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The Petition for Review on *Certiorari* in G.R. No. 166800 is *DENIED* for being moot. It has been overtaken by events. No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Garcia, JJ.,* concur.

EN BANC

[G.R. No. 169752. September 25, 2007]

PHILIPPINE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, *petitioners, vs.* **COMMISSION ON AUDIT, DIR. RODULFO J. ARIESGA (in his official capacity as Director of the Commission on Audit), MS. MERLE M. VALENTIN and MS. SUSAN GUARDIAN (in their official capacities as Team Leader and Team Member, respectively, of the Audit Team of the Commission on Audit),** *respondents.*

SYLLABUS

1. POLITICAL LAW; PUBLIC CORPORATIONS; "CHARTER TEST" IS NOT APPLICABLE IN THE CASE AT BAR; SINCE THE UNDERPINNINGS OF CHARTER TEST HAD BEEN INTRODUCED BY THE 1935 CONSTITUTION, IT FOLLOWS THAT THE TEST CANNOT APPLY TO PETITIONER SOCIETY, WHICH WAS INCORPORATED BY VIRTUE OF ACT NO. 1285, ON JANUARY 19, 1905; LAWS ARE GENERALLY CONSTRUED AS HAVING ONLY A PROSPECTIVE OPERATION. — The Court agrees with the petitioner that the "charter test" cannot be applied. Essentially, the "charter test" as it stands today provides: [T]he test to

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determine whether a corporation is government owned or controlled, or private in nature is simple. *Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law? Those with special charters are government corporations subject to its provisions*, and its employees are under the jurisdiction of the Civil Service Commission, and are compulsory members of the Government Service Insurance System. x x x The petitioner is correct in stating that the charter test is predicated, at best, on the legal regime established by the 1935 Constitution, Section 7, Article XIII, which states: Sec. 7. The National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof. The foregoing proscription has been carried over to the 1973 and the 1987 Constitutions. Section 16 of Article XII of the present Constitution provides: **Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.** Section 16 is essentially a re-enactment of Section 7 of Article XVI of the 1935 Constitution and Section 4 of Article XIV of the 1973 Constitution. During the formulation of the 1935 Constitution, the Committee on Franchises recommended the foregoing proscription to prevent the pressure of special interests upon the lawmaking body in the creation of corporations or in the regulation of the same. To permit the lawmaking body by special law to provide for the organization, formation, or regulation of private corporations would be in effect to offer to it the temptation in many cases to favor certain groups, to the prejudice of others or to the prejudice of the interests of the country. And since the underpinnings of the charter test had been introduced by the 1935 Constitution and not earlier, it follows that the test cannot apply to the petitioner, which was incorporated by virtue of Act No. 1285, enacted on January 19, 1905. Settled is the rule that laws in general have no retroactive effect, unless the contrary is provided. All statutes are to be construed as having only a prospective operation, unless the purpose and intention of the legislature to give them a retrospective effect is expressly

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declared or is necessarily implied from the language used. In case of doubt, the doubt must be resolved against the retrospective effect. There are a few exceptions. Statutes can be given retroactive effect in the following cases: (1) when the law itself so expressly provides; (2) in case of remedial statutes; (3) in case of curative statutes; (4) in case of laws interpreting others; and (5) in case of laws creating new rights. None of the exceptions is present in the instant case. The general principle of prospectivity of the law likewise applies to Act No. 1459, otherwise known as the Corporation Law, which had been enacted by virtue of the plenary powers of the Philippine Commission on March 1, 1906, a little over a year after January 19, 1905, the time the petitioner emerged as a juridical entity. Even the Corporation Law respects the rights and powers of juridical entities organized beforehand.

2. ID.; ID.; ID.; ID.; ID.; IN A LEGAL REGIME WHERE THE CHARTER TEST DOCTRINE CANNOT BE APPLIED, THE MERE FACT THAT A CORPORATION HAS BEEN CREATED BY VIRTUE OF A SPECIAL LAW DOES NOT NECESSARILY QUALIFY IT AS A PUBLIC CORPORATION. — In a legal regime where the charter test doctrine cannot be applied, the mere fact that a corporation has been created by virtue of a special law does not necessarily qualify it as a public corporation. What then is the nature of the petitioner as a corporate entity? What legal regime governs its rights, powers, and duties? As stated, at the time the petitioner was formed, the applicable law was the Philippine Bill of 1902, and, emphatically, as also stated above, no proscription similar to the charter test can be found therein. The textual foundation of the charter test, which placed a limitation on the power of the legislature, first appeared in the 1935 Constitution. However, the petitioner was incorporated in 1905 by virtue of Act No. 1258, a law antedating the Corporation Law (Act No. 1459) by a year, and the 1935 Constitution, by thirty years. There being neither a general law on the formation and organization of private corporations nor a restriction on the legislature to create private corporations by direct legislation, the Philippine Commission at that moment in history was well within its powers in 1905 to constitute the petitioner as a private juridical entity. Time and again the Court must caution even the most brilliant scholars of the law and all constitutional historians on the danger of imposing legal concepts of a later date on facts of an earlier date.

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3. ID.; ID.; ID.; ID.; ID.; THE AMENDMENTS INTRODUCED BY C.A. NO. 148 MADE IT CLEAR THAT PETITIONER SOCIETY IS A PRIVATE CORPORATION AND NOT AN AGENCY OF THE GOVERNMENT; AS A CURATIVE STATUTE, C.A. 148 HAS TO BE GIVEN RETROACTIVE EFFECT, THEREBY FREEING ALL DOUBT AS TO WHICH CLASS OF CORPORATIONS THE PETITIONER BELONGS, THAT IS, QUASI-PUBLIC CORPORATIONS, A KIND OF PRIVATE DOMESTIC CORPORATION. — The amendments introduced by C.A. No. 148 made it clear that the petitioner was a private corporation and not an agency of the government. This was evident in Executive Order No. 63, issued by then President of the Philippines Manuel L. Quezon, declaring that the revocation of the powers of the petitioner to appoint agents with powers of arrest "corrected a serious defect" in one of the laws existing in the statute books. As a curative statute, and based on the doctrines so far discussed, C.A. No. 148 has to be given retroactive effect, thereby freeing all doubt as to which class of corporations the petitioner belongs, that is, it is a quasi-public corporation, a kind of private domestic corporation, which the Court will further elaborate on under the *fourth* point.

4. ID.; ID.; ID.; ID.; ID.; PETITIONER SOCIETY IS NOT SUBJECT TO CONTROL OR SUPERVISION BY ANY AGENCY OF THE STATE, UNLIKE GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS; THE SUCCESSORS OF ITS MEMBERS ARE DETERMINED VOLUNTARILY AND SOLELY BY PETITIONER IN ACCORDANCE WITH ITS BY-LAWS, AND MAY EXERCISE THOSE POWERS GENERALLY ACCORDED TO PRIVATE CORPORATIONS. — A reading of petitioner's charter shows that it is not subject to control or supervision by any agency of the State, unlike government-owned and controlled corporations. No government representative sits on the board of trustees of the petitioner. Like all private corporations, the successors of its members are determined voluntarily and solely by the petitioner in accordance with its by-laws, and may exercise those powers generally accorded to private corporations, such as the powers to hold property, to sue and be sued, to use a common seal, and so forth. It may adopt by-laws for its internal operations: the petitioner shall

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be managed or operated by its officers "in accordance with its by-laws in force."

5. ID.; ID.; ID.; ID.; ID.; EMPLOYEES OF PETITIONER SOCIETY ARE REGISTERED AND COVERED BY THE SOCIAL SECURITY SYSTEM AT THE LATTER'S INITIATIVE, AND NOT THROUGH THE GOVERNMENT SERVICE INSURANCE SYSTEM, WHICH SHOULD BE THE CASE IF THE EMPLOYEES ARE CONSIDERED GOVERNMENT EMPLOYEES. — The employees of the petitioner are registered and covered by the Social Security System at the latter's initiative, and not through the Government Service Insurance System, which should be the case if the employees are considered government employees. This is another indication of petitioner's nature as a private entity. Section 1 of Republic Act No. 1161, as amended by Republic Act No. 8282, otherwise known as the Social Security Act of 1997, defines the employer: Employer — Any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment, *except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government*: Provided, That a self-employed person shall be both employee and employer at the same time.

6. ID.; ID.; ID.; ID.; ID.; FACT THAT A CERTAIN JURIDICAL ENTITY IS IMPRESSED WITH PUBLIC INTEREST DOES NOT, BY THAT CIRCUMSTANCE ALONE, MAKE THE ENTITY A PUBLIC CORPORATION, INASMUCH AS A CORPORATION MAY BE PRIVATE ALTHOUGH ITS CHARTER CONTAINS PROVISIONS OF A PUBLIC CHARACTER INCORPORATED SOLELY FOR THE PUBLIC GOOD; A QUASI-PUBLIC CORPORATION IS A SPECIES OF PRIVATE CORPORATIONS, BUT THE QUALIFYING FACTOR IS THE TYPE OF SERVICE THE FORMER RENDERS TO THE PUBLIC. — The respondents contend that the petitioner is a "body politic" because its primary purpose is to secure the protection and welfare of animals which, in turn, redounds to the public good. This argument, is, at best, specious. The fact that a certain juridical entity is impressed with public interest does not, by that circumstance

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alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good. This class of corporations may be considered quasi-public corporations, which are private corporations that render public service, supply public wants, or pursue other eleemosynary objectives. While purposely organized for the gain or benefit of its members, they are required by law to discharge functions for the public benefit. Examples of these corporations are utility, railroad, warehouse, telegraph, telephone, water supply corporations and transportation companies. It must be stressed that a quasi-public corporation **is a species of private corporations**, but the qualifying factor is the type of service the former renders to the public: if it performs a public service, then it becomes a quasi-public corporation.

7. ID.; ID.; ID.; ID.; ID.; PURPOSE ALONE OF A CORPORATION CANNOT BE TAKEN AS A SAFE GUIDE AND THE TRUE CRITERION TO DETERMINE WHETHER A CORPORATION IS PUBLIC OR PRIVATE IS FOUND IN THE TOTALITY OF RELATION OF THE CORPORATION TO THE STATE. — Authorities are of the view that the purpose alone of the corporation cannot be taken as a safe guide, for the fact is that almost all corporations are nowadays created to promote the interest, good, or convenience of the public. A bank, for example, is a private corporation; yet, it is created for a public benefit. Private schools and universities are likewise private corporations; and yet, they are rendering public service. Private hospitals and wards are charged with heavy social responsibilities. More so with all common carriers. On the other hand, there may exist a public corporation even if it is endowed with gifts or donations from private individuals. The true criterion, therefore, to determine whether a corporation is public or private is found in the totality of the relation of the corporation to the State. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private. Applying the above test, provinces, chartered cities, and *barangays* can best exemplify public corporations. They are created by the State as its own device and agency for the accomplishment of parts of its own public works. It is clear that the amendments introduced by

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C.A. No. 148 revoked the powers of the petitioner to arrest offenders of animal welfare laws and the power to serve processes in connection therewith.

8. ID.; ID.; ID.; ID.; ID.; FACT THAT PETITIONER SOCIETY IS SUBJECT TO THE REPORTORIAL REQUIREMENT IS INCONCLUSIVE TO CONSIDER IT A GOVERNMENT INSTRUMENTALITY BECAUSE ALL CORPORATIONS OF WHATEVER NATURE, WHETHER THEY ARE PUBLIC, QUASI-PUBLIC OR PRIVATE ARE REQUIRED TO REPORT THEIR ACTIVITIES IN ORDER TO DETERMINE WHETHER THEY ACTED WITHIN THEIR POWERS. — The respondents argue that since the charter of the petitioner requires the latter to render periodic reports to the Civil Governor, whose functions have been inherited by the President, the petitioner is, therefore, a government instrumentality. This contention is inconclusive. By virtue of the fiction that all corporations owe their very existence and powers to the State, the reportorial requirement is applicable to all corporations of whatever nature, whether they are public, quasi-public, or private corporations — as creatures of the State, there is a reserved right in the legislature to investigate the activities of a corporation to determine whether it acted within its powers. In other words, the reportorial requirement is the principal means by which the State may see to it that its creature acted according to the powers and functions conferred upon it. These principles were extensively discussed in *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*. Here, the Court, in holding that the subject corporation could not invoke the right against self-incrimination whenever the State demanded the production of its corporate books and papers, extensively discussed the purpose of reportorial requirements, *viz*: x x x The corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It received certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserve[d] right in the legislature to investigate its contracts and find out whether it has exceeded its powers. *It would be a strange anomaly to hold that a state, having chartered a corporation to make use of certain franchises, could not, in the exercise of sovereignty, inquire*

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> *how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose*. The defense amounts to this, that an officer of the corporation which is charged with a criminal violation of the statute may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. *While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation vested with special privileges and franchises may refuse to show its hand when charged with an abuse of such privileges*.

APPEARANCES OF COUNSEL

Gerardo M. Lobo II for petitioners.

Elizabeth S. Zosa Janet Nacion & Alexander B. Juliano for COA, *et al.*

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a special civil action for *Certiorari* and Prohibition under Rule 65 of the Rules of Court, in relation to Section 2 of Rule 64, filed by the petitioner assailing Office Order No. 2005-021[1] dated September 14, 2005 issued by the respondents which constituted the audit team, as well as its September 23, 2005 Letter[2] informing the petitioner that respondents' audit team shall conduct an audit survey on the petitioner for a detailed audit of its accounts, operations, and financial transactions. No temporary restraining order was issued.

The petitioner was incorporated as a juridical entity over one hundred years ago by virtue of Act No. 1285, enacted on January 19, 1905, by the Philippine Commission. The petitioner, at the time it was created, was composed of animal aficionados and animal propagandists. The objects of the petitioner, as stated

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[1] *Rollo*, p. 29.

[2] *Id*. at 30.

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in Section 2 of its charter, shall be to enforce laws relating to cruelty inflicted upon animals or the protection of animals in the Philippine Islands, and generally, to do and perform all things which may tend in any way to alleviate the suffering of animals and promote their welfare.[3]

At the time of the enactment of Act No. 1285, the original Corporation Law, Act No. 1459, was not yet in existence. Act No. 1285 antedated both the Corporation Law and the constitution of the Securities and Exchange Commission. Important to note is that the nature of the petitioner as a corporate entity is distinguished from the *sociedad anonimas* under the Spanish Code of Commerce.

For the purpose of enhancing its powers in promoting animal welfare and enforcing laws for the protection of animals, the petitioner was initially imbued under its charter with the power to apprehend violators of animal welfare laws. In addition, the petitioner was to share one-half (½) of the fines imposed and collected through its efforts for violations of the laws related thereto. As originally worded, Sections 4 and 5 of Act No. 1285 provide:

SEC. 4. The said society is *authorized to appoint* not to exceed five agents in the City of Manila, and not to exceed two in each of the provinces of the Philippine Islands *who shall have all the power and authority of a police officer to make arrests for violation of the laws* enacted for the prevention of cruelty to animals and the protection of animals, and to serve any process in connection with the execution of such laws; and in addition thereto, all the police force of the Philippine Islands, wherever organized, shall, as occasion requires, assist said society, its members or agents, in the enforcement of all such laws.

SEC. 5. *One-half of all the fines imposed and collected through the efforts of said society*, its members or its agents, for violations of the laws enacted for the prevention of cruelty to animals and for their protection, *shall belong to said society and shall be used to promote its objects*.

(emphasis supplied)

[3] Act No. 1285, §2 (1905).

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Subsequently, however, the power to make arrests as well as the privilege to retain a portion of the fines collected for violation of animal-related laws were recalled by virtue of Commonwealth Act (C.A.) No. 148,[4] which reads, in its entirety, thus:

Be it enacted by the National Assembly of the Philippines:

Section 1. Section four of Act Numbered Twelve hundred and eighty-five as amended by Act Numbered Thirty five hundred and forty-eight, is hereby further amended so as to read as follows:

> Sec. 4. The said society is authorized to appoint not to exceed ten agents in the City of Manila, and not to exceed one in each municipality of the Philippines *who shall have the authority to denounce to regular peace officers* any violation of the laws enacted for the prevention of cruelty to animals and the protection of animals and to cooperate with said peace officers in the prosecution of transgressors of such laws.

Sec. 2. *The full amount of the fines collected* for violation of the laws against cruelty to animals and for the protection of animals, *shall accrue to the general fund of the Municipality* where the offense was committed.

Sec. 3. This Act shall take effect upon its approval.

Approved, November 8, 1936. (Emphasis supplied)

Immediately thereafter, then President Manuel L. Quezon issued Executive Order (E.O.) No. 63 dated November 12, 1936, portions of which provide:

Whereas, during the first regular session of the National Assembly, Commonwealth Act Numbered One Hundred Forty Eight was *enacted depriving the agents of the Society for the Prevention of Cruelty to Animals of their power to arrest persons* who have violated the

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[4] Entitled "AN ACT TO AMEND SECTION FOUR OF ACT NUMBERED TWELVE HUNDRED AND EIGHTY-FIVE SO AS TO WITHDRAW FROM AGENTS OF THE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS OF THE PHILIPPINES THE POWER AND AUTHORITY TO MAKE ARRESTS FOR VIOLATION OF THE LAW AGAINST CRUELTY TO ANIMALS AND TO ABOLISH THE PRIVILEGE GRANTED TO SAID SOCIETY TO SHARE IN THE AMOUNT OF THE FINES COLLECTED FOR SAID VIOLATIONS."

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laws prohibiting cruelty to animals *thereby correcting a serious defect in one of the laws existing in our statute books.*

x x x x x x x x x

Whereas, the cruel treatment of animals is an offense against the State, penalized under our statutes, which the Government is duty bound to enforce;

Now, therefore, I, Manuel L. Quezon, President of the Philippines, pursuant to the authority conferred upon me by the Constitution, hereby decree, order, and direct the Commissioner of Public Safety, the Provost Marshal General as head of the Constabulary Division of the Philippine Army, every Mayor of a chartered city, and every municipal president *to detail and organize special members of the police force, local, national, and the Constabulary to watch, capture, and prosecute offenders* against the laws enacted to prevent cruelty to animals. (Emphasis supplied)

On December 1, 2003, an audit team from respondent Commission on Audit (COA) visited the office of the petitioner to conduct an audit survey pursuant to COA Office Order No. 2003-051 dated November 18, 2003[5] addressed to the petitioner. The petitioner demurred on the ground that it was a private entity not under the jurisdiction of COA, citing Section 2(1) of Article IX of the Constitution which specifies the general jurisdiction of the COA, *viz*:

Section 1. *General Jurisdiction*. The Commission on Audit shall have the power, authority, and duty *to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters*, and on a post-audit basis: (a) constitutional bodies, commissions and officers that have been granted fiscal autonomy under the Constitution; (b) autonomous state colleges and universities; *(c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required*

[5] *Rollo*, p. 101.

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by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government, and for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto. (Italics supplied)

Petitioner explained thus:

a. Although the petitioner was created by special legislation, this necessarily came about because in January 1905 there was as yet neither a Corporation Law or any other general law under which it may be organized and incorporated, nor a Securities and Exchange Commission which would have passed upon its organization and incorporation.

b. That Executive Order No. 63, issued during the Commonwealth period, effectively deprived the petitioner of its power to make arrests, and that the petitioner lost its operational funding, underscore the fact that it exercises no governmental function. In fine, the government itself, by its overt acts, confirmed petitioner's status as a private juridical entity.

The COA General Counsel issued a Memorandum[6] dated May 6, 2004, asserting that the petitioner was subject to its audit authority. In a letter dated May 17, 2004,[7] respondent COA informed the petitioner of the result of the evaluation, furnishing it with a copy of said Memorandum dated May 6, 2004 of the General Counsel.

Petitioner thereafter filed with the respondent COA a Request for Re-evaluation dated May 19, 2004,[8] insisting that it was a private domestic corporation.

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[6] *Id*. at 43-45.

[7] *Id*. at 42.

[8] *Id*. at 46-51.

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Acting on the said request, the General Counsel of respondent COA, in a Memorandum dated July 13, 2004,[9] affirmed her earlier opinion that the petitioner was a government entity that was subject to the audit jurisdiction of respondent COA. In a letter dated September 14, 2004, the respondent COA informed the petitioner of the result of the re-evaluation, maintaining its position that the petitioner was subject to its audit jurisdiction, and requested an initial conference with the respondents.

In a Memorandum dated September 16, 2004, Director Delfin Aguilar reported to COA Assistant Commissioner Juanito Espino, Corporate Government Sector, that the audit survey was not conducted due to the refusal of the petitioner because the latter maintained that it was a private corporation.

Petitioner received on September 27, 2005 the subject COA Office Order 2005-021 dated September 14, 2005 and the COA Letter dated September 23, 2005.

Hence, herein Petition on the following grounds:

A.

RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER IS SUBJECT TO ITS AUDIT AUTHORITY.

B.

PETITIONER IS ENTITLED TO THE RELIEF SOUGHT, THERE BEING NO APPEAL, NOR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AVAILABLE TO IT.[10]

The essential question before this Court is whether the petitioner qualifies as a government agency that may be subject to audit by respondent COA.

Petitioner argues: *first*, even though it was created by special legislation in 1905 as there was no general law then existing

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[9] *Id*. at 121-123.

[10] *Id*. at 14.

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under which it may be organized or incorporated, it exercises no governmental functions because these have been revoked by C.A. No. 148 and E.O. No. 63; *second*, nowhere in its charter is it indicated that it is a public corporation, unlike, for instance, C.A. No. 111 which created the Boy Scouts of the Philippines, defined its powers and purposes, and specifically stated that it was "An Act to Create a Public Corporation" in which, even as amended by Presidential Decree No. 460, the law still adverted to the Boy Scouts of the Philippines as a "public corporation," all of which are not obtaining in the charter of the petitioner; *third*, if it were a government body, there would have been no need for the State to grant it tax exemptions under Republic Act No. 1178, and the fact that it was so exempted strengthens its position that it is a private institution; *fourth*, the employees of the petitioner are registered and covered by the Social Security System at the latter's initiative and not through the Government Service Insurance System, which should have been the case had the employees been considered government employees; *fifth*, the petitioner does not receive any form of financial assistance from the government, since C.A. No. 148, amending Section 5 of Act No. 1285, states that the "full amount of the fines, collected for violation of the laws against cruelty to animals and for the protection of animals, shall accrue to the general fund of the Municipality where the offense was committed"; *sixth*, C.A. No. 148 effectively deprived the petitioner of its powers to make arrests and serve processes as these functions were placed in the hands of the police force; *seventh*, no government appointee or representative sits on the board of trustees of the petitioner; *eighth*, a reading of the provisions of its charter (Act No. 1285) fails to show that any act or decision of the petitioner is subject to the approval of or control by any government agency, except to the extent that it is governed by the law on private corporations in general; and finally, *ninth*, the Committee on Animal Welfare, under the Animal Welfare Act of 1998, includes members from both the private and the public sectors.

The respondents contend that since the petitioner is a "body politic" created by virtue of a special legislation and endowed

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with a governmental purpose, then, indubitably, the COA may audit the financial activities of the latter. Respondents in effect divide their contentions into six strains: *first*, the test to determine whether an entity is a government corporation lies in the manner of its creation, and, since the petitioner was created by virtue of a special charter, it is thus a government corporation subject to respondents' auditing power; *second*, the petitioner exercises "sovereign powers," that is, it is tasked to enforce the laws for the protection and welfare of animals which "ultimately redound to the public good and welfare," and, therefore, it is deemed to be a government "instrumentality" as defined under the Administrative Code of 1987, the purpose of which is connected with the administration of government, as purportedly affirmed by American jurisprudence; *third*, by virtue of Section 23,[11] Title II, Book III of the same Code, the Office of the President exercises supervision or control over the petitioner; *fourth*, under the same Code, the requirement under its special charter for the petitioner to render a report to the Civil Governor, whose functions have been inherited by the Office of the President, clearly reflects the nature of the petitioner as a government instrumentality; *fifth*, despite the passage of the Corporation Code, the law creating the petitioner had not been abolished, nor had it been re-incorporated under any general corporation law; and finally, *sixth*, Republic Act No. 8485, otherwise known as the "Animal Welfare Act of 1998," designates the petitioner as a member of its Committee on Animal Welfare which is attached to the Department of Agriculture.

In view of the phrase "*One-half of all the fines imposed and collected through the efforts of said society*," the Court, in a Resolution dated January 30, 2007, required the Office of the Solicitor General (OSG) and the parties to comment on: a) petitioner's

[11] Section 23. *The Agencies under the Office of the President.* — The agencies under the Office of the President refer to those offices placed under the chairmanship of the President, those under the supervision and control of the President, those under the administrative supervision of the Office of the President, those attached to it for policy and program coordination, *and those that are not placed by law or order creating them under any special department.* (Italics supplied)

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authority to impose fines and the validity of the provisions of Act No. 1285 and Commonwealth Act No. 148 considering that there are no standard measures provided for in the aforecited laws as to the manner of implementation, the specific violations of the law, the person/s authorized to impose fine and in what amount; and, b) the effect of the 1935 and 1987 Constitutions on whether petitioner continues to exist or should organize as a private corporation under the Corporation Code, *B.P. Blg.* 68 as amended.

Petitioner and the OSG filed their respective Comments. Respondents filed a Manifestation stating that since they were being represented by the OSG which filed its Comment, they opted to dispense with the filing of a separate one and adopt for the purpose that of the OSG.

The petitioner avers that it does not have the authority to impose fines for violation of animal welfare laws; it only enjoyed the privilege of sharing in the fines imposed and collected from its efforts in the enforcement of animal welfare laws; such privilege, however, was subsequently abolished by C.A. No. 148; that it continues to exist as a private corporation since it was created by the Philippine Commission before the effectivity of the Corporation law, Act No. 1459; and the 1935 and 1987 Constitutions.

The OSG submits that Act No. 1285 and its amendatory laws did not give petitioner the authority to impose fines for violation of laws[12] relating to the prevention of cruelty to animals and the protection of animals; that even prior to the amendment of Act No. 1285, petitioner was only entitled to share in the fines imposed; C.A. No. 148 abolished that privilege to share in the fines collected; that petitioner is a public corporation and has continued to exist since Act No. 1285; petitioner was not repealed by the 1935 and 1987 Constitutions which contain transitory provisions maintaining all laws issued not inconsistent therewith until amended, modified or repealed.

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[12] Act No. 3547 (1928) and R.A. No. 8485 (1998).

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The petition is impressed with merit.

The arguments of the parties, interlaced as they are, can be disposed of in five points.

First, the Court agrees with the petitioner that the "charter test" cannot be applied.

Essentially, the "charter test" as it stands today provides:

> [T]he test to determine whether a corporation is government owned or controlled, or private in nature is simple. *Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law? Those with special charters are government corporations subject to its provisions*, and its employees are under the jurisdiction of the Civil Service Commission, and are compulsory members of the Government Service Insurance System. x x x (Italics supplied)[13]

The petitioner is correct in stating that the charter test is predicated, at best, on the legal regime established by the 1935 Constitution, Section 7, Article XIII, which states:

> Sec. 7. The National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.[14]

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[13] *Baluyot v. Holganza*, 382 Phil. 131, 136-137 (2000); *Camporedondo v. National Labor Relations Commission*, 370 Phil. 901, 906 (1999).

[14] Section 7 should be read with Sections 1 and 2 of Article XI of the same Constitution:

> ARTICLE XI—General Auditing Office
>
> Section 1. There shall be a General Auditing Office under the direction and control of an Auditor General, who shall hold office for a term of ten years and may not be reappointed. The Auditor General shall be appointed by the President with the consent of the Commission on Appointments, and shall receive an annual compensation to be fixed by law which shall not be diminished during his continuance in office. Until the Congress shall provide otherwise, the Auditor General shall receive an annual compensation of twelve thousand pesos.
>
> Sec. 2. The Auditor General shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source, including trust funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining or

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The foregoing proscription has been carried over to the 1973 and the 1987 Constitutions. Section 16 of Article XII of the present Constitution provides:

Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

Section 16 is essentially a re-enactment of Section 7 of Article XVI of the 1935 Constitution and Section 4 of Article XIV of the 1973 Constitution.

During the formulation of the 1935 Constitution, the Committee on Franchises recommended the foregoing proscription to prevent the pressure of special interests upon the lawmaking body in the creation of corporations or in the regulation of the same. To permit the lawmaking body by special law to provide for the organization, formation, or regulation of private corporations would be in effect to offer to it the temptation in many cases to favor certain groups, to the prejudice of others or to the prejudice of the interests of the country.[15]

And since the underpinnings of the charter test had been introduced by the 1935 Constitution and not earlier, it follows that the test cannot apply to the petitioner, which was incorporated by virtue of Act No. 1285, enacted on January 19, 1905. Settled is the rule that laws in general have no retroactive effect, unless the contrary is provided.[16] All statutes are to be construed as

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held in trust by the Government or the provinces or municipalities thereof. He shall keep the general accounts of the Government and preserve the vouchers pertaining thereto. It shall be the duty of the Auditor General to bring the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant. He shall also perform such other functions as may be prescribed by law.

[15] 2 ARUEGO, *THE FRAMING OF THE CONSTITUTION* 678 (1935); JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 1181 (2003).

[16] See CIVIL CODE OF THE PHILIPPINES, R.A. No. 386, as amended, Art. 4 (1950) & SPANISH CIVIL CODE OF 1889, Art. 3.

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having only a prospective operation, unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. In case of doubt, the doubt must be resolved against the retrospective effect.[17]

There are a few exceptions. Statutes can be given retroactive effect in the following cases: (1) when the law itself so expressly provides; (2) in case of remedial statutes; (3) in case of curative statutes; (4) in case of laws interpreting others; and (5) in case of laws creating new rights.[18] None of the exceptions is present in the instant case.

The general principle of prospectivity of the law likewise applies to Act No. 1459, otherwise known as the Corporation Law, which had been enacted by virtue of the plenary powers of the Philippine Commission on March 1, 1906, a little over a year after January 19, 1905, the time the petitioner emerged as a juridical entity. Even the Corporation Law respects the rights and powers of juridical entities organized beforehand, *viz*:

> SEC. 75. Any corporation or *sociedad anonima* formed, organized, and existing under the laws of the Philippine Islands and lawfully transacting business in the Philippine Islands on the date of the passage of this Act, shall be subject to the provisions hereof so far as such provisions may be applicable and *shall be entitled at its option either to continue business as such corporation or to reform and organize under and by virtue of the provisions of this Act*, transferring all corporate interests to the new corporation which, if a stock corporation, is authorized to issue its shares of stock at par to the stockholders or members of the old corporation according to their interests. (Italics supplied).

As pointed out by the OSG, both the 1935 and 1987 Constitutions contain transitory provisions maintaining all laws

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[17] 1 ARTURO M. TOLENTINO, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 24 (1983), citing *Montilla v. Agustinian Corporation*, 24 Phil. 220 (1913).

[18] *Id*. at 24.

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issued not inconsistent therewith until amended, modified or repealed.[19]

In a legal regime where the charter test doctrine cannot be applied, the mere fact that a corporation has been created by virtue of a special law does not necessarily qualify it as a public corporation.

What then is the nature of the petitioner as a corporate entity? What legal regime governs its rights, powers, and duties?

As stated, at the time the petitioner was formed, the applicable law was the Philippine Bill of 1902, and, emphatically, as also stated above, no proscription similar to the charter test can be found therein.

The textual foundation of the charter test, which placed a limitation on the power of the legislature, first appeared in the 1935 Constitution. However, the petitioner was incorporated in 1905 by virtue of Act No. 1258, a law antedating the Corporation Law (Act No. 1459) by a year, and the 1935 Constitution, by thirty years. There being neither a general law on the formation and organization of private corporations nor a restriction on the legislature to create private corporations by direct legislation, the Philippine Commission at that moment in history was well within its powers in 1905 to constitute the petitioner as a private juridical entity.

Time and again the Court must caution even the most brilliant scholars of the law and all constitutional historians on the danger

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[19] Section 7, Article VII, Transitory Provisions of the 1973 Philippine Constitution reads:

Section 7. All existing laws not inconsistent with this Constitution shall remain operative until amended, modified, or repealed by the National Assembly.

Section 3, Article XVIII, Transitory Provisions of the 1985 Philippine Constitution reads:

Section 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

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of imposing legal concepts of a later date on facts of an earlier date.[20]

The amendments introduced by C.A. No. 148 made it clear that the petitioner was a private corporation and not an agency of the government. This was evident in Executive Order No. 63, issued by then President of the Philippines Manuel L. Quezon, declaring that the revocation of the powers of the petitioner to appoint agents with powers of arrest "corrected a serious defect" in one of the laws existing in the statute books.

As a curative statute, and based on the doctrines so far discussed, C.A. No. 148 has to be given retroactive effect, thereby freeing all doubt as to which class of corporations the petitioner belongs, that is, it is a quasi-public corporation, a kind of private domestic corporation, which the Court will further elaborate on under the *fourth* point.

Second, a reading of petitioner's charter shows that it is not subject to control or supervision by any agency of the State, unlike government-owned and controlled corporations. No government representative sits on the board of trustees of the petitioner. Like all private corporations, the successors of its members are determined voluntarily and solely by the petitioner in accordance with its by-laws, and may exercise those powers generally accorded to private corporations, such as the powers to hold property, to sue and be sued, to use a common seal, and so forth. It may adopt by-laws for its internal operations: the petitioner shall be managed or operated by its officers "in accordance with its by-laws in force." The pertinent provisions of the charter provide:

> Section 1. Anna L. Ide, Kate S. Wright, John L. Chamberlain, William F. Tucker, Mary S. Fergusson, Amasa S. Crossfield, Spencer Cosby, Sealy B. Rossiter, Richard P. Strong, Jose Robles Lahesa, Josefina R. de Luzuriaga, and such other persons as may be associated with them in conformity with this act, and their successors, are hereby constituted and created a body politic and corporate at law, under

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[20] See HELEN CAM, *INTRODUCTION: SELECTED HISTORICAL ESSAYS OF F.W. MAITLAND*, xix (1957).

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the name and style of "The Philippines Society for the Prevention of Cruelty to Animals."

As incorporated by this Act, said society shall have the power to add to its organization such and as many members as it desires, to provide for and choose such officers as it may deem advisable, and in such manner as it may wish, and to remove members as it shall provide.

It shall have the right to sue and be sued, to use a common seal, to receive legacies and donations, to conduct social enterprises for the purpose of obtaining funds, to levy dues upon its members and provide for their collection to hold real and personal estate such as may be necessary for the accomplishment of the purposes of the society, and to adopt such by-laws for its government as may not be inconsistent with law or this charter.

xxx xxx xxx

Sec. 3. The said society shall be operated under the direction of its officers, in accordance with its by-laws in force, and this charter.

xxx xxx xxx

Sec. 6. The principal office of the society shall be kept in the city of Manila, and the society shall have full power to locate and establish branch offices of the society wherever it may deem advisable in the Philippine Islands, such branch offices to be under the supervision and control of the principal office.

Third. The employees of the petitioner are registered and covered by the Social Security System at the latter's initiative, and not through the Government Service Insurance System, which should be the case if the employees are considered government employees. This is another indication of petitioner's nature as a private entity. Section 1 of Republic Act No. 1161, as amended by Republic Act No. 8282, otherwise known as the Social Security Act of 1997, defines the employer:

Employer – Any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment, *except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by*

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the Government: Provided, That a self-employed person shall be both employee and employer at the same time. (Italics supplied)

Fourth. The respondents contend that the petitioner is a "body politic" because its primary purpose is to secure the protection and welfare of animals which, in turn, redounds to the public good.

This argument, is, at best, specious. The fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good. This class of corporations may be considered quasi-public corporations, which are private corporations that render public service, supply public wants,[21] or pursue other eleemosynary objectives. While purposely organized for the gain or benefit of its members, they are required by law to discharge functions for the public benefit. Examples of these corporations are utility,[22] railroad, warehouse, telegraph, telephone, water supply corporations and transportation companies.[23] It must be stressed that a quasi-public corporation **is a species of private corporations**, but the qualifying factor is the type of service the former renders to the public: if it performs a public service, then it becomes a quasi-public corporation.[24]

Authorities are of the view that the purpose alone of the corporation cannot be taken as a safe guide, for the fact is that almost all corporations are nowadays created to promote the interest, good, or convenience of the public. A bank, for example, is a private corporation; yet, it is created for a public benefit. Private schools and universities are likewise private corporations; and yet, they are rendering public service. Private hospitals and wards are charged with heavy social responsibilities. More so with all common carriers. On the other hand, there may

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[21] RUPERTO G. MARTIN, *PUBLIC CORPORATIONS* 2 (1983).

[22] *Id*.

[23] *Id*. at 3.

[24] See *id*.

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exist a public corporation even if it is endowed with gifts or donations from private individuals.

The true criterion, therefore, to determine whether a corporation is public or private is found in the totality of the relation of the corporation to the State. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private. Applying the above test, provinces, chartered cities, and *barangays* can best exemplify public corporations. They are created by the State as its own device and agency for the accomplishment of parts of its own public works.[25]

It is clear that the amendments introduced by C.A. No. 148 revoked the powers of the petitioner to arrest offenders of animal welfare laws and the power to serve processes in connection therewith.

Fifth. The respondents argue that since the charter of the petitioner requires the latter to render periodic reports to the Civil Governor, whose functions have been inherited by the President, the petitioner is, therefore, a government instrumentality.

This contention is inconclusive. By virtue of the fiction that all corporations owe their very existence and powers to the State, the reportorial requirement is applicable to all corporations of whatever nature, whether they are public, quasi-public, or private corporations — as creatures of the State, there is a reserved right in the legislature to investigate the activities of a corporation to determine whether it acted within its powers. In other words, the reportorial requirement is the principal means by which the State may see to it that its creature acted according to the powers and functions conferred upon it. These principles were extensively discussed in *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*.[26] Here, the Court, in holding that the subject corporation could not

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[25] See *id.* at 1-3.

[26] No. 75885, May 27, 1987, 150 SCRA 181.

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invoke the right against self-incrimination whenever the State demanded the production of its corporate books and papers, extensively discussed the purpose of reportorial requirements, *viz*:

> x x x The corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It received certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserve[d] right in the legislature to investigate its contracts and find out whether it has exceeded its powers. *It would be a strange anomaly to hold that a state, having chartered a corporation to make use of certain franchises, could not, in the exercise of sovereignty, inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose*. The defense amounts to this, that an officer of the corporation which is charged with a criminal violation of the statute may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. *While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation vested with special privileges and franchises may refuse to show its hand when charged with an abuse of such privileges*. (*Wilson v. United States*, 55 Law Ed., 771, 780.)[27]

WHEREFORE, the petition is *GRANTED*. Petitioner is *DECLARED* a private domestic corporation subject to the jurisdiction of the Securities and Exchange Commission. The respondents are *ENJOINED* from investigating, examining and auditing the petitioner's fiscal and financial affairs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and *Reyes, JJ.,* concur.

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[27] *Id.* at 234-23 (emphasis supplied and also in the original).