to the central issue will determine whether or not private respondent NLRC had jurisdiction to render the Decision and Resolution which are here sought to be nullified.

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[7] Annex "F" of Petition, *Rollo*, pp. 43-48 at 43.

[8] *Id.*, pp. 5-20 at 5.

[9] *Id.*, pp. 132-145 at 132.

[10] *Id.*, pp. 107-117 at 107.

[11] Annex "E" of Petition, *Rollo*, pp. 38-41 at 39.

[12] *Rollo*, pp. 147-152.

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The responses of the parties, on the one hand, and of the Office of the Solicitor General and the Office of the Government Corporate Counsel, upon the other hand, in compliance with the Resolution of this Court of 9 August 1989, present a noteworthy uniformity. Petitioner BSP and private respondents submit substantially the same view "that the BSP is a purely private organization." In contrast, the Solicitor General and the Government Corporate Counsel take much the same position, that is, that the BSP is a "public corporation or a "quasi-public corporation" and, as well, a "government controlled corporation."

Petitioner BSP's compliance with our Resolution invokes the following provisions of its Constitution and By-laws:

> "The Boy Scouts of the Philippines declares that it is an independent, voluntary, non-political, non-sectarian and non-governmental organization, with obligations towards nation building and with international orientation."

The BSP, petitioner stresses, does not receive any monetary or financial subsidy from the Government whether on the national or local level.[13] Petitioner declares that it is a "purely private organization" directed and controlled by its National Executive Board the members of which are, it is said, all "voluntary scouters," including seven (7) Cabinet Secretaries.[14]

Private respondents submitted a supplementary memorandum arguing that while petitioner BSP was created as a public corporation, it had lost that status when Section 2 of Commonwealth Act No. 111 as amended by P.D. No. 460 conferred upon it the powers which ordinary private corporations organized under the Corporation Code have:

> "Sec. 2. The said corporation shall have perpetual succession with power to sue and be sued; to hold such real and personal estate as shall be necessary for corporate purposes, and to receive real and personal property by gift, devise, or bequest; to adopt a seal, and to alter or destroy the same at pleasure; to have offices and

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[13] Compliance, p. 1; Temporary *Rollo*.

[14] *Id.*

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conduct its business and affairs in the City of Manila and in the several provinces; to make and adopt by-laws, rules and regulations not inconsistent with the laws of the Philippines, and generally to do all such acts and things including the establishment of regulations for the election of associates and successors: as may be necessary to carry into effect the provisions of the Act and promote the purposes of said corporation."

Private respondents also point out that the BSP is registered as a private employer with the Social Security System and that all its staff members and employees are covered by the Social Security Act, indicating that the BSP had lost its personality or standing as a public corporation. It is further alleged that the BSP's assets and liabilities, official transactions and financial statements have never been subjected to audit by the government auditing office, *i.e.*, the Commission on Audit, being audited rather by the private auditing firm of Sycip Gorres Velayo and Co. Private respondents finally state that the appointments of BSP officers and staff were not approved or confirmed by the Civil Service Commission.

The views of the Office of the Solicitor General and the Office of the Government Corporate Counsel on the above issue appeared to be generally similar. The Solicitor General's Office, although it had appeared for the NLRC and filed a Comment on the latter's behalf on the merits of the Petition for *Certiorari*, submitted that the BSP is a government-owned or controlled corporation, having been created by virtue of Commonwealth Act No. 111 entitled "An Act to Create a Public Corporation to be known as the Boy Scouts of the Philippines and to Define its Powers and Purposes." The Solicitor General stressed that the BSP was created in order to "promote, through organization, and cooperation with other agencies the ability of boys to do things for themselves and others, to train them in scout craft, and to teach them patriotism, courage, self-reliance, and kindred virtues, using the methods which are now in common use by boy scouts."[15] He further noted that the BSP's objectives

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[15] Section 3, Commonwealth Act No. 111, as amended by P.D. No. 460.

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and purposes are "solely of a benevolent character and not for pecuniary profit by its members.[16] The Solicitor General also underscored the extent of government participation in the BSP under its charter as reflected in the composition of its governing body:

"The governing body of the said corporation shall consist of a National Executive Board composed of (a) the *President of the Philippines* or his representative; (b) the charter and life members of the Boy Scouts of the Philippines; (c) the Chairman of the Board of Trustees of the Philippine Scouting Foundation; (d) the Regional Chairman of the Scout Regions of the Philippines; (e) *the Secretary of Education and Culture, the Secretary of Social Welfare, the Secretary of National Defense, the Secretary of Labor, the Secretary of Finance, the Secretary of Youth and Sports, and the Secretary of Local Government and Community Development*; (f) an equal number of individuals from the private sector; (g) the National President of the Girl Scouts of the Philippines; (h) one Scout of Senior age from each Scout Region to represent the boy membership; and (i) three representatives of the cultural minorities. Except for the Regional Chairman who shall be elected by the Regional Scout Councils during their annual meetings, and the Scouts of their respective regions, *all members of the National Executive Board shall be either by appointment or cooption, subject to ratification and confirmation by the Chief Scout, who shall be the Head of State* x x x." [17] (Italics supplied)

The Government Corporate Counsel, like the Solicitor General, describes the BSP as a "public corporation" but, unlike the Solicitor General, suggests that the BSP is more of a "quasi corporation" than a "public corporation." The BSP, unlike most public corporations which are created for a political purpose, is not vested with political or governmental powers to be exercised for the public good or public welfare in connection with the administration of civil government. The Government Corporate Counsel submits, more specifically, that the BSP falls within the ambit of the term "government-owned or controlled

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[16] Section 4, *id.*

[17] Section 5, *id.*

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corporation" as defined in Section 2 of P.D. No. 2029 (approved on 4 February 1986) which reads as follows:

"A government-owned or controlled corporation is a stock or *a non-stock corporation, whether performing governmental or proprietary functions,* which is *directly chartered by special law* or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock.

x x x x x x x x x"
(Italics supplied)

Examining the relevant statutory provisions and the arguments outlined above, the Court considers that the following need to be considered in arriving at the appropriate legal characterization of the BSP for purposes of determining whether its officials and staff members are embraced in the Civil Service. Firstly, BSP's functions as set out in its statutory charter do have a public aspect. BSP's functions do relate to the fostering of the public virtues of citizenship and patriotism and the general improvement of the moral spirit and fiber of our youth. The social value of activities like those to which the BSP dedicates itself by statutory mandate have in fact, been accorded constitutional recognition. Article II of the 1987 Constitution includes in the "Declaration of Principles and State Policies," the following:

"Sec. 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs."

At the same time, BSP's functions do not relate to the governance of any part of territory of the Philippines; BSP is not a public corporation in the same sense that municipal corporations or local governments are public corporations. BSP's functions can not also be described as proprietary functions in the same sense that the functions or activities of government-owned or controlled

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corporations like the National Development Company or the National Steel Corporation can be described as proprietary or "business-like" in character. Nevertheless, the public character of BSP's functions and activities must be conceded, for they pertain to the educational, civic and social development of the youth which constitutes a very substantial and important part of the nation.

The second aspect that the Court must take into account relates to the governance of the BSP. The composition of the National Executive Board of the BSP includes, as noted from Section 5 of its charter quoted earlier, seven (7) Secretaries of Executive Departments. The seven (7) Secretaries (now six [6] in view of the abolition of the Department of Youth and Sports and merger thereof into the Department of Education, Culture and Sports) by themselves do not constitute a majority of the members of the National Executive Board. We must note at the same time that the appointments of members of the National Executive Board, except only the appointments of the Regional Chairman and Scouts of Senior age from the various Scout Regions, are subject to ratification and confirmation by the Chief Scout, who is the President of the Philippines. Vacancies to the Board are filled by a majority vote of the remaining members thereof, but again subject to ratification and confirmation by the Chief Scout.[18] We must assume that such confirmation or ratification involves the exercise of choice or discretion on the part of ratifying or confirming power. It does appears therefore that there is substantial governmental (*i.e.*, Presidential) participation or intervention in the choice of the majority of the members of the National Executive Board of the BSP.

The third aspect relates to the character of the assets and funds of the BSP. The original assets of the BSP were acquired by purchase or gift or other equitable arrangement with the Boy Scouts of America, of which the BSP was part before the establishment of the Commonwealth of the Philippines. The BSP charter, however, does not indicate that such assets were

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[18] Section 5, *id.*

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public or statal in character or had originated from the Government or the State. According to petitioner BSP, its operating funds used for carrying out its purposes and programs, are derived principally from membership dues paid by the Boy Scouts themselves and from property rentals. In this respect, the BSP appears similar to private non-stock, non-profit corporations, although its charter expressly envisages donations and contributions to it from the Government and any of its agencies and instrumentalities.[19] We note only that BSP funds have not apparently heretofore been regarded as public funds by the Commission on Audit, considering that such funds have not been audited by the Commission.

While the BSP may be seen to be a mixed type of entity, combining aspects of both public and private entities, we believe that considering the character of its purposes and its functions, the statutory designation of the BSP as "a public corporation" and the substantial participation of the Government in the selection of members of the National Executive Board of the BSP, the BSP, as presently constituted under its charter, is a government-controlled corporation within the meaning of Article IX (B) (2) (1) of the Constitution.

We are fortified in this conclusion when we note that the Administrative Code of 1987 designates the BSP as one of the attached agencies of the Department of Education, Culture and Sports ("DECS").[20] An "agency of the Government" is defined as referring to any of the various units of the Government including a department, bureau, office, instrumentality, government-owned or controlled corporation, or local government or distinct unit therein.[21] "Government instrumentality" is in turn defined in the 1987 Administrative Code in the following manner:

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[19] Section 8, *id.*

[20] Book IV, Title VI, Chapter 8, Section 20, Administrative Code of 1987.

[21] Introductory Provisions, Section 2 (4), *id.*

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"*Instrumentality* — refers to any agency of the National Government, *not integrated within the department framework,* vested with special functions or jurisdiction by law, *endowed with some if not all corporate powers,* administering special funds, and *enjoying operational autonomy, usually through a charter. This term includes* regulatory agencies, *chartered institutions and government-owned or controlled corporations.*"[22] (Italics supplied)

The same Code describes a "chartered institution" in the following terms:

"*Chartered institution* — refers to any *agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives.* This term includes the state universities and colleges, and the monetary authority of the State."[23] (Italics supplied)

We believe that the BSP is appropriately regarded as "a government instrumentality"' under the 1987 Administrative Code.

It thus appears that the BSP may be regarded as both a "government controlled corporation with an original charter" and as an "instrumentality' of the Government within the meaning of Article IX (B) (2) (1) of the Constitution. It follows that the employees of petitioner BSP are embraced within the Civil Service and are accordingly governed by the Civil Service Law and Regulations.

It remains only to note that even before the effectivity of the 1987 Constitution employees of the BSP already fell within the scope of the Civil Service. In *National Housing Corporation v. Juco*,[24] decided in 1985, the Court, speaking through Mr. Justice Gutierrez, held:

"There should no longer be any question at this time that *employees of government-owned or controlled corporations are governed by the civil service law and civil service rules and regulations.*

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[22] Section 2 (5), *id.*

[23] Section 2 (12), *id.*

[24] 134 SCRA 172 (1985); Italics supplied.

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Section 1, Article XII-B of the [1973] Constitution specifically provides:

'The Civil Service embraces every branch, agency, subdivision and instrumentality of the Government, including every government-owned or controlled corporation. x x x'

The 1935 Constitution had a similar provision in its Section 1, Article XII which stated:

'A Civil Service embracing all branches and subdivisions of the Government shall be provided by law.'

The inclusion of 'government-owned or controlled corporations' within the embrace of the civil service shows a deliberate effort of the framers to plug an earlier loophole which allowed government-owned or controlled corporations to avoid the full consequences of the all encompassing coverage of the civil service system. The same explicit intent is shown by the addition of 'agency' and 'instrumentality' to branches and subdivisions of the Government. All offices and firms of the government are covered. The amendments introduced in 1973 are not idle exercises or meaningless gestures. They carry the strong message that civil service coverage is broad and all-embracing insofar as employment in the government in any of its governmental or corporate arms is concerned."[25]

The complaint in NLRC Case No. 1637-84 having been filed on 13 November 1984, when the 1973 Constitution was still in force, our ruling in *Juco* applies in the case at bar.[26]

In view of the foregoing, we hold that both the Labor Arbiter and public respondent NLRC had *no* jurisdiction over the complaint filed by private respondents in NLRC Case No. 1637-84; neither labor agency had before it any matter which could validly have been passed upon by it in the exercise of original or appellate jurisdiction. The appealed Decision and Resolution in this case, having been rendered without jurisdiction, vested no rights and imposed no liabilities upon any of the parties here involved. That neither party had expressly raised the issue of

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[25] 134 SCRA at 176-177.

[26] See *Hagonoy Water District v. Hon. National Labor Relations Commission*, G.R. No. 81490, 31 August 1988.

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jurisdiction in the pleadings poses no obstacle to this ruling of the Court, which may *motu proprio* take cognizance of the issue of existence or absence of jurisdiction and pass upon the same.[27]

ACCORDINGLY, the Decision of the Labor Arbiter dated 31 July 1985, and the Decision dated 27 February 1987 and Resolution dated 16 October 1987, issued by public respondent NLRC, in NLRC Case No. 1637-84, are hereby SET ASIDE. All other orders and resolutions rendered in this case by the Labor Arbiter and the NLRC are likewise SET ASIDE. No pronouncement as to costs.

Fernan, C.J., Gutierrez, Jr., Bidin, and *Davide, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 82985. April 22, 1991]

MERVILLE PARK HOMEOWNERS ASSOCIATION, INC., *petitioner, vs.* **HON. FRANCISCO X. VELEZ and EDGARDO M. SALANDANAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY MANDATORY INJUNCTION; ISSUANCE THEREOF *PENDENTE LITE*, PROPER ONLY IN EXTREME URGENCY. — A preliminary mandatory injunction is not a proper remedy to take property, possession of which is being disputed, out of the possession and control of one party and to deliver the same to the other party. It may issue *pendente*

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[27] *Dy v. National Labor Relations Commission*, 145 SCRA 211 (1986).