Supreme Court E-Library

EN BANC

[G.R. No. 138298. November 29, 2000]

RAOUL B. DEL MAR, *petitioner, vs.* **PHILIPPINE AMUSEMENT AND GAMING CORPORATION, BELLE JAI-ALAI CORPORATION, FILIPINAS GAMING ENTERTAINMENT TOTALIZATOR CORPORATION,** *respondents.*

[G.R. No. 138982. November 29, 2000]

FEDERICO S. SANDOVAL II and MICHAEL T. DEFENSOR, *petitioners, vs.* **PHILIPPINE AMUSEMENT AND GAMING CORPORATION,** *respondent.*

JUAN MIGUEL ZUBIRI, *intervenor.*

SYNOPSIS

Petitioners and the intervenor, members of the House of Representatives, in two consolidated taxpayers' suit, raised the issue of whether the franchise granted to Philippine Amusement and Gaming Corporation (PAGCOR) includes the right to manage and operate jai-alai. PAGCOR entered into an agreement with respondents BELLE and FILGAME making available, at no expense to the former, infrastructure facilities. Respondents opposed the petitions and challenged the legal standing of petitioners and the intervenor.

It has been held that a taxpayer is allowed to sue where there is a claim of illegal disbursement of public funds or improper use thereof. Although in the case at bar, there is no evidence that the assailed case involves expenditure of public money, the Court deemed it proper to liberalize the policy on *locus standi* as this case involves an issue of overarching significance to our society.

The members of the House of Representatives possess the legal standing to file petitions assailing the infringement by

Supreme Court E-Library

PAGCOR of the legislative exclusive power to grant a franchise.

The franchise granted PAGCOR to maintain gambling casinos does not include the right to manage and operate jai-alai. The same was given to the Philippine Jai-Alai and Amusement Corporation by then President Marcos with the issuance of P. D. No. 810 and revoked by then President Aquino thru Executive Order No. 169.

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; DETERMINED BY ALLEGATIONS IN PLEADING AND CHARACTER OF RELIEF SOUGHT.**— It is axiomatic that what determines the nature of an action and hence, the jurisdiction of the court, are the allegations of the pleading and the character of the relief sought.

2. **ID.; SUPREME COURT; MAY TAKE COGNIZANCE OF PETITION IMPROPERLY FILED IF COMPELLING REASONS SO WARRANT; CASE AT BAR.**— A cursory perusal of the petition filed in G. R. No. 138982 will show that it is actually one for Prohibition under Section 2 of Rule 65 for it seeks to prevent PAGCOR from managing, maintaining and operating jai-alai games. Even assuming, *arguendo*, that it is an action for injunction, this Court has the discretionary power to take cognizance of the petition at bar if compelling reasons, or the nature and importance of the issues raised, warrant the immediate exercise of its jurisdiction. It cannot be gainsaid that the issues raised in the present petitions have generated an oasis of concern, even days of disquiet in view of the public interest at stake. In *Tano, et al. vs. Socrates, et al.*, this Court did not hesitate to treat a petition for *certiorari* and injunction as a special civil action for *certiorari* and prohibition to resolve an issue of far-reaching impact to our people. This is in consonance with our case law now accorded near religious reverence that rules of procedure are but tools designed to facilitate the attainment of justice such that when its rigid application tends to frustrate rather than promote substantial justice, this Court has the duty to suspend their operation.

Supreme Court E-Library

3. **ID.; ACTIONS; PARTIES; *LOCUS STANDI*; TAXPAYERS ARE ALLOWED TO SUE WHERE THERE IS CLAIM OF ILLEGAL DISBURSEMENT OF PUBLIC FUNDS OR IMPROPER USE THEREOF.**— A party suing as a taxpayer must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation. In essence, taxpayers are allowed to sue where there is a claim of illegal disbursement of public funds, or that public money is being deflected to any improper purpose, or where petitioners seek to restrain respondent from wasting public funds through the enforcement of an invalid or unconstitutional law.

4. **ID.; ID.; ID.; MEMBER OF HOUSE OF REPRESENTATIVES, WITH LEGAL STANDING TO FILE PETITIONS ASSAILING INFRINGEMENT OF FRANCHISE GRANTED TO PAGCOR.**— In line with the liberal policy of this Court on *locus standi* when a case involves an issue of overarching significance to our society, we find and so hold that as members of the House of Representatives, petitioners have legal standing to file the petitions at bar. In the instant cases, petitioners complain that the operation of jai-alai constitutes an infringement by PAGCOR of the legislature's exclusive power to grant franchise. To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution, so petitioners contend. The contention commands our concurrence for it is now settled that a member of the House of Representatives has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office.

5. **POLITICAL LAW; LEGISLATIVE POWER; FRANCHISE; GRANT THEREOF, LEGISLATIVE IN NATURE.**— A "*franchise*" is a *special privilege* conferred upon a corporation or individual by a government duly empowered legally to grant it. It is a *privilege of public concern* which cannot be exercised at will and pleasure, but should be *reserved for public control* and administration, either by the government directly, or by public agents, under such conditions and regulations as the government may impose on them *in the interest of the public.* A franchise thus emanates from a sovereign power and the grant is *inherently a legislative power.* It may, however, be derived *indirectly* from the state through an agency to which the power

Supreme Court E-Library

has been *clearly and validly delegated.* In such cases, Congress prescribes the *conditions* on which the grant of a franchise may be made. Thus, the *manner* of granting the franchise, *to whom* it may be granted, the *mode of conducting* the business, the *character and quality* of the service to be rendered and the *duty of the grantee* to the public in exercising the franchise are almost always defined in clear and unequivocal language. *In the absence of these defining terms, any claim to a legislative franchise to operate a game played for bets and denounced as a menace to morality ought to be rejected.*

6. ADMINISTRATIVE LAW; PAGCOR; NEVER GIVEN LEGISLATIVE FRANCHISE TO OPERATE JAI-ALAI.— A *historical study* of the creation, growth and development of PAGCOR will readily show that it was never given a legislative franchise to operate jai-alai. *(2.a) Before the creation of PAGCOR,* a 25-year right to operate jai-alai in Manila was given by President Marcos to the *Philippine Jai-alai and Amusement Corporation then controlled by his in-laws, the Romualdez family.* The franchise was granted on October 16, 1975 thru *P.D. No. 810* issued by President Marcos *in the exercise of his martial law powers.* P.D. No. 1067-A which created the PAGCOR is not a grant of franchise to operate the game of jai-alai. On the other hand, Section 1 of P.D. 1067-B provides the *nature and term* of PAGCOR'S *franchise to maintain gambling casinos* (not a franchise to operate jai-alai). Then came the *1986 EDSA revolution* and the end of the Marcos regime. On May 8, 1987, *President Corazon Aquino* issued *Executive Order No. 169* repealing P.D. Nos. 810, 1124 and 1966 *thus revoking the franchise of the Philippine Jai-alai and Amusement Corporation controlled by the Romualdezes to operate jai-alai in Manila. PAGCOR's franchise to operate gambling casinos was not revoked. Neither was it given a franchise to operate jai-alai. A franchise to operate jai-alai is granted solely for that purpose and the terms and conditions of the grant are unequivocably defined by the grantor. Such express grant and its conditionalities protective of the public interest are evidently wanting in P.D. No. 1869, the present Charter of PAGCOR. In fine, P.D. No. 1869 does not have the standard marks of a law granting a franchise to operate jai-alai as those found under P.D. No. 810 or E.O. 135.* We cannot blink away from the stubborn reality that *P.D. No. 1869 deals with details pertinent alone to the operation of gambling casinos.*

Supreme Court E-Library

7. **POLITICAL LAW; LEGISLATIVE POWER; GRANT OF FRANCHISE TO OPERATE JAI-ALAI; IMBUED WITH PUBLIC INTEREST; CONSTRUED STRICTLY AGAINST THE GRANTEE.**— PAGCOR is engaged in business affected with public interest. The phrase "affected with public interest" means that an industry is subject to control for the public good; it has been considered as the equivalent of "subject to the exercise of the police power." Perforce, *a legislative franchise to operate jai-alai is imbued with public interest and involves an exercise of police power. The familiar rule is that laws which grant the right to exercise a part of the police power of the state are to be construed strictly and any doubt must be resolved against the grant. The legislature is regarded as the guardian of society, and therefore is not presumed to disable itself or abandon the discharge of its duty. Thus, courts do not assume that the legislature intended to part away with its power to regulate public morals.* The presumption is influenced by constitutional considerations. Constitutions are widely understood to withhold from legislatures any authority to bargain away their police power for the power to protect the public interest is beyond abnegation.

8. **ID.; STATUTES LEGALIZING GAMBLING ACTIVITY, STRICTLY CONSTRUED.**— A statute which legalizes a gambling activity or business should be strictly construed and every reasonable doubt must be resolved to limit the powers and rights claimed under its authority.

9. **STATUTORY CONSTRUCTION; WHEN IS A STATUTE VAGUE AND AMBIGUOUS.**— That the statute admits of different interpretations is the best evidence that the statute is vague and ambiguous. It is widely acknowledged that a statute is ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses.

10. **ID.; PD 1067-A AND PD 1067-B, CLEAR AND UNAMBIGUOUS.**— In the cases at bar, it is difficult to see how a literal reading of the statutory text would unerringly reveal the legislative intent. To be sure, the term "jai-alai" was never used and is nowhere to be found in the law. The conclusion that it is included in the franchise granted to PAGCOR cannot be based on a mere cursory perusal of and a blind reliance on the ordinary and plain meaning of the statutory terms used such as "gaming pools" and "lotteries." Sutherland tells us that a statute is "ambiguous," and so open to explanation by extrinsic

Supreme Court E-Library

aids, not only when its abstract meaning or the connotation of its terms is uncertain, but also when it is uncertain in its application to, or effect upon, the fact-situation of the case at bar.

DAVIDE, JR., *C.J., separate opinion*:

1. **CRIMINAL LAW; GAMBLING; JAI-ALAI, NOT A GAME OF CHANCE, BUT A SPORT BASED ON SKILL; BETTING ON RESULT OF JAI-ALAI ALLOWED ONLY BY CONGRESS.**— In my Separate Opinion in G.R. No. 115044 *(Alfredo Lim vs. Hon. Felipe Pacquing)* and G.R. No. 117263 *(Teofisto Guingona vs. Hon. Vetino Reyes)*, 240 SCRA 649, 685, I reiterated my prior view in a supplemental concurring opinion I submitted in the earlier case, G.R. No. 115044 that jai-alai is not a game of chance, but a sport based on skill. Betting on the results thereof can only be allowed by Congress, and I am not aware of any new law authorizing such betting. My reading of the charter of the PAGCOR fails to disclose a grant of a congressional authority to allow betting on the results of *jai-alai*. Accordingly, all that the PAGCOR may do is operate and conduct the *jai-alai,* but in no case can it allow betting on the results thereof without obtaining a statutory authority for the purpose.

2. **ID.; ID.; ID.; ID.; CITY OF MANILA CANNOT LICENSE BETTING IN JAI-ALAI.**— However, as stated in the *ponencia*, P.D. No. 810 was repealed by E.O. No. 169 issued by then President Corazon C. Aquino, I am not aware of any other law which authorizes betting in *jai-alai.* It follows then that while the private respondent may operate the *jai-alai* fronton and conduct *jai-alai* games, it can do so solely as a sports contest. Betting on the results thereof, whether within or off-fronton, is illegal and the City of Manila cannot, under the present state of the law, license such betting. The dismissal of the petition in this case sustaining the challenged orders of the trial court does not legalize betting, for this Court is not the legislature under our systems of government.

VITUG, *J., separate opinion*:

1. **ADMINISTRATIVE LAW; PAGCOR (PHILIPPINE AMUSEMENT AND GAMING CORPORATION);**

Supreme Court E-Library

FRANCHISE TO OPERATE AND MAINTAIN GAMBLING CASINOS, GRANTED BY LEGISLATIVE POWER OF FORMER PRESIDENT MARCOS.— The former President Ferdinand E. Marcos in the exercise of his legislative powers under the 1973 Constitution, created the Philippine Amusement Gaming Corp. ("PAGCOR") and granted it franchise to "operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, x x x." PAGCOR was authorized to implement, among other things, an objective "to establish and operate clubs and casinos for amusement and recreation, including games of chance, which (might) be allowed by law within the territorial jurisdiction of the Philippines."

2. **ID.; ID.; ID.; WITHOUT POWER TO ENTER INTO JOINT VENTURE WITH ANOTHER FOR OPERATION OF JAI-ALAI OR BASQUE PELOTA.**— PAGCOR has entered into a joint venture agreement with Belle Jai-Alai Corporation ("BELLE") and Filipinas Gaming Entertainment Totalizator Corporation ("FILGAME") in the operation and management of jai-alai games. The two firms, under the agreement, would also furnish the jai-alai fronton facilities. I see in the joint venture agreement a situation that places BELLE and FILGAME in active endeavor with PAGCOR in conducting jai-alai games. *Without a congressional franchise of its own, neither BELLE nor FILGAME can lawfully engage into the activity.* I vote to grant the petitions in these cases insofar as they seek to enjoin respondent Philippine Amusement and Gaming Corporation ("PAGCOR") from operating jai-alai or Basque Pelota games *through respondents Belle Jai-alai Corporation ("BELLE") and/or Filipinas Gaming Entertainment Totalizator Corporation* ("FILGAME") or through any other agency, but I vote to deny the same insofar as they likewise seek to prohibit PAGCOR from itself managing or operating the game.

3. **POLITICAL LAW; LEGISLATIVE POWER; GRANT OF FRANCHISE; CANNOT BE DELEGATED TO PAGCOR.**— Indeed, the grant of a franchise is a purely legislative act that cannot be delegated to PAGCOR without violating the Constitution. The thesis rests on the maxim *potestas delegata non delegari potest*. Any constitutionally delegated sovereign power constitutes not only a right but a duty to be performed by the delegate, the legislature in this case, through the instrumentality of its own judgment. A further delegation of

Supreme Court E-Library

such power to PAGCOR would constitute a negation of this duty in violation of the trust reposed in the delegate mandated to discharge it directly. The broad authority then of PAGCOR under its charter to enter into agreements could not have been meant to empower PAGCOR *to pass on or to share* its own franchise to others. Had its charter intended otherwise, PAGCOR would have been itself virtually capable of extending franchise rights and thereby be a recipient of an unlawful delegation of legislative power.

DE LEON, JR., *J., dissenting opinion*:

1. **REMEDIAL LAW; ACTIONS; TAXPAYER'S SUIT; WHEN ALLOWED.**— In *Kilosbayan Incorporated vs. Morato* we have categorically stated that taxpayers, voters, concerned citizens and legislators, as such, may bring suit only (1) in cases involving constitutional issues and (2) under certain conditions. Taxpayers are allowed to sue, for example, where there is a claim of illegal disbursement of public funds or where a tax measure is assailed as unconstitutional. Concerned citizens can bring suits if the constitutional question they raise is of transcendental importance which must be settled early.

2. **ID.; ID.; ID.; CASE AT BAR DOES NOT INVOLVE EXPENDITURE OF PUBLIC FUNDS.**— While herein petitioners and intervenor claim illegal disbursement of public funds by PAGCOR in the resumption of the operations of jai-alai games, there is nothing on record to show involvement of any expenditure of public money on the part of PAGCOR. In fact, what is essentially raised as an issue is whether PAGCOR has the requisite franchise to operate jai-alai games and whether it is authorized under its charter to enter into joint venture agreements with private corporations. More specifically, under the joint venture agreement dated June 17, 1999 it is private respondent corporations BELLE and FILGAME which will provide infrastructure facilities to PAGCOR on a rent free basis. I cannot see how the Court could treat the subject petitions as taxpayers' suits when there is nothing, apart from petitioners' bare allegations, to prove that the operations of jai-alai would involve expenditure of public funds. Neither does the pivotal issue raised relate to a constitutional question inasmuch as only the scope of PAGCOR's franchise, and not its validity, is assailed.

Supreme Court E-Library

3. **ID.; SPECIAL CIVIL ACTION; *QUO WARRANTO*; CONSTRUED.**— *Quo warranto* literally means: "By what authority." It is an extraordinary legal remedy whereby the State challenges a person or an entity to show by what authority he holds a public office or exercises a public franchise. It is commenced by the Solicitor General in the name of the Republic of the Philippines against a usurper or against a corporation, on the proposition that the State is the aggrieved party. The Solicitor General institutes the action when directed by the President of the Philippines, or when upon a complaint or otherwise, he has good reason to believe that any of the cases specified under the law exists to warrant the institution of a *quo warranto* proceedings. *Quo warranto* proceedings against corporations are instituted to demand the forfeiture of their franchise or charter.

4. **ID.; SUPREME COURT; HAS THE FINAL WORD AS TO WHAT THE LAW MEANS.**— It is well-settled that the duty and power to interpret a statute belongs to the Judiciary. While the legislative and/or executive departments, by enacting and enforcing a law, respectively, may construe or interpret the law, it is the Supreme Court that has the final word as to what the law means.

5. **ID.; ACTIONS; PARTIES; *LOCUS STANDI*; MEMBER OF CONGRESS MAY BRING SUIT ALLEGING IMPAIRMENT OF ANY POWERS OF CONGRESS.**— The issue as to whether a member of Congress may bring suit in his capacity as a lawmaker, alleging impairment of any of the powers, rights and privileges belonging to Congress, is not novel. Citing the American cases of *Coleman vs. Miller* and *Holtzman vs. Schlesinger* we declared in *Philconsa vs. Enriquez* that "to the extent that the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution."

6. **ID.; ID.; ID.; ID.; ID.; CASE AT BAR.**— There is no dispute that the power to grant franchises rests within the legislative branch of government. In a legal or narrower sense, the term "franchise" is more often used to designate a right or privilege conferred by law. The view taken in a number of cases is that to be a franchise, the right possessed must be such as cannot be exercised without the express permission of a sovereign power, that is, a privilege or immunity of a public nature which cannot

Supreme Court E-Library

be legally exercised without legislative grant. Having the prerogative to grant franchises, Congress also has the power to revoke or repeal or alter franchises. Considering that whatever judgment may be rendered in the interpretation of the law defining the scope of PAGCOR's franchise would have a bearing on petitioners' prerogative, as members of Congress, *to consider* whether to modify, amend, alter, or repeal, through legislation, PAGCOR's franchise, I believe, that in limited sense, that petitioners have the requisite standing to bring these suits at bar.

7. **ID.; ACTIONS; INJUNCTION, DEFINED.**— Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a particular act. It may be an action in itself brought specifically to restrain or command the performance of an act or it may be just a provisional remedy for and as an incident in the main action which may be for other reliefs. The action for injunction should not be confused with the ancillary and provisional remedy of preliminary injunction which cannot exist except only as an incident of an independent action or proceeding. In a main action for permanent injunction, a party may ask for preliminary injunction pending the final judgment.

8. **ID.; SUPREME COURT; WITHOUT JURISDICTION TO ENTERTAIN ORIGINAL ACTIONS FOR INJUNCTION.**— It is clear that no mention was made in Section 1, Rule 56 of the 1997 Rules of Civil Procedure as to the jurisdiction of this Court to entertain original actions for injunction. In the 1917 case of *Madarang vs. Santamaria*, we have ruled that the Supreme Court does not have original jurisdiction, in an action brought for that purpose, to grant the remedy by injunction pursuant to Section 17 of Act No. 136 which provided that the Supreme Court shall have original jurisdiction to issue writs of *mandamus*, *certiorari*, prohibition, *habeas corpus* and *quo warranto*. As in Section 17 of Act 136, Section 1 of Rule 56 of the 1997 Rules of Civil Procedure has likewise not made any provision for the granting of the writ of injunction, as an original action, in the Supreme Court. Hence, the rule that this Court does not have jurisdiction over original actions for injunction still holds. This Court may, however, issue preliminary writs of injunction in cases on appeal before Us or in original actions commenced

Supreme Court E-Library

therein pursuant to Section 2 of Rule 58 of the 1997 Rules of Civil Procedure.

9. **ID.; ID.; ID.; MAY TAKE PRIMARY JURISDICTION OVER PETITION WHERE IMPORTANT ISSUES ARE RAISED.**— Notwithstanding procedural lapses as to the appropriateness of the remedies prayed for in the petitions filed before Us, however, this Court can take primary jurisdiction over the said petitions in view of the importance of the issues raised. In some instances, this Court has even suspended its own rules and excepted a case from their operation whenever the higher interests of justice so demanded.

10. **STATUTORY CONSTRUCTION; OBJECT.**— *The object of all interpretation and construction of statutes is to ascertain the meaning and intention of the legislature, to the end that the same may be enforced. This meaning and intention must be sought first of all in the language of the statute* itself. For it must be presumed that the means employed by the legislature to express its will are adequate for the purpose and do express that will correctly. If the language is plain and free from obscurity, it must be taken as meaning exactly what it says, whatever may be the consequences.

11. **ADMINISTRATIVE LAW; PAGCOR; FRANCHISE GRANTED INCLUDES OPERATION OF JAI-ALAI.**— Section 11 of P.D. No. 1869 defining the extent and nature of PAGCOR's franchise reads: x x x *the Corporation is hereby granted x x x the rights, privilege, and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports,* ***gaming pools****, i.e., basketball, football, lotteries,* ***etc****. x x x [underscoring supplied].* Contrary to the majority opinion that PAGCOR's franchise is limited only to the management and operation of casinos, a cursory reading of the abovequoted legal provision would readily show that the extent and nature of PAGCOR's franchise is so broad that literally all kinds of sports and gaming pools, including jai-alai, are covered therein. P.D. No. 1869 has made express mention of basketball and football as example of gaming pools. Basketball and football, however, like jai-alai are games of skills. Considering that under Section 11 of P.D. No. 1869, games of skill like basketball and football have been lumped together with the word "lotteries" just before the word "*etc.*" and after the words "gaming pools," it may be deduced from the wording

Supreme Court E-Library

of the law that when bets or stakes are made in connection with games of skill, they may be classified as games of chance under the coverage of PAGCOR's franchise. The meaning of the phrase "*et cetera*" or its abbreviation "*etc.*" depends largely on the context of the instrument, description and enumeration of the matters preceding the term and subject matter to which it is applied, and when used in a statute, the words should be given their usual and natural signification. Consequently, jai-alai, otherwise known as "game of Basque pelota," while in itself is not *per se* a game of chance, may be categorized as a game of chance when bets are accepted as a form of gambling.

12. **STATUTORY CONSTRUCTION; WHEN WORDS OR PHRASES OF A STATUTE ARE CLEAR AND UNEQUIVOCAL, STATUTE TAKEN TO MEAN EXACTLY WHAT IT SAYS.**— It is a cardinal rule of statutory construction that when words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. Even if the Court is fully persuaded that the legislature really meant and intended something different from what it enacted, and that the failure to convey the real meaning was due to inadvertence or mistake in the use of language, yet, if the words chosen by the legislature are not obscure or ambiguous, but convey a precise and sensible meaning (excluding the case of obvious clerical errors or elliptical forms of expression), then the Court must take the law as if finds it, and give it its literal interpretation, without being influenced by the probable legislative meaning lying at the back of the words. In that event, the presumption that the legislature meant what it said, though it be contrary to the fact, is conclusive.

13. **POLITICAL LAW; LEGISLATIVE POWER; GRANT OF FRANCHISE; WHERE FRANCHISE DOES NOT DEFINE OR LIMIT POWER, HOLDER HAS ALL POWERS AS ARE REASONABLY NECESSARY TO ACCOMPLISH PURPOSE.**— While there is no specific mention of jai-alai as among the games of chance which PAGCOR can operate under its franchise, the language of the law defining the scope of PAGCOR's franchise is broad enough to include the operations of jai-alai as a game of chance. Where the franchise contains no words either defining or *limiting* the powers which the holder may exercise, such holder has, by implication, all such powers

Supreme Court E-Library

as are reasonably necessary to enable it to accomplish the purposes and object of its creation. It is well recognized that the principle of strict construction does not preclude a fair and reasonable interpretation of such charter and franchises, nor does it justify withholding that which satisfactorily appears to have been intended to be conveyed to the grantee.

14. **ID.; ID.; ID.; NOT ALWAYS CONFINED TO EXCLUSIVE RIGHTS.**— The mere granting of a franchise does not amount to an implied contract on the part of the grantor that it will not grant a rival franchise to a competing corporation or enter into a competition itself in reference to the subject of the franchise. Monopoly is not an essential feature of a franchise and the strictly legal signification of the term franchise is not always confined to exclusive rights. An examination of the provisions of P.D. No. 810 does not give us any indication that the franchise granted to PJAC to operate jai-alai is exclusive in character.

15. **ADMINISTRATIVE LAW; PAGCOR; POWERS INCLUDES POWER TO ENTER INTO JOINT VENTURE AGREEMENT.**— PAGCOR's right to enter into management contracts is not limited to those relating to the efficient operation of gambling casinos under Section 11 of P.D. No. 1869. Clearly, in Section 11 of P.D. No.1869, the powers granted to PAGCOR is broad enough to include the power to enter into a joint venture agreement with private corporations like BELLE and FILGAME relating to the operation, management and conduct not only of gambling casinos but also of those relating to jai-alai as legalized gambling.

16. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; JOINT VENTURE, DEFINED.**— A joint venture is an association of persons or companies jointly undertaking some commercial enterprise – generally, all contribute assets and share risks. It requires a community of interests in the performance of the subject matter, a right, and governs the policy connected therewith, and duty, which may be altered by agreement to share in both profit and losses. In this jurisdiction, a joint venture is a form of partnership and is thus governed by the law on partnerships.

17. **STATUTORY CONSTRUCTION; COURT SHOULD ENFORCE STATUTE TO PLAIN MEANING OF WORDS WHERE LANGUAGE IS CLEAR.**— *Where the language of*

Supreme Court E-Library

the statute is clear, it is the duty of the court to enforce it according to the plain meaning of the word. There is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation, and, when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning. When an act is expressed in clear and concise terms, and the sense is manifest and leads to nothing absurd, there can be no reason not to adopt the sense which it naturally presents. To go elsewhere in search of conjectures in order to find a different meaning is not so much to interpret the law as to elude it.

18. **POLITICAL LAW; LEGISLATIVE POWER; DELEGATION OF POWER; DELEGATED POWER CAN NO LONGER BE DELEGATED; RATIONALE.**— Under the rule *potestas delegata non delegari potest* a delegated power cannot be delegated. This is based upon the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment acting immediately upon the matter of legislation and not through the intervening mind of another.

19. **ID.; ID.; ID.; ID.; RULE, NOT APPLICABLE TO CASE AT BAR.**— However, the said rule is inapplicable in the case at bar. The legislative grant of franchise to PAGCOR has not accorded unto the latter legislative powers nor quasi-legislative powers. The joint venture agreement was entered by PAGCOR with FILGAME and BELLE pursuant to the powers granted under P.D. No. 1869 to PAGCOR to "enter into, make, perform, and carry out contracts of every kind and for any purpose pertaining to the business of the corporation x x x with any person, firm or corporation." Under the joint venture agreement, BELLE and FILGAME will provide financial requirements and technical assistance to PAGCOR in connection with the use of their operational facilities. *PAGCOR however shall still manage, regulate and control all aspects of jai-alai operations.* The subject joint venture Agreement is in consonance with the powers granted to PAGCOR that it may "do anything and everything necessary, proper, desirable, convenient or suitable for the accomplishment of any of the purposes or attainment of any of the objects or the furtherance of any of the powers herein stated, either alone or in association with other corporations, firms or individuals."

Supreme Court E-Library

APPEARANCES OF COUNSEL

Policarpio Concepcion Sison and Mendoza for petitioners.
Herrera Teehankee & Faylona for Belle Jai-Alai Corp. & Filipinas Gaming Entertainment Totalizator Corp.
The Solicitor General for public respondent.
Ocampo Manalo & Ureta Law Offices for Intervenor.

DECISION

PUNO, *J.*:

These two consolidated petitions concern the issue of whether the franchise granted to the Philippine Amusement and Gaming Corporation (PAGCOR) includes the right to manage and operate jai-alai.

First, we scour the significant facts. The Philippine Amusement and Gaming Corporation is a government-owned and controlled corporation organized and existing under Presidential Decree No. 1869 which was enacted on July 11, 1983. Pursuant to Sections 1 and 10 of P.D. No. 1869, respondent PAGCOR requested for legal advice from the Secretary of Justice as to whether or not it is authorized by its Charter to operate and manage jai-alai frontons in the country. In its Opinion No. 67, Series of 1996 dated July 15, 1996, the *Secretary of Justice* opined that "the authority of PAGCOR to operate and maintain games of chance or gambling extends to jai-alai which is a form of sport or *game played for bets* and that the Charter of PAGCOR amounts to a legislative franchise for the purpose."[1] Similar favorable opinions were received by PAGCOR from the Office of the *Solicitor General* per its letter dated June 3, 1996 and the Office of the *Government Corporate Counsel* under its Opinion No. 150 dated June 14, 1996.[2] Thus, PAGCOR started the operation of jai-alai frontons.

---

[1] Annex D, Petition, G.R. No. 138298; *Rollo*, 171-174.

[2] Annex A, *id.*; *Ibid.*, 23.

Supreme Court E-Library

On May 6, 1999, petitioner Raoul B. del Mar *initially filed* in G.R. No. 138298 a *Petition for Prohibition* to prevent respondent PAGCOR from managing and/or operating the jai-alai or Basque pelota games, by itself or in agreement with Belle Corporation, on the ground that the controverted act is patently illegal and devoid of any basis either from the Constitution or PAGCOR's own Charter.

However, on June 17, 1999, respondent PAGCOR entered into an *Agreement* with private respondents Belle Jai-Alai Corporation (BELLE) and Filipinas Gaming Entertainment Totalizator Corporation (FILGAME) wherein it was agreed that BELLE will make available to PAGCOR the required infrastructure facilities including the main fronton, as well as provide the needed funding for jai-alai operations with no financial outlay from PAGCOR, while PAGCOR handles the actual management and operation of jai-alai.[3]

Thus, on August 10, 1999, petitioner Del Mar filed a *Supplemental Petition for Certiorari* questioning the validity of said Agreement on the ground that PAGCOR is without jurisdiction, legislative franchise, authority or power to enter into such Agreement for the opening, establishment, operation, control and management of jai-alai games.

A little earlier, or on July 1, 1999, petitioners Federico S. Sandoval II and Michael T. Defensor filed a *Petition for Injunction*, docketed as G.R. No. 138982, which seeks to enjoin respondent PAGCOR from operating or otherwise managing the jai-alai or Basque pelota games by itself or in joint venture with Belle Corporation, for being patently illegal, having no basis in the law or the Constitution, and in usurpation of the authority that properly pertains to the legislative branch of the government. In this case, a *Petition in Intervention* was filed by Juan Miguel Zubiri alleging that the operation by PAGCOR of jai-alai is illegal because it is not included in the scope of PAGCOR's franchise which covers only games of chance.

---

[3] Annex A, Supplemental Petition, G.R. No. 138298; *Ibid.*, 162-168.

Supreme Court E-Library

Petitioners Raoul B. del Mar, Federico S. Sandoval II, Michael T. Defensor, and intervenor Juan Miguel Zubiri, are *suing as taxpayers and in their capacity as members of the House of Representatives* representing the First District of Cebu City, the Lone Congressional District of Malabon-Navotas, the Third Congressional District of Quezon City, and the Third Congressional District of Bukidnon, respectively.

The bedrock *issues* spawned by the petitions at bar are:

G.R. No. 138298

Petitioner *Del Mar* raises the following issues:

I. The respondent PAGCOR has no jurisdiction or legislative franchise or acted with grave abuse of discretion, tantamount to lack or excess of jurisdiction, in arrogating unto itself the authority or power to open, pursue, conduct, operate, control and manage jai-alai game operations in the country.

II. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x in executing its agreement with co-respondents Belle and Filgame for the conduct and management of jai-alai game operations, upon undue reliance on an opinion of the Secretary of Justice.

III. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x in entering into a partnership, joint venture or business arrangement with its co-respondents Belle and Filgame, through their agreement x x x. The Agreement was entered into through manifest partiality and evident bad faith (Sec. 3 (e), RA 3019), thus manifestly and grossly disadvantageous to the government [Anti-Graft and Corrupt Practices Act, RA 3019, Sec. 3 (g)].

IV. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x to award to its co-respondents Belle and Filgame the right to avail of the tax benefits which, by law, inures solely and exclusively to PAGCOR itself.

Supreme Court E-Library

V. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x to cause the disbursement of funds for the illegal establishment, management and operation of jai-alai game operations.

VI. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x to award or grant authority for the establishment, management and operation of off-fronton betting stations or bookies.

VII. The respondent PAGCOR has no jurisdiction or authority x x x in awarding unto its co-respondents Belle and Filgame, without public bidding, the subject agreement.

In defense, private respondents *BELLE and FILGAME* assert:

1. The petition states no cause of action and must be dismissed outright;

2. The petitioner has no cause of action against the respondents, he not being a real party-in-interest;

3. The instant petition cannot be maintained as a taxpayer suit, there being no illegal disbursement of public funds involved;

4. The instant petition is essentially an action for *quo warranto* and may only be commenced by the Solicitor General;

5. The operation of jai-alai is well within PAGCOR's authority to operate and maintain. PAGCOR's franchise is intended to be wide in its coverage, the underlying considerations being, that: (1) the franchise must be used to integrate all gambling operations in one corporate entity (*i.e.* PAGCOR); and (2) it must be used to generate funds for the government to support its social impact projects;

6. The agreement executed by, between and among PAGCOR, BJAC and FILGAME is outside the coverage of existing laws requiring public bidding.

Supreme Court E-Library

Substantially the same defenses were raised by respondent PAGCOR in its Comment.

G.R. No. 138982

Petitioners contend that:

I. The operation of jai-alai games by PAGCOR is illegal in that:

   1) the franchise of PAGCOR does not include the operation of jai-alai since jai-alai is a prohibited activity under the Revised Penal Code, as amended by P.D. No. 1602 which is otherwise known as the Anti-Gambling Law;

   2) jai-alai is not a game of chance and therefore cannot be the subject of a PAGCOR franchise.

II. A franchise is a special privilege that should be construed strictly against the grantee.

III. To allow PAGCOR to operate jai-alai under its charter is tantamount to a license to PAGCOR to legalize and operate any gambling activity.

In its Comment, respondent *PAGCOR* avers that:

1. An action for injunction is not among the cases or proceedings originally cognizable by the Honorable Supreme Court, pursuant to Section 1, Rule 56 of the 1997 Rules of Civil Procedure.

2. Assuming, *arguendo*, the Honorable Supreme Court has jurisdiction over the petition, the petition should be dismissed for failure of petitioners to observe the doctrine on hierarchy of courts.

3. x x x Petitioners have no legal standing to file a taxpayer's suit based on their cause of action nor are they the real parties-in-interest entitled to the avails of the suit.

4. Respondent's franchise definitely includes the operation of jai-alai.

Supreme Court E-Library

5. Petitioners have no right *in esse* to be entitled to a temporary restraining order and/or to be protected by a writ of preliminary injunction.

The *Solicitor General* claims that the petition, which is actually an action for *quo warranto* under Rule 66 of the Rules of Court, against an alleged usurpation by PAGCOR of a franchise to operate jai-alai, should be dismissed outright because only the Solicitor General or public prosecutor can file the same; that P.D. No. 1869, the Charter of PAGCOR, authorizes PAGCOR to regulate and operate games of chance and skill which include jai-alai; and that P.D. No. 1602 did not outlaw jai-alai but merely provided for stiffer penalties to illegal or unauthorized activities related to jai-alai and other forms of gambling.

We shall first rule on the important procedural issues raised by the respondents.

Respondents in G.R. No. 138982 contend that the Court has no jurisdiction to take original cognizance of a petition for injunction because it is not one of those actions specifically mentioned in Section 1 of Rule 56 of the 1997 Rules of Civil Procedure. Moreover, they urge that the petition should be dismissed for failure of petitioners to observe the doctrine on hierarchy of courts.

It is axiomatic that what determines the nature of an action and hence, the jurisdiction of the court, are the allegations of the pleading and the character of the relief sought.[4] A cursory perusal of the petition filed in G.R. No. 138982 will show that it is actually one for Prohibition under Section 2 of Rule 65 for it seeks to prevent PAGCOR from managing, maintaining and operating jai-alai games. Even assuming, *arguendo*, that it is an action for injunction, this Court has the discretionary power to take cognizance of the petition at bar if compelling reasons, or the nature and importance of the issues raised, warrant

---

[4] *Times Broadcasting Network vs. CA, et al.*, 274 SCRA 366 (1997); *Estate of the late Mercedes Jacob vs. CA, et al.*, 283 SCRA 474 (1997).

Supreme Court E-Library

the immediate exercise of its jurisdiction.[5] It cannot be gainsaid that the issues raised in the present petitions have generated an oasis of concern, even days of disquiet in view of the public interest at stake. In *Tano, et al. vs. Socrates, et al.,*[6] this Court did not hesitate to treat a petition for *certiorari* and injunction as a special civil action for *certiorari* and prohibition to resolve an issue of far-reaching impact to our people. This is in consonance with our case law now accorded near religious reverence that rules of procedure are but tools designed to facilitate the attainment of justice such that when its rigid application tends to frustrate rather than promote substantial justice, this Court has the duty to suspend their operation.[7]

Respondents also assail the *locus standi* or the standing of petitioners to file the petitions at bar as taxpayers and as legislators. First, they allege that petitioners have no legal standing to file a taxpayer's suit because the operation of jai-alai does not involve the disbursement of public funds.

Respondents' stance is not without oven ready legal support. A party suing as a taxpayer must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation.[8] In essence, taxpayers are allowed to sue where there is a claim of illegal disbursement of public funds,[9] or that public money is being deflected to any improper purpose,[10] or where petitioners seek to restrain respondent from wasting public funds through the enforcement of an invalid or unconstitutional law.[11]

---

[5] *Fortich, et al. vs. Corona, et al.,* 289 SCRA 624 (1998).

[6] 278 SCRA 154 (1997).

[7] *Ramos vs. CA, et al.,* 269 SCRA 34 (1997).

[8] *Bugnay Construction & Dev. Corp. vs. Laron,* 176 SCRA 240 (1989).

[9] *Pascual vs. Sec. of Public Works,* 110 Phil. 331 (1960); *Sanidad vs. Comelec,* 73 SCRA 333 (1976); *Kilosbayan, Inc., et al. vs. Morato, et al.,* 250 SCRA 130 (1995).

[10] *Dumlao vs. Comelec,* 95 SCRA 392 (1980).

[11] *Philconsa vs. Mathay,* 18 SCRA 300 (1966).

Supreme Court E-Library

In the petitions at bar, the Agreement entered into between PAGCOR and private respondents BELLE and FILGAME will show that all financial outlay or capital expenditure for the operation of jai-alai games shall be provided for by the latter. Thus, the Agreement provides, among others, that: PAGCOR shall manage, operate and control the jai-alai operation at no cost or financial risk to it (Sec. 1[A][1]); BELLE shall provide funds, at no cost to PAGCOR, for all capital expenditures (Sec. 1[B][1]); BELLE shall make available to PAGCOR, at no cost to PAGCOR, the use of the integrated nationwide network of on-line computerized systems (Sec. 1[B][2]); FILGAME shall make available for use of PAGCOR on a rent-free basis the jai-alai fronton facilities (Sec. 1[C][1]); BELLE & FILGAME jointly undertake to provide funds, at no cost to PAGCOR, for pre-operating expenses and working capital (Sec. 1 [D][1]); and that BELLE & FILGAME will provide PAGCOR with goodwill money in the amount of ₱200 million (Sec. 1[D][2]). In fine, the record is barren of evidence that the operation and management of jai-alai by the PAGCOR involves expenditure of public money.

Be that as it may, in line with the liberal policy of this Court on *locus standi* when a case involves an issue of overarching significance to our society,[12] we find and so hold that as members of the House of Representatives, petitioners have legal standing to file the petitions at bar. In the instant cases, petitioners complain that the operation of jai-alai constitutes an infringement by PAGCOR of the legislature's exclusive power to grant franchise. To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution, so petitioners contend. The contention commands our concurrence for it is now settled that a member of the House

---

[12] *Philconsa vs. Gimenez*, 15 SCRA 479 (1965); *Civil Liberties Union vs. Executive Secretary*, 194 SCRA 317 (1991); *Guingona vs. Carague*, 196 SCRA 221 (1991); *Osmeña vs. Comelec*, 199 SCRA 750 (1991); *Basco vs. PAGCOR*, 197 SCRA 52 (1991); *Carpio vs. Executive Secretary*, 206 SCRA 290 (1992).

Supreme Court E-Library

of Representatives has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office.[13] As presciently stressed in the case of ***Kilosbayan, Inc.***, *viz*:

"We find the instant petition to be of transcendental importance to the public. The issues it raised are of paramount public interest and of a category even higher than those involved in many of the aforecited cases. The ramifications of such issues immeasurably affect the social, economic, and moral well-being of the people even in the remotest *barangays* of the country and the counter-productive and retrogressive effects of the envisioned on-line lottery system are as staggering as the billions in pesos it is expected to raise. The legal standing then of the petitioners deserves recognition x x x."

After hurdling the threshold procedural issues, we now come to the decisive substantive issue of whether PAGCOR's legislative franchise includes the right to manage and operate jai-alai.[14] The issue is of supreme significance for its incorrect resolution can dangerously diminish the plenary legislative power of Congress, more especially its exercise of police power to protect the morality of our people. After a circumspect consideration of the clashing positions of the parties, we hold that the charter of PAGCOR does not give it any franchise to operate and manage jai-alai.

---

[13] *Philconsa vs. Mathay, supra.*

[14] The game was introduced to the country during the Spanish colonial period. The first games were played at a fronton in Numancia Street, Binondo, Manila. In 1917, the games were moved to a larger fronton at the corner of Taft Avenue and San Luis Street in Ermita where it gained popularity. From a plain sport, jai-alai become a form of gambling when the Philippine Legislature issued a franchise legalizing betting in June 1939. The fronton was then operated by the Madrigals, a family close to Commonwealth President Manuel Quezon.. Devastated by World War II, the fronton was rebuilt in 1948. During the term of President Marcos, the jai-alai franchise was granted to the Romualdez family. After the EDSA revolution, the Aquino administration closed down jai-alai. Then, in 1994, during the term of President Ramos, the Associated Development Corporation (ADC) revived the games at a new location in Harrison Plaza, Manila. However, after only a few months of operation, this Court ruled that a congressional franchise was required for the games.

Supreme Court E-Library

FIRST. A "*franchise*" is a *special privilege* conferred upon a corporation or individual by a government duly empowered legally to grant it.[15] It is a *privilege of public concern* which cannot be exercised at will and pleasure, but should be *reserved for public control* and administration, either by the government directly, or by public agents, under such conditions and regulations as the government may impose on them *in the interest of the public.*[16] A franchise thus emanates from a sovereign power[17] and the grant is *inherently a legislative power*. It may, however, be derived *indirectly* from the state through an agency to which the power has been *clearly and validly delegated.*[18] In such cases, Congress prescribes the *conditions* on which the grant of a franchise may be made.[19] Thus, the *manner* of granting the franchise, *to whom* it may be granted, the *mode of conducting* the business, the *character and quality* of the service to be rendered and the *duty of the grantee* to the public in exercising the franchise are almost always defined in clear and unequivocal language. *In the absence of these defining terms, any claim to a legislative franchise to operate a game played for bets and denounced as a menace to morality ought to be rejected.*

SECOND. A *historical study* of the creation, growth and development of PAGCOR will readily show that it was never given a legislative franchise to operate jai-alai.

(2.a) Before the creation of PAGCOR, a 25-year right to operate jai-alai in Manila was given by President Marcos to the *Philippine Jai-Alai and Amusement Corporation then*

---

[15] *City of Oakland vs. Hogan*, 106 P.2d 987, 994, 41 Cal. App.2d 333.

[16] *Central Pac. R. Co. vs. People of State of California*, 16 S.Ct. 766, 778, 162 U.S. 91, 40 L Ed. 903; *Hamill vs. Hawks*, C.C.A. Okl., 58 F.2d 41, 44.

[17] *People ex rel. Foley vs. Begole*, 56 P.2d 931, 933, 98 Colo. 354.

[18] *City of Helena vs. Helena Light and R. Co.*, 207 O. 337, 63 Mont. 108.

[19] *Beekman vs. Third Ave. R. Co.*, 47 N.E. 277, 153 N.Y. 144.

Supreme Court E-Library

controlled by his in-laws, the Romualdez family. The franchise was granted on October 16, 1975 thru *P.D. No. 810* issued by President Marcos *in the exercise of his martial law powers.* On that very date, the 25-year franchise of the prior grantee expired and was not renewed. A few months before, President Marcos had issued *P.D. No. 771* dated August 20, 1975, revoking the authority of local government units to issue jai-alai franchises. By these acts, the former President exercised complete control of the sovereign power to grant franchises.

(2.b) Almost *one year and a half after* granting the Philippine Jai-Alai and Amusement Corporation a 25-year franchise to operate jai-alai in Manila, *President Marcos created PAGCOR* on January 1, 1977 by issuing *P.D. No. 1067-A*. The decree is entitled "*Creating* the Philippine Amusements and Gaming Corporation, Defining Its Powers and Functions, Providing Funds therefor and for Other Purposes." Its *Declaration of Policy*[20] trumpeted the intent that PAGCOR was created to implement "the policy of the State to centralize and integrate *all games of chance not heretofore authorized by existing franchises or permitted by law* x x x." One of its whereas clauses referred to the need to prevent "the proliferation of *illegal casinos* or clubs conducting games of chance x x x."[21] To achieve this objective, PAGCOR was empowered "to establish and maintain clubs, *casinos*, branches, agencies or subsidiaries, or other units anywhere in the Philippines x x x."[22]

(2.c) On the same day after creating PAGCOR, President Marcos issued *P.D. No. 1067-B* granting PAGCOR "x x x a *Franchise* to Establish, Operate, and Maintain *Gambling Casinos* on Land or Water Within the Territorial Jurisdiction of the Republic of the Philippines." *Obviously*, P.D. No. 1067-A which created the PAGCOR is not a grant of franchise to operate the game of jai-alai. On the other hand, Section 1 of P.D. No. 1067-B provides the *nature and term* of PAGCOR'S *franchise*

---

[20] Section 1 of P.D. No. 1067-A.

[21] *See* third whereas clause.

[22] *See* Section 3(2) of P.D. No. 1067-A.

Supreme Court E-Library

to maintain gambling casinos (not a franchise to operate jai-alai), *viz*:

"SECTION 1. Nature And Term Of Franchise. — Subject to the terms and conditions established in this Decree, the Philippine Amusements and Gaming Corporation is hereby granted for a period of twenty-five (25) years, renewable for another 25 years, the right, privilege, and authority to operate and maintain *gambling casinos*, clubs and other recreation or amusement places, sports, gaming pools, *i.e.*, basketball, football, *etc.*, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines."

Section 2 of the same decree spells out the *scope* of the PAGCOR *franchise to maintain gambling casinos* (not a franchise to operate jai-alai), *viz*:

"SEC. 2. SCOPE OF FRANCHISE. — In addition to the right and privileges granted it under Sec. 1, this Franchise shall entitle the franchise holder to do and undertake the following:

(1) Enter into operator's and/or management contracts with duly registered and accredited company possessing the knowledge, skill, expertise and facilities to insure the efficient operation of *gambling casinos; Provided,* That the service fees of such management and/or operator companies whose services may be retained by the franchise holder of this Franchise shall not in the aggregate exceed ten (10%) percent of the gross income.

(2) Purchase foreign exchange that may be required for the importation of equipment, facilities and other gambling paraphernalia indispensably needed or useful to insure the successful operation of *gambling casinos.*

(3) Acquire the right of way, access to or thru public lands, public waters or harbors, including the Manila Bay Area; such right to include, but not limited to, the right to lease and/or purchase public lands, government reclaimed lands, as well as land of private ownership or those leased from the government. This right shall carry with it the privilege of the franchise holder to utilize piers, quays, boat landings, and such other pertinent and related facilities within these specified areas for use as landing, anchoring, or berthing sites in connection with its authorized *casino operations.*

Supreme Court E-Library

(4) Build or construct structures, buildings, coastways, piers, docks, as well as any other form of land and berthing facilities for its floating *casinos*.

(5) To do and perform such other acts directly related to the efficient and successful operation and conduct of games of chance in accordance with existing laws and decrees."

(2.d) Still on the day after creating PAGCOR, President Marcos issued *P.D. No. 1067-C* amending P.D. Nos. 1067-A and B. The amendment provides that *PAGCOR's franchise to maintain gambling casinos* "x x x shall become *exclusive* in character, subject only to the *exception of existing franchises* and games of chance heretofore permitted by law, upon the generation by the franchise holder of gross revenues amounting to ₱1.2 billion and its contribution therefrom of the amount of ₱720 million as the government's share."

(2.e) On *June 2, 1978*, President Marcos issued *P.D. No. 1399* amending PD. Nos. 1067-A and 1067-B. *The amendments did not change the nature and scope of the PAGCOR franchise to maintain gambling casinos*. Rather, they referred to the Composition of the Board of Directors,[23] Special Condition of Franchise,[24] Exemptions,[25] and Other Conditions.[26]

(2.f) On *August 13, 1979*, President Marcos issued *P.D. No. 1632*. Again, *the amendments did not change a comma on the nature and scope of PAGCOR's franchise to maintain gambling casinos*. They related to the allocation of the 60% share of the government where the host area is a city or municipality other than Metro Manila,[27] and the manner of payment of franchise tax of PAGCOR.[28]

---

[23] *See* Section 5 of P.D. No. 1067-A.

[24] *See* Section 3 of P.D. No. 1067-C.

[25] *See* Section 4 of P.D. No. 1067-B.

[26] *See* Section 5, par. 1 of P.D. No. 1067-B.

[27] *See* Section 1 of P.D. No. 1632.

[28] *See* Section 2 of P.D. No. 1632.

Supreme Court E-Library

(2.g) On *July 11, 1983*, President Marcos issued *P.D. No. 1869* entitled "*Consolidating* and Amending P.D. Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632 Relative to the Franchise and Power of the PAGCOR." *As a consolidated decree; it reiterated the nature and scope of PAGCOR's existing franchise to maintain gambling casinos* (not a franchise to operate jai-alai), thus:

"SEC. 10. *Nature and term of franchise.* — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privilege and authority to operate and maintain *gambling casinos*, clubs, and other recreation or amusement places, sports, gaming pools, *i.e.* basketball, football, lotteries, *etc.*, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

SEC. 11. *Scope of Franchise.* — In addition to the rights and privileges granted it under the preceding Section, this Franchise shall entitle the corporation to do and undertake the following:

(1) Enter into operating and/or management contracts with any registered and accredited company possessing the knowledge, skill, expertise and facilities to insure the efficient operation of *gambling casinos*; provided, that the service fees of such management and/or operator companies whose services may be retained by the Corporation shall not in the aggregate exceed ten (10%) percent of the gross income;

(2) Purchase foreign exchange that may be required for the importation of equipment, facilities and other gambling paraphernalia indispensably needed or useful to insure the successful operation of *gambling casinos;*

(3) Acquire the right of way or access to or thru public land, public waters or harbors, including the Manila Bay Area; such right shall include, but not be limited to, the right to lease and/or purchase public lands, government reclaimed lands, as well as lands of private ownership or those leased from the Government. This right shall carry with it the privilege of the Corporation to utilize piers, quays, boat landings, and such other pertinent and related facilities within these specified areas for use as landing, anchoring or berthing sites in connection with its authorized *casino operations;*

Supreme Court E-Library

(4) Build or construct structures, buildings, castways, piers, decks, as well as any other form of landing and boarding facilities for its *floating casinos*; and

(5) To do and perform such other acts directly related to the efficient and successful operation and conduct of games of chance in accordance with existing laws and decrees."

(2.h) Then came the *1986 EDSA revolution* and the end of the Marcos regime. On May 8, 1987, *President Corazon Aquino* issued *Executive Order No. 169* repealing P.D. Nos. 810, 1124 and 1966 *thus revoking the franchise of the Philippine Jai-Alai and Amusement Corporation controlled by the Romualdezes to operate jai-alai in Manila. PAGCOR's franchise to operate gambling casinos was not revoked. Neither was it given a franchise to operate jai-alai.*

THIRD. In light of its legal history, *we hold that PAGCOR cannot maintain that Section 10 of P.D. No. 1869 grants it a franchise to operate jai-alai.* Section 10 provides:

"SEC. 10. *Nature and term of franchise.* — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privilege and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, *i.e.*, basketball, football, lotteries, *etc.*, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines."

(3.a) P.D. No. 1869 is a *mere consolidation* of previous decrees dealing with PAGCOR. PAGCOR cannot seek comfort in Section 10 as it is *not a new provision* in P.D. No. 1869 and, from the beginning of its history, was never meant to confer it with a franchise to operate jai-alai. It is a *reiteration* of Section 1 of P.D. No. 1067-B which provides:

"SECTION 1. *Nature and Term of Franchise.* — Subject to the terms and conditions established in this Decree, the Philippine Amusements and Gaming Corporation is hereby granted for a period of twenty-five (25) years, renewable for another 25 years, the right, privilege, and authority to operate and maintain gambling casinos,

Supreme Court E-Library

clubs and other recreation or amusement places, sports gaming pools, *i.e.*, basketball, football, *etc.*, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines."

(3.b) Plainly, Section 1 of P.D. No. 1067-B which was reenacted as Section 10 of P.D. No. 1869 is not a grant of legislative franchise to operate jai-alai. P.D. No. 1067-B is a franchise to maintain gambling casinos alone. The two franchises are as different as day and night and no alchemy of logic will efface their difference.

(3.c) PAGCOR's stance becomes more sterile when we consider the law's intent. *It cannot be the intent of President Marcos to grant PAGCOR a franchise to operate jai-alai* because a year and a half before it was chartered, he issued P.D. No. 810 granting Philippine Jai-Alai and Amusement Corporation a 25-year franchise to operate jai-alai in Manila. This corporation is controlled by his in-laws, the Romualdezes.[29] To assure that this Romualdez corporation would have no competition, President Marcos earlier revoked the power of local governments to grant jai-alai franchises. Thus, *PAGCOR's stance that P.D. No. 1067-B is its franchise to operate jai-alai, which would have competed with the Romualdezes' franchise, extends credulity to the limit.* Indeed, P.D. No. 1067-A which created PAGCOR made it crystal clear that it was to implement "the policy of the State to centralize and integrate all games of chance *not heretofore authorized by existing franchises or permitted by law*," which included the Philippine Jai-Alai and Amusement Corporation.

(3.d) There can be no sliver of doubt that under P.D. No. 1869, PAGCOR's franchise is *only* to operate gambling casinos and not jai-alai. This conclusion is compelled by a *plain reading* of its various provisions, *viz*:

"SECTION 1. Declaration of Policy.— It is hereby declared to be the policy of the State to centralize and integrate all games of

---

[29] *See Dissenting Opinion in Lim v. Pacquing, et al.*, 240 SCRA 649 (1995), pp. 720 and 729.

Supreme Court E-Library

chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:

x x x x x x x x x

(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: x x x (3) *minimize, if not totally eradicate, the evils, malpractices and corruptions that are normally prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement.*

x x x x x x x x x

TITLE IV — GRANT OF FRANCHISE

SEC. 10. Nature and term of franchise. — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, *the rights, privileges and authority to operate and maintain gambling casinos*, clubs, and other recreation or amusement places, sports, gaming pools, *i.e.* basketball, football, lotteries, *etc.* whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

SEC. 11. Scope of Franchise. — In addition to the rights and privileges granted it under the preceding Section, this Franchise shall entitle the Corporation to do and undertake the following:

(1) Enter into operating and/or management contracts with any registered and accredited company possessing the knowledge, skill, expertise and facilities *to insure the efficient operation of gambling casinos;* provided, that the service fees of such management and/or operator companies whose services may be retained by the Corporation shall not in the aggregate exceed ten (10%) percent of the gross income;

(2) Purchase foreign exchange that may be required for the importation of equipment, facilities and other gambling paraphernalia indispensably needed or useful *to insure the successful operation of gambling casinos;*

(3) Acquire the right of way or access to or thru public land, public waters or harbors x x x. This right shall carry with it the privilege of the Corporation to utilize x x x such other pertinent and related facilities

Supreme Court E-Library

within these specified areas x x x *in connection with its authorized casino operations;*

(4) Build or construct structures, building castways, piers, decks, as well as any other form of landing and boarding facilities *for its floating casinos;*

x x x x x x x x x

SEC. 13. Exemptions. —

(1) Customs duties, taxes and other imposts on importations. — All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, *for the sole and exclusive use of the casinos*, the proper and efficient management and administration thereof, and such other clubs. Recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of all kinds of customs duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature, whether National or Local.

Vessels and/or accessory ferry boats imported or to be imported by any corporation having existing contractual arrangements with the Corporation, *for the sole and exclusive use of the casino or to be used to service the operations and requirements of the casino*, shall likewise be totally exempt from the payment of all customs duties, x x x.

(2) Income and other taxes. — (a) x x x

(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise x x x shall inure to the benefit of and extend to corporation(s) x x x with whom the Corporation or operator has *any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise x x x.*

(3) Dividend Income. — x x x The dividend income shall not in such case be considered as part of beneficiaries' taxable income; provided, however, that such dividend income shall be totally exempted from income or other forms of taxes if invested within six (6) months from date the dividend income is received, in the following:

(a) *operation of the casino(s)* or investments in any affiliate activity that will ultimately redound to the benefit of the Corporation or any

Supreme Court E-Library

other corporation with whom the Corporation has any *existing arrangements in connection with or related to the operations of the casino(s);*

x x x x x x x x x

(4) Utilization of Foreign Currencies. — The Corporation shall have the right and authority, *solely and exclusively in connection with the operations of the casino(s),* to purchase, receive, exchange and disburse foreign exchange, subject to the following terms and conditions:

(a) A specific area in the *casino(s)* or gaming pit shall be put up solely and exclusively for players and patrons utilizing foreign currencies;

(b) The Corporation shall appoint and designate a duly accredited commercial bank agent of the Central Bank, to handle, administer and manage *the use of foreign currencies in the casino(s);*

(c) The Corporation shall provide *an office at casino(s)* for the employees of the designated bank, agent of the Central Bank, where the Corporation will maintain a dollar account which will be utilized exclusively for the above purpose and the *casino dollar treasury employees*;

x x x x x x x x x

(f) The disbursement, administration, management and recording of *foreign exchange currencies used in the casino(s)* shall be carried out in accordance with existing foreign exchange regulations x x x.

SEC. 14. Other Conditions. —

(1) Place. — The Corporation shall conduct the gambling activities or games of chance on land or water within the territorial jurisdiction of the Republic of the Philippines. When conducted on water, the Corporation shall have the right to dock the *floating casino(s)* in any part of the Philippines where vessels/boats are authorized to dock under the Customs and Maritime Laws.

(2) Time. — Gambling activities may be held and conducted at anytime of the day or night; provided, however, that in places where curfew hours are observed, *all players and personnel of gambling casinos shall remain within the premises of the casinos.*

(3) Persons allowed to play. — x x x

Supreme Court E-Library

(4) Persons not allowed to play. —

x x x x x x x x x

From these are *excepted the personnel employed by the casinos,* special guests, or those who at the discretion of the Management may be allowed to stay in the premises.

TITLE VI — EXEMPTION FROM CIVIL SERVICE LAW

SEC. 16. Exemption. — All position in the Corporation, whether technical, administrative, professional or managerial are exempt from the provisions of the Civil Service Law, rules and regulations, and shall be governed only by the personnel management policies set by the Board of Directors. *All employees of the casinos* and related services shall be classified as "Confidential" appointees.

TITLE VII — TRANSITORY PROVISIONS

SEC. 17. Transitory Provisions. — x x x

SEC. 18. Exemption from Labor Laws. — No union or any form of association shall be formed by all those working as *employees of the casino* or related services whether directly or indirectly. For such purpose, *all employees of the casinos* or related services shall be classified as "confidential" appointees and their employment thereof, whether by the franchise holder, or the operators, or the managers, shall be exempt from the provisions of the Labor Code or any implementing rules and regulations thereof."

From its creation in 1977 and until 1999, PAGCOR never alleged that it has a franchise to operate jai-alai. Twenty-two years is a long stretch of silence. It is inexplicable why it never claimed its alleged franchise for so long a time which could have allowed it to earn billions of pesos as additional income.

(3.e) To be sure, we need not resort to intellectual jujitsu to determine whether PAGCOR has a franchise to operate jai-alai. It is *easy to tell* whether there is a legislative grant or not. Known as the game of a thousand thrills, *jai-alai is a different game, hence, the terms and conditions imposed on a franchisee are spelled out in standard form.* A review of some laws and executive orders granting a franchise to operate jai-alai will demonstrate these *standard terms and conditions, viz*:

Supreme Court E-Library

(3.e.1) Commonwealth Act No. 485 (An Act to Permit Bets in the Game of Basque Pelota) — June 18, 1939

"Be it enacted by the National Assembly of the Philippines:

SECTION 1. Any provision of existing law to the contrary notwithstanding, it shall be permissible in the game of Basque pelota, a game of skill (including the games of *pala, raqueta, cestapunta, remonte* and *mano*), in which professional players participate, to make either direct bets or bets by means of a totalizer; Provided, That no operator or maintainer of a Basque pelota court shall collect as commission a fee in excess of twelve per centum on such bets, or twelve per centum of the receipts of the totalizer, and of such per centum three shall be paid to the Government of the Philippines, for distribution in equal shares between the General Hospital and the Philippine Anti-tuberculosis Society.

SEC. 2. Any person, company or corporation, that shall build a court for Basque pelota games with bets within eighteen months from the date of the approval of this Act, shall thereunder have the privilege to maintain and operate the said court for a term of twenty-five years from the date in which the first game with bets shall have taken place. At the expiration of the said term of twenty-five years, the buildings and the land on which the court and the stadium shall be established, shall become the property of the Government of the Philippines, without payment.

SEC. 3. The location and design of the buildings that shall be used for the same games of Basque pelota, shall have prior approval of the Bureau of Public Works and the operator shall pay a license fee of five hundred pesos a year to the city or municipality in which the establishment shall be situated, in addition to the real-estate tax due on such real property.

SEC. 4. This Act shall take effect upon its approval.

ENACTED, without Executive approval, June 18, 1939."

(3.e.2) Executive Order No. 135 (Regulating the Establishment, Maintenance and Operation of Frontons and Basque Pelota Games [Jai Alai]) — May 4, 1948

"By virtue of the powers vested in me by Commonwealth Act No. 601, entitled An Act to regulate the establishment, maintenance and operation of places of amusements in chartered

Supreme Court E-Library

cities, municipalities and municipal districts, the following rules and regulations governing frontons and basque pelota games are hereby promulgated:

SECTION 1. Definitions. — Whenever used in this Order and unless the context indicates a different meaning, the following terms shall bear the meaning indicated herein:

(a) 'Basque pelota game' shall include the pelota game with the use of *pala*, *raqueta*, *cesta punta*, *remonte* and *mano*, in which professional players participate.

(b) 'Fronton' comprises the court where basque pelota games are played, including the adjoining structures used in connection with such games, such as the betting booths and galleries, totalizator equipment, and the grandstands where the public is admitted in connection with such games.

(c) 'Pelotari' is a professional player engaged in playing basque pelota.

(d) 'Professional player' is one who plays for compensation.

SEC. 2. Supervision over the establishment and operation of frontons and basque pelota games. — Subject to the administrative control and supervision of the Secretary of the Interior, city or municipal mayors shall exercise supervision over the establishment, maintenance and operation of frontons and basque pelota games within their respective territorial jurisdiction, as well as over the officials and employees of such frontons and shall see to it that all laws, orders and regulations relating to such establishments are duly enforced. Subject to similar approval, they shall appoint such personnel as may be needed in the discharge of their duties and fix their compensation which shall be paid out of the allotment of one-half per centum (1/2%) out of the total bets or wager funds set aside and made available for the purpose in accordance with Section 19 hereof. The Secretary of the Interior shall have the power to prohibit or allow the operation of such frontons on any day or days, or modify their hour of operation and to prescribe additional rules and regulations governing the same.

SEC. 3. Particular duties of city or municipal mayors regarding operation of basque pelota games and frontons. — In connection with their duty to enforce the laws, orders, rules and regulations

Supreme Court E-Library

relating to frontons and basque pelota games, the city or municipal mayor shall require that such frontons shall be properly constructed and maintained in accordance with the provisions of Commonwealth Act No. 485; shall see that the proper sanitary accommodations are provided in the grandstands and other structures comprising such frontons; and shall require that such frontons be provided with a properly equipped clinic for the treatment of injuries to the pelotaris.

SEC. 4. Permits. — In the absence of a legislative franchise, it shall be unlawful for any person or entity to establish and/or operate frontons and conduct basque pelota games without a permit issued by the corresponding city or municipal mayor, with the approval of the provincial governor in the latter case. Any permit issued hereunder shall be reported by the provincial governor or city mayor, as the case may be, to the Secretary of the Interior.

SEC. 5. License fees. — The following license fees shall be paid:

(a) For each basque pelota fronton, five hundred pesos (₱500) annually, or one hundred and twenty-five pesos (₱125) quarterly.

(b) For pelotaris, judges or referees and superintendents (intendentes) of basque pelota games, eighteen pesos (₱18) each annually.

The above license fees shall accrue to the funds of the city or municipality where the fronton is operated.

SEC. 6. Location. — Except in the case of any basque pelota fronton licensed as of December 8, 1941, no basque pelota fronton shall be maintained or operated within a radius of 200 lineal meters from any city hall or municipal building, provincial capitol building, national capitol building, public playa or park, public school, church, hospital, athletic stadium, or any institution of learning or charity.

SEC. 7. Buildings, sanitary and parking requirements. — No permit or license for the construction or operation of a basque pelota fronton shall be issued without proper certificate of the provincial or city engineer and architect certifying to the suitability and safety of the building and of the district or city health officer certifying to the sanitary condition of said building.

Supreme Court E-Library

The city or municipal mayor may, in his discretion and as circumstances may warrant, require that the fronton be provided with sufficient space for parking so that the public roads and highways be not used for such purposes.

SEC. 8. Protest and complaint. — Any person who believes that any basque pelota fronton is located or established in any place not authorized herein or is being operated in violation of any provision of this order may file a protest or complaint with the city or municipal mayor concerned, and after proper investigation of such complaint the city or municipal mayor may take such action as he may consider necessary in accordance with the provisions of Section 10 hereof. Any decision rendered on the matter by the city or municipal mayor shall be appealable to the Secretary of the Interior.

SEC. 9. Persons prohibited admission. — Persons under 16 years of age, persons carrying firearms or deadly weapons of any description, except government officials actually performing their official duties therein, intoxicated persons, and persons of disorderly nature and conduct who are apt to disturb peace and order, shall not be admitted or allowed in any basque pelota fronton: Provided, That persons under 16 years of age may, when accompanied by their parents or guardians, be admitted therein but in no case shall such minors be allowed to bet.

SEC. 10. Gambling prohibited. — No card games or any of the prohibited games shall be permitted within the premises of any basque pelota fronton; and upon satisfactory evidence that the operator or entity conducting the game has tolerated the existence of any prohibited game within its premises, the city or municipal mayor may take the necessary action in accordance with the provisions of Section 11 hereof.

SEC. 11. Revocation or suspension of permits and licenses. — The city or municipal mayor, subject to the approval of the Secretary of the Interior, may suspend or revoke any license granted under this Order to any basque pelota fronton or to any official or employee thereof, for violation of any of the rules and regulations provided in this Order or those which said city or municipal mayor may prescribe, or for any just cause. Such suspension or revocation shall operate to forfeit to the city or municipality concerned all sums paid therefor.

Supreme Court E-Library

SEC. 12. Appeals. — Any action taken by the city or municipal mayor under the provisions of this Order shall stand, unless modified or revoked by the Secretary of the Interior.

SEC. 13. Books, records and accounts. — The city or municipal mayor, or his duly authorized representative, shall have the power to inspect at all times the books, records, and accounts of any basque pelota fronton. He may, in his discretion and as the circumstances may warrant, require that the books and financial or other statements of the person or entity operating the game be kept in such manner as he may prescribe.

SEC. 14. Days and hours of operation. — Except as may otherwise be provided herein, basque pelota games with betting shall be allowed every day, excepting Sundays, from 2 o'clock p.m. to not later than 11 o'clock p.m.

SEC. 15. Pelotaris, judges, referees, *etc.* shall be licensed. — No person or entity operating a basque pelota fronton, wherein games are played with betting, shall employ any pelotari, judge or referee, superintendent of games (intendente), or any other official whose duties are connected with the operation or supervision of the games, unless such person has been duly licensed by the city or municipal mayor concerned. Such license shall be granted upon satisfactory proof that the applicant is in good health, know the rules and usages of the game, and is a person of good moral character and of undoubted honesty. In the case of pelotaris, such license shall be granted only upon the further condition that they are able to play the game with reasonable skill and with safety to themselves and to their opponents. The city or municipal mayor may further require other reasonable qualifications for applicants to a license, not otherwise provided herein. Such license shall be obtained yearly.

SEC. 16. Installation of automatic electric totalizator. — Any person or entity operating a fronton wherein betting in any form is allowed shall install in its premises within the period of one year from the date this Order takes effect, an automatic electrically operated indicator system and ticket selling machine, commonly known as totalizator, which shall clearly record each ticket purchased on every player in any game, the total number of tickets sold on each event, as well as the dividends that correspond to holders of winning numbers. This requirement shall, however, not apply to double events or forecast pools or

Supreme Court E-Library

to any betting made on the basis of a combination or grouping of players until a totalizator that can register such bets has been invented and placed on the market.

SEC. 17. Supervision over sale of betting tickets and payment of dividends. — For the purpose of verifying the accuracy of reports in connection with the sale of betting tickets and the computation of dividends awarded to winners on each event, as well as other statements with reference to the betting in the games played, the city or municipal mayor shall assign such number of auditing officers and checkers as may be necessary for the purpose. These auditing officers and checkers shall be placed in the ticket selling booths, dividend computation booths and such other parts of the fronton, where betting tickets are sold and dividends computed. It shall be their duty to check up and correct any irregularity or any erroneous report or computation that may be made by officials of the fronton, in connection with the sale of tickets and the payment of dividends.

SEC. 18. Wager tickets and dividends. — The face value of the wager tickets for any event shall not exceed ₱5 whether for "win" or "place," or for any combination or grouping of winning numbers. The face value of said tickets, as the case may be, shall be the basis for the computation of the dividends and such dividends shall be paid after eliminating fractions of ten centavos (₱0.10); for example: if the resulting dividend is ₱10.43, the dividend that shall be paid will be only ₱10.40.

SEC. 19. Distribution of wager funds. — The total wager funds or gross receipts from the sale of the betting tickets shall be apportioned as follows: a commission not exceeding ten and one-half per centum (10 1/2%) on the total bets on each game or event shall be set aside for the person or entity operating the fronton and four and one-half per centum (4 ½%) of such bets shall be covered into the National Treasury for disposition as may be authorized by law or executive order; and the balance or eighty-five per centum (85%) of the total bets shall be distributed in the form of dividends among holders of "win" or "place" numbers or holders of the winning combination or grouping of numbers, as the case may be: Provided, however, That of the ten and one-half per centum (10 ½%) representing the commission of the person or entity operating the fronton, an amount equivalent to one-half per centum (½%) of the total bets or wager funds shall be set aside and made available to

Supreme Court E-Library

cover the expenses of the personnel assigned to supervise the operation of basque pelota games and frontons, including payment of salaries of such personnel, purchase of necessary equipment and other sundry expenses as may be authorized by competent authority.

SEC. 20. Supervision over the conduct of games; enforcement of rules and regulations. — The city or municipal mayor is authorized to place within the premises of the fronton such number of inspectors and agents as may be deemed necessary to supervise the conduct of the games to see that the rules of the games are strictly enforced, and to carry out the provisions of this Order as well as such other regulations as may hereafter be prescribed.

SEC. 21. Rules governing the games and personnel of the fronton. — The rules and regulations that have been adopted by any fronton to govern the operation of its games and the behavior, duties and performance of the officials and personnel connected therewith, such as pelotaris, judges, referees or superintendents of games (intendentes) and others, shall be the recognized rules and regulations of such fronton until the same are altered or repealed by the Secretary of the Interior; and any fronton may introduce any type or form of games or events, provided they are not contrary to the provisions of this Order or any rule or regulation hereafter issued by the Secretary of the Interior.

SEC. 22. Regulations governing pelotaris. — Any rule or regulation adopted by any established fronton governing the conduct or performance of pelotaris to the contrary notwithstanding, the following regulations shall be observed:

(a) The pelotaris who are participating in the games shall not be allowed to communicate, talk or make signs with any one in the public or with any official or employee of the fronton during the games, except with the judges or referees or the superintendent (intendente) in charge of the games;

(b) The program of games or events, as well as the line-up or order of playing of the pelotaris in each event shall be determined by the superintendent of the games (intendente), subject to the approval of the city or municipal mayor, or his authorized representatives;

Supreme Court E-Library

(c) Pelotaris shall be in good physical condition before participating in any game and shall be laid off from playing at least two days in a week. Every pelotari shall once a month secure a medical certificate from a government physician to be designated by the city or municipal mayor concerned certifying to his physical fitness to engage in the games; and

(d) The amount of dividends computed for any event shall not be posted within the view of the pelotaris participating in the event until after the termination of said event."

(3.e.3) Presidential Decree No. 810 *(An Act Granting the Philippine Jai-Alai and Amusement Corporation a Franchise to Operate, Construct and Maintain a Fronton for Basque Pelota and Similar Games of Skill in the Greater Manila Area) — October 16, 1975*

"WHEREAS, by virtue of the provisions of Commonwealth Act Numbered 485 the franchise to operate and maintain a fronton for the Basque pelota and similar games of skill in the City of Manila, shall expire on October, 1975 whereupon the ownership of the land, buildings and improvements used in the said game will be transferred without payment to the government by operation of law;

WHEREAS, there is a pressing need not only to further develop the game as a sport and amusement for the general public but also to exploit its full potential in support of the government's objectives and development programs;

WHEREAS, Basque pelota is a game of international renown, the maintenance and promotion of which will surely assist the tourism industry of the country;

WHEREAS, the tourism appeal of the game will be enhanced only with the government's support and inducement in developing the sport to a level at par with international standards;

WHEREAS, once such tourism appeal is developed, the same will serve as a stable and expanding base for revenue generation for the government's development projects.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, hereby decree as follows:

Supreme Court E-Library

SECTION 1. Any provision of law to the contrary notwithstanding, there is hereby granted to the Philippine Jai-Alai and Amusement Corporation, a corporation duly organized and registered under the laws of the Philippines, hereinafter called the grantee or its successors, for a period of twenty-five years from the approval of this Act, extendable for another twenty-five years without the necessity of another franchise, the right, privilege and authority to construct, operate and maintain a court for Basque Pelota (including the games of *pala*, *raqueta*, *cestapunta*, *remonte* and *mano*) within the Greater Manila Area, establish branches thereof for booking purposes and hold or conduct Basque pelota games therein with bettings either directly or by means of electric and/or computerized totalizator.

The games to be conducted by the grantee shall be under the Supervision of the Games and Amusements Board, hereinafter referred to as the Board, which shall enforce the laws, rules and regulations governing Basque pelota as provided in Commonwealth Act numbered four hundred and eighty-five, as amended, and all the officials of the game and pelotaris therein shall be duly licensed as such by the Board.

SEC. 2. The grantee or its duly authorized agent may offer, take or arrange bets within or outside the place, enclosure or court where the Basque pelota games are held: Provided, That bets offered, taken or arranged outside the place, enclosure or court where the games are held, shall be offered, taken or arranged only in places duly licensed by the corporation; Provided, however, That the same shall be subject to the supervision of the Board. No person other than the grantee or its duly authorized agents shall take or arrange bets on any pelotari or on the game, or maintain or use a totalizator or other device, method or system to bet on any pelotari or on the game within or without the place, enclosure or court where the games are held by the grantee. Any violation of this section shall be punished by a fine of not more than two thousand pesos or by imprisonment of not more than six months, or both in the discretion of the Court. If the offender is a partnership, corporation, or association, the criminal liability shall devolve upon its president, directors or any other officials responsible for the violation.

SEC. 3. The grantee shall provide mechanical and/or computerized devices, namely: a) electric totalizator; b) machine directly connected to a computer in a display board, for the sale of tickets, including, those sold from the off-court stations; c) modern sound system and loud speakers; d) facilities that bring safety, security, comfort and convenience to the public; e) modern intercommunication devices;

Supreme Court E-Library

and f) such other facilities, devices and instruments for clean, honest and orderly Basque pelota games, within three years from the approval of this Act.

The Board shall assign its auditors and/or inspectors to supervise and regulate the placing of bets, proper computation of dividends and the distribution of wager funds.

SEC. 4. The total wager fund or gross receipts from the sale of betting tickets will be apportioned as follows: eighty-five per centum (85%) shall be distributed in the form of dividends among the holders of "win" or "place" numbers or holders of the winning combination or grouping of numbers as the case may be. The remaining balance of fifteen per centum (15%) shall be distributed as follows: eleven and one-half per centum (11 ½%) shall be set aside as the commission fee of the grantee, and three and one-half per centum (3 ½%) thereof shall be set aside and allotted to any special health, educational, civic, cultural, charitable, social welfare, sports, and other similar projects as may be directed by the President. The receipts from betting corresponding to the fraction of ten centavos eliminated from the dividends paid to the winning tickets, commonly known as breakage, shall also be set aside for the above-named special projects.

SEC. 5. The provision of any existing law to the contrary notwithstanding, the grantee is hereby authorized to hold Basque pelota games (including the games of *pala*, *raqueta*, *cestapunta*, *remonte* and *mano*) on all days of the week except Sundays and official holidays.

SEC. 6. The provisions of Commonwealth Act numbered four hundred and eighty-five as amended, shall be deemed incorporated herein, provided that the provisions of this Act shall take precedence over the provisions thereof and all other laws, executive orders and regulations which are inconsistent herewith.

SEC. 7. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise permit, or the rights or privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, company or corporation organized for the same purpose, without the previous approval of the President of the Philippines.

SEC. 8. For purposes of this franchise, the grantee is herein authorized to make use of the existing fronton, stadium and facilities located along Taft Avenue, City of Manila, belonging to the government

Supreme Court E-Library

by virtue of the provisions of Commonwealth Act numbered four hundred and eighty-five."

It is abundantly clear from the aforequoted laws, executive orders and decrees that the legislative practice is that a franchise to operate jai-alai is granted solely for that purpose and the terms and conditions of the grant are unequivocably defined by the grantor. Such express grant and its conditionalities protective of the public interest are evidently wanting in P.D. No. 1869, the present Charter of PAGCOR. Thus, while E.O. 135 and P.D. No. 810 provided for the apportionment of the wager funds or gross receipts from the sale of betting tickets, as well as the distribution of dividends among holders of "win" or "place" numbers or holders of the winning combination or grouping of numbers, no such provisions can be found in P.D. No. 1869. Likewise, while P.D. No. 810 describes where and how the games are to be conducted and bettings to be made, and imposes a penalty in case of a violation thereof, such provisions are absent in P.D. No. 1869.

In fine, P.D. No. 1869 does not have the standard marks of a law granting a franchise to operate jai-alai as those found under P.D. No. 810 or E.O. 135. We cannot blink away from the stubborn reality that *P.D. No. 1869 deals with details pertinent alone to the operation of gambling casinos.* It prescribes the rules and regulations concerning the operation of gambling casinos such as the place, time, persons who are and are not entitled to play, tax exemptions, use of foreign exchange, and the exemption of casino employees from the coverage of the Civil Service Law and the Labor Code. *The short point is that P.D. No. 1869 does not have the usual provisions with regards to jai-alai.* The logical inference is that PAGCOR was not given a franchise to operate jai-alai frontons. There is no reason to resist the beguiling rule that acts of incorporation, and statutes granting other franchises or special benefits or privileges to corporations, are to be construed strictly against the corporations; and whatever is not given in unequivocal terms is understood to be withheld.[30]

---

[30] Black on Interpretation of Laws, 2nd ed., pp. 504-506.

Supreme Court E-Library

FOURTH. The tax treatment between jai-alai operations and gambling casinos are distinct from each other. Letters of Instruction No. 1439 issued on November 2, 1984 directed the suspension of the imposition of the increased tax on winnings in horse races and jai-alai under the old revenue code, to wit:

"WHEREAS, the increased tax on winnings on horse races and jai-alai under Presidential Decree 1959 has already affected the holding of horse races and jai-alai games, resulting in government revenue loss and affecting the livelihood of those dependent thereon;

WHEREAS, the manner of taxation applicable thereto is unique and its effects and incidence are in no way similar to the taxes on casino operation or to any shiftable tax;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and instruct the Minister of Finance, the Commissioner of the Bureau of Internal Revenue, and the Chairman, Games & Amusements Board, to suspend the implementation of the increased rate of tax winnings in horse races and jai-alai games and collect instead the rate applicable prior to the effectivity of PD 1959."

Similarly, under Republic Act No. 8424, or the Tax Reform Act of 1997, there is an amusement tax imposed on operators of jai-alai (Section 125) and a stamp tax on jai-alai tickets (Section 190). There is no corresponding imposition on gambling casinos. Well to note, Section 13 of P.D. No. 1869 grants to the franchise holder and casino operators tax exemptions from the payment of customs duties and income tax, except a franchise tax of five (5%) percent which 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. No similar exemptions have been extended to operators of jai-alai frontons.

FIFTH. P.D. No. 1869, the present Charter of PAGCOR, is a *consolidation* of P.D. Nos. 1067-A, 1067-B and 1067-C all issued on January 1, 1977. P.D. No. 1067-A created the PAGCOR and defined its powers and functions; P.D. No. 1067-B granted to PAGCOR a *franchise to establish, operate, and maintain*

Supreme Court E-Library

gambling casinos on land or water within the territorial jurisdiction of the Republic of the Philippines; and P.D. No. 1067-C granted PAGCOR the *exclusive right*, privilege and authority to operate and maintain gambling casinos, subject only to the exception of existing franchises and games of chance permitted by law.

Beyond debate, *P.D. No. 1869 adopted substantially the provisions of said prior decrees, with some additions which, however, have no bearing on the franchise granted to PAGCOR to operate gambling casinos alone,* such as the Affiliation Provisions under Title III and the Transitory Provisions under Title VII. It also added the term "lotteries" under Section 1 (b) on Declaration of Policy and Section 10 on the Nature and Term of Franchise. It ought to follow that P.D. No. 1869 carries with it the same legislative intent that infused P.D. Nos. 1067-A, 1067-B and 1067-C. To be sure, both P.D. No. 1067-A and P.D. No. 1869 seek to enforce *the same* avowed policy of the State to "minimize, if not totally eradicate, the evils, malpractices and corruptions that normally are found prevalent in the conduct and operation of *gambling clubs and casinos* without direct government involvement." *It did not address the moral malevolence of jai-alai games and the need to contain it thru PAGCOR.* We cannot deface this legislative intent by holding that the grant to PAGCOR under P.D. Nos. 1067-A and 1067-B to establish, operate, and maintain gambling casinos, has been enlarged, broadened or expanded by P.D. No. 1869 so as to include a grant to operate jai-alai frontons. Then and now, the intention was merely to grant PAGCOR a franchise to operate gambling casinos, no more, no less.

SIXTH. Lest the idea gets lost in the shoals of our subconsciousness, let us not forget that PAGCOR is engaged in business affected with public interest. The phrase "affected with public interest" means that an industry is subject to control for the public good;[31] it has been considered as the equivalent

---

[31] *Nebbia v. New York*, 291 U.S. 502.

Supreme Court E-Library

of "subject to the exercise of the police power."[32] Perforce, *a legislative franchise to operate jai-alai is imbued with public interest and involves an exercise of police power. The familiar rule is that laws which grant the right to exercise a part of the police power of the state are to be construed strictly and any doubt must be resolved against the grant.*[33] *The legislature is regarded as the guardian of society, and therefore is not presumed to disable itself or abandon the discharge of its duty. Thus, courts do not assume that the legislature intended to part away with its power to regulate public morals.*[34] The presumption is influenced by constitutional considerations. Constitutions are widely understood to withhold from legislatures any authority to bargain away their police power[35] for the power to protect the public interest is beyond abnegation.

It is stressed that the case at bar does not involve a franchise to operate a public utility (such as water, transportation, communication or electricity) — the operation of which undoubtedly redounds to the benefit of the general public. What is claimed is an alleged legislative grant of a gambling franchise — a franchise to operate jai-alai. A statute which legalizes a gambling activity or business should be strictly construed and every reasonable doubt must be resolved to limit the powers and rights claimed under its authority.[36]

The dissent would like to make capital of the fact that the cases of *Stone vs. Mississippi* and *Aicardi vs. Alabama* are not on all fours to the cases at bar and, hence, the rulings therein

---

[32] Bernas, *The 1987 Constitution of the Republic of the Philippines, A Commentary*, 1996 ed., p. 1053.

[33] *People v. Chicago*, 103 N.E. 609; *Slaughter v. O'Berry*, 35 S.E. 241, 48 L.R.A. 442.

[34] *Stone v. Mississippi*, 101 U.S. 814.

[35] Sutherland *Statutory Construction*, Vol. 3, 5th ed., p. 244.

[36] *Aicardi v. Alabama*, 22 L.Ed. 215; *West Indies, Inc. v. First National Bank*, 214 P.2d 144.

Supreme Court E-Library

do not apply. The perceived incongruity is more apparent than real.

Stone[37] involves a contract entered into by the State of Mississippi with the plaintiffs which allowed the latter to sell and dispose of certificates of subscription which would entitle the holders thereof to such prizes as may be awarded to them, by the casting of lots or by lot, chance or otherwise. The contract was entered into by plaintiffs pursuant to their charter entitled "An Act Incorporating the Mississippi Agricultural, Educational and Manufacturing Aid Society" which purportedly granted them the franchise to issue and sell lottery tickets. However, the state constitution expressly prohibits the legislature from authorizing any lottery or allowing the sale of lottery tickets. Mississippi law makes it unlawful to conduct a lottery.

The question raised in *Stone* concerned the authority of the plaintiffs to exercise the franchise or privilege of issuing and selling lottery tickets. This is essentially the issue involved in the cases at bar, that is, whether PAGCOR's charter includes the franchise to operate jai-alai frontons. Moreover, even assuming *arguendo* that the facts in the cases at bar are not identical, the principles of law laid down in *Stone* are illuminating. For one, it was held in *Stone* that:

> "Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the wide-spread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling, it reaches every class; it preys upon the hard earnings of the poor; and it plunders the ignorant and simple. x x x"[38]

The verity that all species of gambling are pernicious prompted the Mississippi Court to rule that the legislature cannot bargain away public health or public morals. We can take judicial notice of the fact that jai-alai frontons have mushroomed in every nook and corner of the country. They are accessible to everyone

---

[37] 101 U.S. 1079.

[38] *Ibid.*, at p. 1080.

Supreme Court E-Library

and they specially mangle the morals of the marginalized sector of society. It cannot be gainsaid that there is but a miniscule of a difference between jai-alai and lottery with respect to the evils sought to be prevented.

In the case of *Aicardi vs. Alabama,* Moses & Co. was granted a legislative franchise to carry on gaming in the form specified therein, and its agent, Antonio Aicardi, was indicted for keeping a gaming table. In ascertaining whether the scope of the company's franchise included the right to keep a gaming table, the Court there held that "such an Act should be construed strictly. Every reasonable doubt should be so resolved as to limit the powers and rights claimed under its authority. Implications and intendments should have no place except as they are inevitable from the language or the context."

The view expressed in the dissent that the aforequoted ruling was taken out of context is perched on the premise that PAGCOR's franchise is couched in a language that is broad enough to cover the operations of jai-alai. This view begs the question for as shown in our disquisition, PAGCOR's franchise is restricted only to the operation of gambling casinos. *Aicardi* supports the thesis that a gambling franchise should be strictly construed due to its ill-effects on public order and morals.

SEVENTH. The dissent also insists that the legislative intent must be sought first of all in the language of the statute itself. In applying a literal interpretation of the provision under Section 11 of P.D. 1869 that "x x x the Corporation is hereby granted x x x the rights, privileges, and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, *i.e.*, basketball, football, lotteries, *etc.* x x x," it contends that the extent and nature of PAGCOR's franchise is so broad that literally all kinds of sports and gaming pools, including jai-alai, are covered therein. It concluded that since under Section 11 of P.D. No. 1869, games of skill like basketball and football have been lumped together with the word "lotteries" just before the word "*etc.*" and after the words "gaming pools," it may be deduced from the wording of the law that when bets or stakes are made in connection with the

Supreme Court E-Library

games of skill, they may be classified as games of chance under the coverage of PAGCOR's franchise.

We reject this simplistic reading of the law considering the social, moral and public policy implications embedded in the cases at bar. The plain meaning rule used in the dissent rests on the assumption that there is no ambiguity or obscurity in the language of the law. The fact, however, that the statute admits of different interpretations is the best evidence that the statute is vague and ambiguous.[39] It is widely acknowledged that a statute is ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses.[40] In the cases at bar, it is difficult to see how a literal reading of the statutory text would unerringly reveal the legislative intent. To be sure, the term "jai-alai" was never used and is nowhere to be found in the law. The conclusion that it is included in the franchise granted to PAGCOR cannot be based on a mere cursory perusal of and a blind reliance on the ordinary and plain meaning of the statutory terms used such as "gaming pools" and "lotteries." Sutherland tells us that a statute is "ambiguous," and so open to explanation by extrinsic aids, not only when its abstract meaning or the connotation of its terms is uncertain, but also when it is uncertain in its application to, or effect upon, the fact-situation of the case at bar.[41]

Similarly, the contention in the dissent that:

"x x x Even if the Court is fully persuaded that the legislature really meant and intended something different from what it enacted,

---

[39] *Marathon Le Tourneau Co., Marine Division v. National Labor Relations Board,* 414 F. Supp 1074 (1976).

[40] *Wisconsin Dept. of Revenue v. Nagle-Hart, Inc.*, 234 NW2d 350 (1975); *Allen v. Juneau County Forest Withdrawal Appeal Review Committee*, 295 NW2d 218 (1980); *Kimberly-Clark Corp. v. Public Service Commission*, 320 NW2d 5 (1982).

[41] Sutherland *Statutory Construction*, Vol. 2A, 5th ed., 1992 Revision, p. 713.

Supreme Court E-Library

and that the failure to convey the real meaning was due to inadvertence or mistake in the use of the language, yet, if the words chosen by the legislature are not obscure or ambiguous, but convey a precise and sensible meaning (excluding the case of obvious clerical errors or elliptical forms of expression), then the Court must take the law as it finds it, and give it its literal interpretation, without being influenced by the probable legislative meaning lying at the back of the words. In that event, the presumption that the legislature meant what it said, though it be contrary to the fact, is conclusive."

cannot apply in the cases at bar considering that it has not been shown that the failure to convey the true intention of the legislature is attributable to inadvertence or a mistake in the language used.

EIGHTH. Finally, there is another reason why PAGCOR's claim to a legislative grant of a franchise to operate jai-alai should be subjected to stricter scrutiny. *The so-called legislative grant to PAGCOR did not come from a real Congress.* It came from President Marcos who assumed legislative powers under martial law. The grant is not the result of deliberations of the duly elected representatives of our people.

This is not to assail President Marcos' legislative powers granted by Amendment No. 6 of the 1973 Constitution, as the dissent would put it. It is given that in the exercise of his legislative power, President Marcos legally granted PAGCOR's franchise to operate gambling casinos. The validity of this franchise to operate gambling casinos is not, however, the issue in the cases at bar. The issue is whether this franchise to operate gambling casinos includes the privilege to operate jai-alai. PAGCOR says it does. We hold that it does not. PAGCOR's overarching claim should be given the strictest scrutiny because it was granted by one man who governed when the country was under martial law and whose governance was repudiated by our people in EDSA 1986. The reason for this submission is rooted in the truth that PAGCOR's franchise was not granted by a real Congress where the passage of a law requires a more rigorous process in terms of floor deliberations and voting by members of both the House and the Senate. *It is self-evident that there is a need to be extra cautious in treating this alleged*

Supreme Court E-Library

grant of a franchise as a grant by the legislature, as a grant by the representatives of our people, for plainly it is not. We now have a real Congress and it is best to let Congress resolve this issue considering its policy ramifications on public order and morals.

In view of this ruling, we need not resolve the other issues raised by petitioners.

WHEREFORE, the petitions are *GRANTED*. Respondents PAGCOR, Belle Jai-Alai Corporation and Filipinas Gaming Entertainment Totalizator Corporation are *ENJOINED* from managing, maintaining and operating jai-alai games, and from enforcing the agreement entered into by them for that purpose.

SO ORDERED.

Melo, Panganiban, Pardo, Buena, Gonzaga-Reyes, and *Ynares-Santiago, JJ.*, concur.

Bellosillo, Kapunan, and *Quisumbing, JJ.*, joined the opinion of J. De Leon, Jr.

Davide, Jr., C.J. and *Vitug, J.*, see separate opinions.

Mendoza, J., joined in the separate opinion of J. Vitug.

De Leon, Jr., J., see dissenting opinion.

SEPARATE OPINION

DAVIDE, JR., *C.J.*:

In my Separate Opinion in G.R. No. 115044 (*Alfredo Lim vs. Hon. Felipe Pacquing*) and G.R. No. 117263 (*Teofisto Guingona vs. Hon. Vetino Reyes*), 240 SCRA 649, 685, I reiterated my prior view in a supplemental concurring opinion I submitted in the earlier case, G.R. No. 115044 that jai-alai is not a game of chance, but a sport based on skill. Betting on the results thereof can only be allowed by Congress, and I am not aware of any new law authorizing such betting.

I said therein, thus:

Supreme Court E-Library

It follows then that the Mayor's Permit ordered by the trial court to be issued to the private respondent is not a license or authority to allow betting or wagering on the results of the *jai-alai* games. *Jai-alai* is a sport based on skill. Under Article 197 of the Revised Penal Code, before it was amended by P.D. No. 1602, betting upon the result of any boxing or other sports contests was penalized with *arresto menor* or a fine not exceeding ₱200.00, or both. Article 2019 of the Civil Code provides that "[b]etting on the results of sports, athletic competitions, or games of skill may be prohibited by local ordinances."

P.D. No. 483, enacted on 13 June 1974, penalizes betting, game fixing or point shaving and machinations in sports contests, including *jai-alai.* Section 2 thereof expressly provides:

> SECTION 2. Betting, game fixing, point shaving or game machinations unlawful. — Game fixing, point shaving, machination, as defined in the preceding Section, in connection with the games of basketball, volleyball, softball, baseball, chess, boxing bouts, "*jai-alai*," "*sipa*," "*pelota*" and all other sports contests, games or races; *as well as betting therein except as may be authorized by law*, is hereby declared *unlawful.*

The succeeding Section 3 provides for the penalties.

On 11 June 1978, P.D. No. 1602 (75 O.G. No. 15, 3270), *Prescribing Stiffer Penalties on Illegal Gambling*, was enacted to increase the penalties provided in various "Philippine Gambling Laws such as Articles 195-199 of the Revised Penal Code (Forms of Gambling and Betting), R.A. No. 3063 (Horse Racing Bookies), P.D. No. 449 (Cock-fighting), P.D. No. 483 (Game Fixing), P.D. No. 510 (Slot Machines) in relation to Opinion Nos. 33 and 97 of the Ministry of Justice, P.D. No. 1306 (*Jai-alai* Bookies), and other City and Municipal Ordinances on gambling all over the country," Section 1 thereof reads:

x x x x x x x x x

Both P.D. No. 483 and P.D. No. 1602 were promulgated in the exercise of the police power of the State.

Pursuant to Section 2 of P.D. No. 483, which was not repealed by P.D. No. 1602 since the former is not inconsistent with the latter in that respect, betting in *jai-alai* is illegal unless allowed by law. There was such a law, P.D. No. 810, which authorized the Philippine *Jai-Alai* and Amusement Corporation as follows:

Supreme Court E-Library

> SECTION 2. The grantee or its duly authorized agent may offer, take or arrange bets within or outside the place, enclosure or court where the Basque pelota games are held: Provided, That bets offered, taken or arranged outside the place, enclosure or court where the games are held, shall be offered, taken or arranged only in places duly licensed by the corporation. Provided, however, That the same shall be subject to the supervision of the Board. No person other than the grantee or its duly authorized agents shall take or arrange bets on any pelotari or on the game, or maintain or use a totalizator or other device, method or system to bet on any pelotari or on the game within or without the place, enclosure or court where the games are held by the grantee. Any violation of this section shall be punished by a fine or not more than two thousand pesos or by imprisonment of not more than six months, or both in the discretion of the Court. If the offender is a partnership, corporation or association, the criminal liability shall devolve upon its president, directors or any officials responsible for the violation.
>
> However, as stated in the *ponencia*, P.D. No. 810 was repealed by E.O. No. 169 issued by then President Corazon C. Aquino, I am not aware of any other law which authorizes betting in *jai-alai*. It follows then that while the private respondent may operate the *jai-alai* fronton and conduct *jai-alai* games, it can do so solely as a sports contest. Betting on the results thereof, whether within or off-fronton, is illegal and the City of Manila cannot, under the present state of the law, license such betting. The dismissal of the petition in this case sustaining the challenged orders of the trial court does not legalize betting, for this Court is not the legislature under our systems of government.

My reading of the charter of the PAGCOR fails to disclose a grant of a congressional authority to allow betting on the results of *jai-alai*.

Accordingly, all that the PAGCOR may do is operate and conduct the *jai-alai*, but in no case can it allow betting on the results thereof without obtaining a statutory authority for the purpose.

Supreme Court E-Library

VITUG, *J., separate opinion:*

Gambling, universally regarded to be a threat to the moral fiber of any society, is aptly a prohibited activity in the Philippines. The Revised Penal Code, as well as succeeding amendatory laws, makes "betting, game-fixing, point-shaving or game machination" on games of chance or skill unlawful.[1] The Civil Code additionally states that "betting on the result of sports, athletic competitions, or games of skill may be prohibited by local ordinances."[2]

An exception to the rule was introduced by the former President Ferdinand E. Marcos when he, in the exercise of his legislative powers under the 1973 Constitution, created the Philippine Amusement Games Corp. ("PAGCOR")[3] and granted it franchise to "operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, x x x."[4] PAGCOR was authorized to implement, among other things, an objective "to establish and operate clubs and casinos for amusement and recreation, including games of chance, which (might) be allowed by law within the territorial jurisdiction of the Philippines."[5]

The *ponencia* views the law to be broad enough to authorize PAGCOR to operate all kinds of sports and gaming pools, inclusive of jai-alai, in the country. Such does appear to be the case, and a statute which is sufficiently clear and free from serious ambiguity can only be given its literal meaning and simply be applied. Quite a different matter, however, submits

---

[1] Sections 195-197, Revised Penal Code, Pres. Decree No. 483, Pres. Decree 1602.

[2] Article 2019, New Civil Code.

[3] P.D. No. 1067.

[4] Sec. 10, P.D. No. 1869.

[5] Sec. 1(b), P.D. No. 1869; *People vs. Quijada*, 259 SCRA 191 (1996) citing *Victoria vs. COMELEC*, 299 SCRA 269 (1994) and *Libanan vs. Sandiganbayan*, 233 SCRA 163 (1994).

Supreme Court E-Library

itself with regard to PAGCOR's power to enter into joint venture agreements in the operation and management of such games.

PAGCOR has entered into a joint venture agreement with Belle Jai-Alai Corporation ("BELLE") and Filipinas Gaming Entertainment Totalizator Corporation ("FILGAME") in the operation and management of jai-alai games. The two firms, under the agreement, would also furnish the jai-alai fronton facilities. I see in the joint venture agreement a situation that places BELLE and FILGAME in active endeavor with PAGCOR in conducting jai alai games. *Without a congressional franchise of its own, neither BELLE nor FILGAME can lawfully engage into the activity. Thus, in Lim vs. Pacquing,*[6] *this Court held that Associated Development Corporation, having had no franchise from Congress to operate the jai alai, could not do so even if it had a license or permit from the city mayor to operate that game in the City of Manila. While PAGCOR is allowed under its charter to enter into agreements in its authorized operations, that power, upon the other hand, cannot be so construed as to permit it to likewise grant a veritable franchise to any other person, individual or firm.*

Indeed, the grant of a franchise is a purely legislative act that cannot be delegated to PAGCOR without violating the Constitution.[7] The thesis rests on the maxim *potestas delegata non delegari potest*. Any constitutionally delegated sovereign power constitutes not only a right but a duty to be performed by the delegate, the legislature in this case, through the instrumentality of its own judgment. A further delegation of such power to PAGCOR would constitute a negation of this duty in violation of the trust reposed in the delegate mandated to discharge it directly.[8] Parenthetically, under the 1987 Constitution, the only instances when the legislature may validly delegate its assigned powers are those that involve the fixing

---

[6] 240 SCRA 649, 674.

[7] Secs. 1 and 24, Art. VI, Constitution.

[8] Cruz, *Philippine Political Law*, p. 86 (1996).

Supreme Court E-Library

of tariff rates to the President[9] and the inherent powers, *i.e.*, police power, eminent domain and taxation, that may be delegated but solely to local legislative units.[10]

The broad authority then of PAGCOR under its charter to enter into agreements could not have been meant to empower PAGCOR *to pass on or to share* its own franchise to others. Had its charter intended otherwise, PAGCOR would have been itself virtually capable of extending franchise rights and thereby be a recipient of an unlawful delegation of legislative power.

For the foregoing considerations, I vote to grant the petitions in these cases insofar as they seek to enjoin respondent Philippine Amusement and Gaming Corporation ("PAGCOR") from operating jai-alai or Basque Pelota games *through respondents Belle Jai-alai Corporation ("BELLE") and/or Filipinas Gaming Entertainment Totalizator Corporation* ("FILGAME") or through any other agency, but I vote to deny the same insofar as they likewise seek to prohibit PAGCOR from itself managing or operating the game.

Mendoza, *J*. concurs.

DE LEON, JR., *J., dissenting opinion*:

I respectfully dissent from the majority opinion of Mr. Justice Reynato S. Puno granting the consolidated petitions in these two cases.

An exposition of these two cases would be helpful.

Here are two consolidated cases filed against respondent Philippine Amusement and Gaming Corporation (hereinafter referred to as PAGCOR) to desist from managing and/or operating jai alai or Basque pelota games, by itself or with the "infrastructure facilities" of co-respondents Belle Jai alai

---

[9] Sec. 28 (2), Art. VI, Constitution.

[10] Art. X, Constitution.

Supreme Court E-Library

Corporation (hereinafter called BELLE) and Filipinas Gaming Entertainment Totalizator Corporation (hereinafter called FILGAME).

In G.R. No. 138298, Raoul B. del Mar, in his capacity as member of the House of Representatives representing the First District of Cebu and as a taxpayer, filed a petition for prohibition, with prayer for temporary restraining order, against PAGCOR for conducting jai-alai or Basque pelota games. In the said petition filed with this Court on May 6, 1999, del Mar alleged that the operation of jai-alai games by PAGCOR is illegal since its franchise does not include the power to open, pursue, conduct, operate, control and manage jai-alai game operations in the country.

Under Section 10 of Presidential Decree No. 1869, PAGCOR's nature and term of franchise which is therein contained, is as follows:

SEC. 10. Nature and term of franchise. — Subject to the terms and conditions established in this Decree, the corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, the ***rights, privilege and authority to operate and maintain gambling casinos, clubs, and other recreations or amusement places, sports, gaming pools, i.e., basketball, football, lotteries, etc.*** *whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.*

PAGCOR, in conducting Basque pelota games otherwise known as jai-alai, relied on the Opinion of the Secretary of Justice dated July 16, 1996 that "the authority of PAGCOR under its charter to operate and maintain games of chance or gambling extends to jai-alai which is a form of sport or game played for bets and that the charter of PAGCOR (P.D. No. 1869) amounts to a legislative franchise for the purpose."[1]

On June 17, 1999, PAGCOR entered into a joint venture agreement with BELLE and FILGAME relating to the opening, operation, control and management of jai-alai games operations

[1] Opinion No. 67, S., 1996. G.R. No. 138298, *Rollo*, pp. 171-172.

Supreme Court E-Library

in the country. Under the said agreement which is co-terminous with the franchise of PAGCOR, BELLE and FILGAME will provide technical assistance to PAGCOR with respect to various aspects of jai-alai operations including the operation of computerized nationwide network of on-line betting systems. The jai-alai fronton facilities will be provided by BELLE and FILGAME, on a free-rent basis, to PAGCOR. PAGCOR, on the other hand, shall consult BELLE and FILGAME as regards the formulation of the terms of appointment of their personnel.

On July 1, 1999, Federico S. Sandoval II and Michael T. Defensor, in their capacity as members of the House of Representatives representing the lone district of Malabon-Navotas and the 3rd District of Quezon City respectively, and as taxpayers, filed a Petition for Injunctive Relief with Prayer for Issuance of Temporary Restraining Order, with this Court to compel PAGCOR to refrain from operating and managing jai-alai games. The petition was docketed as G.R. No. 138982. Petitioners Sandoval and Defensor alleged that the franchise of PAGCOR does not include the operation of jai-alai, jai-alai being one of the activities prohibited under the Revised Penal Code, as amended by P.D. No. 1602 otherwise known as the Anti-Gambling Law. Petitioners further averred that jai-alai is not a game of chance and cannot be the subject of a PAGCOR franchise.

On August 17, 1999, petitioner del Mar filed a motion for leave to file a supplemental petition in G.R. No. 138298, impleading BELLE and FILGAME as additional respondents. The said motion for leave was granted. In his supplemental petition denominated as "Petition for *Certiorari*, Prohibition with prayer for Temporary Restraining Order and Injunctive Writ" petitioner questioned the authority of PAGCOR to enter into an agreement with BELLE and FILGAME for the opening, establishment, operation, control and management of jai-alai operations. Petitioner alleged that in entering into the said agreement with BELLE and FILGAME, PAGCOR has virtually relinquished its control and management of the jai-alai operations to the said corporations. Petitioner further alleged that assuming

Supreme Court E-Library

that PAGCOR has the requisite franchise to operate jai-alai, it is still under obligation to conduct an open and fair public bidding to determine the capability of the parties concerned who may be interested to provide funds for capital expenditures, including an integrated computer network system for fronton and off fronton betting stations and the infrastructure or facilities of the fronton at Manila. Petitioner alleged that contracts that require competitive public bidding relate to infrastructure projects or public works and the procurement of equipment, supplies and materials.

On September 24, 1999, Juan Miguel Zubiri, as a taxpayer and member of the House of Representatives representing the Third District of Bukidnon, filed a petition for intervention in G.R. No. 138982. Zubiri alleged that the legislative power to grant franchises for the operation of jai-alai has not been delegated by Congress to anyone. By operating jai-alai without the required legislative franchise, PAGCOR has effectively usurped the authority of Congress to grant franchises in violation of the Constitution.

Considering that BELLE and FILGAME were impleaded as additional respondents in G.R. No. 138298, the Court required BELLE and FILGAME on March 21, 2000 to file their respective comments.

On April 18, 2000, BELLE and FILGAME, thru counsel, filed their comment praying for the dismissal of the petition in G.R. No. 138298 on the ground that is essentially an action for *quo warranto* which may only be commenced by the Solicitor General.

On July 6, 2000, the Solicitor General filed a motion to consolidate G.R. No. 138982 with G.R. No. 138298 inasmuch as the issues raised are identical. On August 8, 2000, we granted the said motion for consolidation.

In both G.R. Nos. 138982 and 138298, no temporary restraining order was issued by this Court.

PAGCOR's comments, through the Office of the Government Corporate Counsel and the Office of the Solicitor General, to

Supreme Court E-Library

these consolidated petitions or cases may be essentially summarized as follows:

I. Petitioners have no legal standing to file a taxpayer's suit based on their alleged cause of action nor are they a real party in interest entitled to the avails of the suit

II. An action for injunction is not among the cases or proceedings originally cognizable by the Honorable Supreme Court

III. The franchise of PAGCOR includes its authority and power to open, pursue, conduct, operate, control and manage jai-alai operations in the country

In its comment in G.R. No. 138298, PAGCOR further alleged that:

IV. Per its charter, the corporate authority and power of PAGCOR to operate and conduct jai-alai games include the express power to enter into joint venture agreements

V. The joint venture Agreement dated June 17, 1999 entered into by and among PAGCOR, Belle Jai-alai Corporation (BELLE) and Filipinas Gaming Entertainment Totalizator Corporation (FILGAME) does not require any public bidding for its validity

Respondent PAGCOR maintains that petitioners have no standing to file a taxpayer's suit since there is no showing that these cases involve expenditure of public funds.

In *Kilosbayan Incorporated vs. Morato*[2] we have categorically stated that taxpayers, voters, concerned citizens and legislators, as such, may bring suit only (1) in cases involving constitutional issues and (2) under certain conditions. Taxpayers are allowed to sue, for example, where there is a claim of illegal disbursement of public funds or where a tax measure is assailed as unconstitutional. Concerned citizens can bring suits if the constitutional question they raise is of transcendental importance which must be settled early. While herein petitioners and intervenor claim illegal disbursement of public funds by

[2] 250 SCRA 130, 140-141 [1995].

Supreme Court E-Library

PAGCOR in the resumption of the operations of jai-alai games, there is nothing on record to show involvement of any expenditure of public money on the part of PAGCOR. In fact, what is essentially raised as an issue is whether PAGCOR has the requisite franchise to operate jai-alai games and whether it is authorized under its charter to enter into joint venture agreements with private corporations. More specifically, under the joint venture Agreement dated June 17, 1999[3] it is private respondent corporations BELLE and FILGAME which will provide infrastructure facilities to PAGCOR on a rent free basis. I cannot see how the Court could treat the subject petitions as taxpayers' suits when there is nothing, apart from petitioners' bare allegations, to prove that the operations of jai-alai would involve expenditure of public funds. Neither does the pivotal issue raised relate to a constitutional question inasmuch as only the scope of PAGCOR's franchise, and not its validity, is assailed.

This Court is faced, however, with the issue as to the standing of the petitioners who filed their petitions, in their capacity as taxpayers and members of the House of Representatives, alleging infringement by PAGCOR on the legislature's sole prerogative in the granting of a jai-alai franchise. Respondents PAGCOR, BELLE and FILGAME contend, however, that the pivotal issue raised by petitioners is whether or not PAGCOR has violated any law or has committed acts beyond the scope of its franchise when it entered into the said Agreement with BELLE and FILGAME for the resumption of jai-alai operations. Respondents aver that petitioners, in consequence, raised an issue which may be commenced and prosecuted only by the Solicitor General through a *quo warranto* action.

In support of their position, respondents cite Section 2, Rule 66 of the old Rules of Civil Procedure governing *quo warranto* proceedings against legally incorporated entities which reads:

Sec. 2. Like actions against corporation. — A like action may be brought against a corporation:

---

[3] Annex "A", Supplemental Petition in G.R. Nos. 138298, *Rollo*, pp. 162-170.

Supreme Court E-Library

A) When it has offended against a provision of an act for its creation.

x x x *x x x* *x x x*

D) When it has misused a right, privilege, or franchise conferred upon it by law, or when it has exercised a right, privilege or franchise, or franchise in contravention of law.

Respondents maintain that although Section 2 of Rule 66 was not reproduced in the 1997 Rules of Civil Procedure, an action for *quo warranto* may still be commenced by the Solicitor General before the Court based on the aforesaid section.

Quo warranto literally means: "By what authority." It is an extraordinary legal remedy whereby the State challenges a person or an entity to show by what authority he holds a public office or exercises a public franchise. It is commenced by the Solicitor General in the name of the Republic of the Philippines against a usurper or against a corporation, on the proposition that the State is the aggrieved party. The Solicitor General institutes the action when directed by the President of the Philippines, or when upon a complaint or otherwise, he has good reason to believe that any of the cases specified under the law exists to warrant the institution of a *quo warranto* proceedings. *Quo warranto* proceedings against corporations are instituted to demand the forfeiture of their franchise or charter.

It is clear that Section 2 of Rule 66 of the old Rules of Court governing *quo warranto* proceedings against legally incorporated entities, is not reproduced in the 1997 Rules of Civil Procedure. Proceedings against legally incorporated entities, alleging misuse of its rights, privileges and franchises granted by law, at the time the subject petitions before this Court were filed in May and July 1999, respectively, up to the time the last pleading was filed on July 7, 2000, were governed by Section 5 (b) of P.D. 902-A which vested the Securities and Exchange Commission (SEC) with full jurisdiction over the same.[4]

[4] Section 5 (b) of P.D. 902-A reads: Section 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with

Supreme Court E-Library

However, P.D. 902-A was superseded by R.A. 8799,[5] which took effect on August 8, 2000.

The difficulty of the issue posed by petitioners is that, in the cases at bar, the Solicitor General together with the Office of the Government Corporate Counsel is the counsel for respondent PAGCOR.

This is not to say, however, that this Court cannot take cognizance of the instant cases before us. While petitioners allege unlawful operation of jai-alai games by PAGCOR, what is ultimately and mainly at issue in these cases is the interpretation of PAGCOR's franchise which defines the scope of PAGCOR's rights, privileges and authority. While the Executive branch of the government, through the Secretary of Justice and Office of the Government Corporate Counsel have interpreted respondent PAGCOR's franchise to include the operation of jai-alai, the petitioners, in their capacity as members of the House of Representatives, allege a different interpretation. Whether or not PAGCOR has in fact committed acts beyond the scope of its franchise hinges upon the interpretation of

---

it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x x x x x x

(b) Controversies arising out of intra-corporate or partnership relations between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as entity.

[5] Sec 5.2 of R.A. 8799, otherwise known as "The Securities Regulation Code" which took effect on August 8, 2000 reads: The Commission's jurisdiction over all cases under Section 5 of P.D. 902-A is hereby transferred to the courts of general jurisdiction or the appropriate Regional Trial Court: Provided, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over cases pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

Supreme Court E-Library

PAGCOR's franchise. Considering that said pivotal issue involves the interpretation of the law defining the scope of PAGCOR's rights, privileges and authority, this Court may rightfully take, as in fact it has taken, jurisdiction over the subject petitions. It is well-settled that the duty and power to interpret a statute belongs to the Judiciary. While the legislative and/or executive departments, by enacting and enforcing a law, respectively, may construe or interpret the law, it is the Supreme Court that has the final word as to what the law means.[6]

Having ruled that this Court can take cognizance of the subject petitions, I come back to the question as to whether petitioners, in their capacity as members of the House of Representatives, have the requisite standing to file these two related suits. Respondent PAGCOR contends that petitioners who instituted these suits in their capacity as lawmakers cannot validly claim that they are suing in behalf of Congress. Respondent PAGCOR contends that the issue as to whether or not it has the authority to operate and manage jai-alai games does not violate petitioners' rights as members of Congress nor can it be deemed as impermissibly intruding into the domain of the legislature.

The issue as to whether a member of Congress may bring suit in his capacity as a lawmaker, alleging impairment of any of the powers, rights and privileges belonging to Congress, is not novel. Citing the American cases of *Coleman vs. Miller*[7] and *Holtzman vs. Schlesinger*[8] we declared in *Philconsa vs. Enriquez*[9] that "to the extent that the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution."

A more careful scrutiny is warranted, therefore, with regard to the issue as to whether the powers and rights of petitioners,

---

[6] *Endencia vs. David*, 93 Phil. 696, 700-702 (1953).

[7] 307 U.S. 433 [1939].

[8] 484 F. 2d 1307 [1973].

[9] 235 SCRA 506, 520 [1994].

Supreme Court E-Library

as members of Congress, are in any way impaired by respondent PAGCOR's act of operating and maintaining jai-alai games.

There is no dispute that the power to grant franchises rests within the legislative branch of government. In a legal or narrower sense, the term "franchise" is more often used to designate a right or privilege conferred by law. The view taken in a number of cases is that to be a franchise, the right possessed must be such as cannot be exercised without the express permission of a sovereign power, that is, a privilege or immunity of a public nature which cannot be legally exercised without legislative grant.[10] Having the prerogative to grant franchises, Congress also has the power to revoke or repeal or alter franchises. Considering that whatever judgment may be rendered in the interpretation of the law defining the scope of PAGCOR's franchise would have a bearing on petitioners' prerogative, as members of Congress, to consider whether to modify, amend, alter, or repeal, through legislation, PAGCOR's franchise, I believe, that in limited sense, that petitioners have the requisite standing to bring these suits at bar.

Respondent PAGCOR, nevertheless, insists that an action for injunction is not among the cases or proceedings originally cognizable by the Supreme Court. In support of its contention, PAGCOR cites the cases of *Diokno vs. Reyes*[11] and *Garcia Gavires vs. Robinson*[12] where it was held that an application for preliminary injunction will not be entertained by this Court unless the same is prayed for in connection with some other remedy or in an action actually pending before Us.

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a particular act. It may be an action in itself brought specifically to restrain or command the performance of an act or it may be just a provisional remedy for and as an incident in the main action which may be

---

[10] 36 Am Jur 26, Franchises §1.

[11] 7 Phil. 385, 387 [1907].

[12] 8 Phil. 332, 333 [1907].

Supreme Court E-Library

for other reliefs. The action for injunction should not be confused with the ancillary and provisional remedy of preliminary injunction which cannot exist except only as an incident of an independent action or proceeding. In a main action for permanent injunction, a party may ask for preliminary injunction pending the final judgment.

Section 1, Rule 56 of the 1997 Rules of Civil Procedure provides:

Section 1. Original cases cognizable. — Only petitions for certiorari, prohibition, quo warranto, habeas corpus, disciplinary proceedings against members of the judiciary and attorneys, and cases affecting ambassadors, public ministers and consultants may be filed originally in the Supreme Court.

It is clear that no mention was made in the above-cited rule as to the jurisdiction of this Court to entertain original actions for injunction. In the 1917 case of *Madarang vs. Santamaria,*[13] we have ruled that the Supreme Court does not have original jurisdiction, in an action brought for that purpose, to grant the remedy by injunction pursuant to Section 17 of Act No. 136 which provided that the Supreme Court shall have original jurisdiction to issue writs of *mandamus*, *certiorari*, prohibition, *habeas corpus* and *quo warranto*. As in Section 17 of Act 136, Section 1 of Rule 56 of the 1997 Rules of Civil Procedure has likewise not made any provision for the granting of the writ of injunction, as an original action, in the Supreme Court. Hence, the rule that this Court does not have jurisdiction over original actions for injunction still holds. This Court may, however, issue preliminary writs of injunction in cases on appeal before Us or in original actions commenced therein pursuant to Section 2 of Rule 58 of the 1997 Rules of Civil Procedure.

Notwithstanding procedural lapses as to the appropriateness of the remedies prayed for in the petitions filed before Us, however, this Court can take primary jurisdiction over the said petitions in view of the importance of the issues raised. In some

---

[13] 37 Phil. 304 [1917].

Supreme Court E-Library

instances, this Court has even suspended its own rules and excepted a case from their operation whenever the higher interests of justice so demanded.

It is helpful, in the discussion of the merits of these consolidated cases, to review the history of the law creating PAGCOR.

On January 1, 1977, the then President Ferdinand E. Marcos, in the exercise of his legislative powers under Amendment No. 6 of the 1973 Constitution, issued Presidential Decree (P.D.) No. 1067-A creating the Philippine Amusement Games Corporation (PAGCOR). PAGCOR was created and mandated to implement the following state 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 franchise or permitted by law to obtain the following objectives:

1. *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;*

2. *To establish and operate clubs and casinos, sports gaming pools (basketball, football, etc.) and such other for amusement and recreation, including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines which will (1) generate source of additional revenue infrastructure and socio-economic projects, such as flood control, Tulungan ng Bayan Centers/Nutritional Programs, Population Control and such other essential public services; (2) create recreation and integrate facilities which will expand and improve the country's existing tourist attractions; (3) minimize, if not totally eradicate the evils, malpractices and corruptions that normally are found prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement.*

On the same day, PAGCOR was granted by the then President Marcos under P.D. No. 1067-B the "franchise to establish, operate and maintain gambling casinos on land and water within

Supreme Court E-Library

the territorial jurisdiction of the Republic of the Philippines." PAGCOR's franchise was further amended under P.D. No. 1067-C for the purpose of specifying that "The franchise shall become exclusive in character, subject only to the exception of existing franchises and games of chance heretofore permitted by law." P.D. No. 1067-A and P.D. No. 1067-B were again amended by P.D. Nos. 1399 and 1632 relative to the provisions on Board of Directors, exemptions and allocation of fund, among others.

On July 11, 1983, President Marcos issued P.D. No. 1869 for the purpose of consolidating and amending P.D. Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, relative to the franchise and powers of PAGCOR. Under P.D. No. 1869, PAGCOR is mandated to implement the following state policy —

x x x *x x x* *x x x*

(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 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, the evils, malpractices and corruption that are normally in the conduct and operation of gambling clubs and casinos without direct government involvement."

It is the petitioners' contention that PAGCOR'S franchise is limited to the management and operation of games of chance. They point out that P.D. No. 810 and Executive Order No. 169 have characterized jai-alai as a game of skill and consequently, the operation and management of jai-alai or Basque pelota games cannot be said to have been included in PAGCOR's franchise. Jai-alai as defined in Webster's dictionary is a game of Basque

Supreme Court E-Library

origin resembling handball and played (as in Spain and Latin America) on a large walled court by usually two or four (4) players who use a long curved wicker basket strapped to the right wrist to catch and hurl the ball against the front wall to make it rebound in such a way that the opponent cannot return it before it has bounced more than once.[14]

Respondent PAGCOR, on the other hand, citing the cases of *Lim vs. Pacquing* and *Guingona vs. Reyes, et al.*,[15] claims that while jai-alai in itself is not a game of chance, it may be characterized as a game of chance when bets are accepted as a form of gambling.

The object of all interpretation and construction of statutes is to ascertain the meaning and intention of the legislature, to the end that the same may be enforced. This meaning and intention must be sought first of all in the language of the statute itself. For it must be presumed that the means employed by the legislature to express its will are adequate for the purpose and do express that will correctly. If the language is plain and free from obscurity, it must be taken as meaning exactly what it says, whatever may be the consequences.[16]

Section 11 of P.D. No. 1869 defining the extent and nature of PAGCOR's franchise reads:

x x x the Corporation is hereby granted x x x the rights, privilege, and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, **gaming pools**, *i.e., basketball, football, lotteries, etc. x x x [underscoring supplied]*

Contrary to the majority opinion that PAGCOR's franchise is limited only to the management and operation of casinos, a cursory reading of the abovequoted legal provision would readily

---

[14] Websters *Third New International Dictionary* (Unabridged), 1993 Ed.

[15] 240 SCRA 649, 674-675 [1995].

[16] H.C. Black, *HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS* 45 (2nd Ed., 1971).

Supreme Court E-Library

show that the extent and nature of PAGCOR's franchise is so broad that literally all kinds of sports and gaming pools, including jai-alai, are covered therein.

A sport is defined as "a game or contest especially when involving individual skill or prowess on which money is staked."[17] Gaming, on the other hand, is defined as "the act or practice of playing games for stakes."[18] P.D. No. 1869 has made express mention of basketball and football as example of gaming pools. Basketball and football, however, like jai-alai are games of skills. In *U.S. vs. Hilario,*[19] the distinction between games of chance and games of skill was treated in this wise:

> *This distinction between games of chance and games of skill, making betting upon the former illegal is quite well treated in State vs. Gupton (30 N.C. 271) where a game of tenpins was held not to be a game of chance, but a game depending chiefly upon the skill of players, and betting thereon consequently not prohibited by a statute prohibiting bets or wagers upon games of chances.*

Considering that under Section 11 of P.D. No. 1869, games of skill like basketball and football have been lumped together with the word "lotteries" just before the word "*etc.*" and after the words "gaming pools," it may be deduced from the wording of the law that when bets or stakes are made in connection with games of skill, they may be classified as games of chance under the coverage of PAGCOR's franchise. The meaning of the phrase "*et cetera*" or its abbreviation "*etc.*" depends largely on the context of the instrument, description and enumeration of the matters preceding the term and subject matter to which it is applied, and when used in a statute, the words should be given their usual and natural signification.[20] Consequently, jai-alai, otherwise known as "game of Basque pelota," while in

---

[17] See note 14, *supra.*

[18] *Ibid.*

[19] 24 Phil. 392, 399 [1913].

[20] *Wright vs. People*, 181 P.2d 447, 450. 116 Colo. 306.

Supreme Court E-Library

itself is not *per se* a game of chance, may be categorized as a game of chance when bets are accepted as a form of gambling. It is a cardinal rule of statutory construction that when words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. Even if the Court is fully persuaded that the legislature really meant and intended something different from what it enacted, and that the failure to convey the real meaning was due to inadvertence or mistake in the use of language, yet, if the words chosen by the legislature are not obscure or ambiguous, but convey a precise and sensible meaning (excluding the case of obvious clerical errors or elliptical forms of expression), then the Court must take the law as it finds it, and give it its literal interpretation, without being influenced by the probable legislative meaning lying at the back of the words. In that event, the presumption that the legislature meant what it said, though it be contrary to the fact, is conclusive.[21]

Notably, even the literal application of the word "*etc.*" does not run counter to the reason for the enactment of the statute and the purpose to be gained by it. P.D. No. 1869, the law amending and consolidating P.D. Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of PAGCOR, was issued by the then President Marcos, pursuant to the observation that PAGCOR's operation has enabled the government to identify potential sources of additional revenue for the government provided all games of chance are managed and made subject to the close scrutiny, regulation, supervision and control by the government. The operation and management of jai-alai can and will undoubtedly generate more funds for PAGCOR as a source of additional and much needed revenue for the government.

It is alleged that there is no specific mention of jai-alai among the games which PAGCOR can operate under its franchise. Hence, pursuant to the principle that a franchise is a special

---

[21] H. Black, *op. cit*, note 16 at 53.

Supreme Court E-Library

privilege that should be construed strictly against the grantee, PAGCOR cannot claim that it is authorized to conduct the operation of jai-alai games.

While there is no specific mention of jai-alai as among the games of chance which PAGCOR can operate under its franchise, the language of the law defining the scope of PAGCOR's franchise is broad enough to include the operations of jai-alai as a game of chance. Where the franchise contains no words either defining or *limiting* the powers which the holder may exercise, such holder has, by implication, all such powers as are reasonably necessary to enable it to accomplish the purposes and object of its creation.[22] It is well recognized that the principle of strict construction does not preclude a fair and reasonable interpretation of such charter and franchises, nor does it justify withholding that which satisfactorily appears to have been intended to be conveyed to the grantee.[23]

It is claimed that jai-alai operations is beyond the scope of PAGCOR's franchise inasmuch as jai-alai is not allowed by law within the territorial jurisdiction of the Philippines; and that at the time of the passage of P.D. No. 1869, the operations of jai-alai was already the subject of a grant to the Philippine Jai-Alai and Amusement Corporation (PJAC) by virtue of P.D. Nos. 810 and 1124; and that the subsequent repeal of P.D. Nos. 810 and 1124 in 1986 allegedly reverted betting on the results of jai-alai games to the status of a criminal act under P.D. No. 1602.

The mere granting of a franchise does not amount to an implied contract on the part of the grantor that it will not grant a rival franchise to a competing corporation or enter into a competition

---

[22] 36 Am Jur 2d, Franchises §26 citing *Russell vs. Kentucky Utilities Co.*, 231 Ky 820, 22 SW2d 289, 66 ALR 1238; *Southern Illinois and M. Bridge Co. vs. Stone*, 174 Mo 1, 73 SW 453.

[23] 36 Am Jur 2d, Franchises §26 citing *Russell vs. Sebastian*, 233 US 195, 58 L ed 912, 34 S CT. 517.

Supreme Court E-Library

itself in reference to the subject of the franchise.[24] Monopoly is not an essential feature of a franchise and the strictly legal signification of the term franchise is not always confined to exclusive rights.[25] An examination of the provisions of P.D. No. 810 does not give us any indication that the franchise granted to PJAC to operate jai-alai is exclusive in character. Given the broad language of P.D. 1869 defining the scope of PAGCOR's franchise, I find no reason why the operations of jai-alai cannot be deemed as included in its franchise. Besides, the subsequent repeal of P.D. Nos. 810 and 1124 in 1986 by E.O. No. 610 only meant that PJAC was no longer entitled to exercise its rights under its former franchise. E.O. No. 610, otherwise known as Repealing Presidential Decree No. 810, entitled "An Act Granting the Philippine Jai-alai and Amusement Corporation a Franchise to Operate, Construct and Maintain a Fronton for Basque Pelota and Similar Games of Skill in the Greater Manila Area," as amended, and Accordingly Revoking and Canceling the Right, Privilege and Authority granted therein in itself did not delimit the scope of the franchise of PAGCOR especially since E.O. No. 610 was specific enough to identify the repeal of the law (P.D. No. 810) granting a certain franchise, *i.e.* PJAC's franchise. As regards P.D. No 1602, it should be stressed that it did not outlaw the operations of jai-alai. It merely provided for stiffer penalties for illegal or *unauthorized activities* related to jai-alai and other forms of gambling.

The majority opinion makes much issue of the fact that the franchise of PAGCOR under P.D. No. 1869 came from President Marcos who assumed legislative powers under martial law. He stresses that "*the so-called legislative grant to PAGCOR did not come from a real Congress*." I would like to point out, however, the fact that the validity of PAGCOR's franchise has already been upheld in the case of *Basco vs. PAGCOR*.[26] As earlier stated, the main issue before this Court is the scope of

---

[24] 36 Am Jur 2d, Franchises §29.

[25] *Ibid.*

[26] 197 SCRA 52 [1991].

Supreme Court E-Library

the aforesaid franchise of PAGCOR and not its validity. The majority opinion does not dispute that PAGCOR under P.D. No. 1869 has the requisite franchise to operate gambling casinos. In the same vein, however, it is argued that P.D. No. 1869 cannot be held as a valid legislative grant of franchise for the operation of jai-alai games. President Marcos had legislative power to grant PAGCOR a franchise to operate all other games of chance including jai-alai. President Marcos' exercise of legislative power, under Amendment No. 6 during the martial law years, has been upheld in a number of cases by this Court, notably that of *Legaspi vs. Minister of Finance*.[27] Moreover, Section 3, Article XVIII of the Transitory Provisions of the 1987 Constitution clearly provides that: "All existing laws, decrees, executive orders, proclamations, letters of instruction and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked." Hence, unless and until P.D. No. 1869 which is the charter and franchise of PAGCOR, is amended or repealed by Congress, it remains valid and effective.

If courts believe that a particular statute is unwise, a recognition of their own limited sphere forbids them from amending or rewriting the law in the guise of strict interpretation to suit their own predilections or prejudices. The case of *Stone vs. Mississippi*[28] cited in the majority opinion saying that courts do not assume that the legislature intended to part away with its power to regulate public morals, is misplaced. In the said case, an Act was passed by the legislature of Mississippi on January 16, 1867 entitled, "An Act Incorporating the Mississippi Agricultural, Educational and Manufacturing Aid Society" which conceded to the defendants the franchise of issuing and vending lottery tickets. From 1822 to 1867, without any constitutional requirement, *lotteries were prohibited by law* in Mississippi and those who conducted them were punished as a kind of

---

[27] 115 SCRA 418, 433 [1982].

[28] 101 US 814, 25 L Ed. 1079 [1879].

Supreme Court E-Library

gamblers. In 1868, the people of the State of Mississippi adopted *a new Constitution which contained a provision stating that "the Legislature shall never authorize any lottery; nor shall the sale of lottery tickets be allowed; nor shall any lottery heretofore authorized be permitted to be drawn, or tickets therein to be sold.*" The defendants therein insisted that they had complied with all the conditions imposed by the charter, and were conducting business in accordance with its provisions; that the terms of the state Constitution and the Legislative Act, above set forth, interfered with their vested rights and violate the Constitution of the United States, in attempting to impair the obligation of contracts. The question then posed was whether in the view of the facts presented, the legislature of a state can, by the charter of a lottery company, defeat the will of the people authoritatively expressed in relation to the further continuance of such business in their midst. The United States Supreme Court ruled that no legislature can bargain away public health or public morals.

Clearly, the issue in the said case is materially different from the issue in the consolidated cases at bar where the main question presented is the *scope and not the validity* of respondent PAGCOR's franchise to operate jai-alai as a legalized game of chance. It is not amiss to note that PAGCOR in the light of Section 1 of P.D. No. 1869 was created, precisely, 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" x x x "to minimize the evils, malpractices and corruptions that normally are found prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement.*" PAGCOR's right to operate jai-alai games as legalized games of chance under its franchise, is in fact a measure which flows from the legislature's exercise of police power. In *Basco vs. PAGCOR* this Court have so declared that "Public welfare lies at the bottom of the enactment of P.D. No. 1869."[29]

---

[29] 197 SCRA 52, 62 [1991].

Supreme Court E-Library

Reliance in the majority opinion on the case of *Aicardi vs. Alabama*[30] that a statute which legalizes a gambling activity or business should be strictly construed and every reasonable doubt must be resolved to limit the powers and rights claimed under its authority is likewise misplaced. The aforesaid statement was apparently taken out of context inasmuch as in the same case, the court declared "*Every reasonable doubt should be so resolved as to limit the powers and rights claimed under its authority. **Implications and intendments should have no place except as they are inevitable from the language or the context**.*"[31] As earlier stated, in the case at bar the scope of PAGCOR's franchise is couched in a language that is broad enough to cover the operations of jai-alai.

As regards the issue that it could not have been the intent of then President Marcos to grant PAGCOR a franchise to operate jai-alai considering that he had already issued to another corporation which is controlled by his in-laws a franchise to operate jai-alai, suffice it to say that in the interpretation of statutes, it is not proper or permissible to inquire into the motives which influenced the legislative body, except insofar as such motives are disclosed by the statute itself.[32] ***It should be stressed*** *that the magnitude of the consideration, political or financial, which may operate upon the legislative mind as an inducement for grants and franchises conferred by statute, do not change the character of the legislation, or vary the rule of construction by which the rights of the grantees must be measured.*[33]

---

[30] 22 L.Ed. 215.

[31] *Id.* at 216.

[32] H. Black, *op. cit.*, note 16 at 315 citing *Home vs. Guy*, L.R. 5 Ch Div. 901; *Keyport & M.P. Streamboat Co. v. Farmer's Transp. Co.*, 18 N.J. Eq 13; *Kountze v. Omaha*, 5 Dill. 443, Fed. Cas. No. 7,928; *City of Richmond vs. Supervisors of Henrico County*, 83 Va. 204, 2 S.E. 26, *People vs. Shepard*, 36 N.Y. 285; *Fletcher v. Peck*, 6 Cranch, 87, 3 L.Ed. 162; *Williams v. Nashville*, 89 Tenn. 487, 15 S.W. 364; *Pacific Coast S.S. Co. v. United States*, 33 Ct. Cl. 36; *City of Lebanon v. Creel*, 109 Ky 363, 59 S. W. 16.

[33] *Ibid.* at 116 citing *Union Pac. R. Co. vs. United States*, 10 Ct. Cl 448.

Supreme Court E-Library

Considering that PAGCOR's franchise is broad enough to cover the operation and management of jai-alai games as well as supervised betting activities in connection therewith, let us come to the question as to whether PAGCOR may enter into a joint venture agreement with the private corporations, BELLE and FILGAME, to operate, manage and conduct jai-alai games as well as supervised betting activities both at the fronton site and selected off-fronton betting stations.

PAGCOR's right to enter into management contracts is not limited to those relating to the efficient operation of gambling casinos under Section 11 of P.D. No. 1869 which reads:

> Sec. 11. *Scope of Franchise.* — In addition to the rights and privileges granted it under the preceding section, this Franchise shall entitle the corporation to do and undertake the following:
>
> (1) enter into operating and/or managing contracts with any registered and accredited company possessing the knowledge, skill and expertise and facilities to insure the efficient operation of gambling casinos x x x

A joint venture is an association of persons or companies jointly undertaking some commercial enterprise — generally, all contribute assets and share risks. It requires a community of interests in the performance of the subject matter, a right, and governs the policy connected therewith, and duty, which may be altered by agreement to share in both profit and losses.[34] In this jurisdiction, a joint venture is a form of partnership and is thus governed by the law on partnerships.

Section 3 of P.D. No. 1869 enumerates the following powers and functions of PAGCOR:

x x x *x x x* *x x x*

h) to enter into, make, perform, and carry out contracts of **every kind and for any purpose** *pertaining to the business of the corporation, or in* **any manner incident thereto, as principal, agent or otherwise, with any person, firm, association or corporation**,

---

[34] *Kilosbayan vs. Guingona*, 232 SCRA 110, 144 [1994].

Supreme Court E-Library

x x x *x x x* *x x x*

l) to do anything and everything necessary, proper, desirable, convenient or suitable for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers herein stated, either alone or in association with other corporations, firms or individuals, and to do every other act or thing incidental, pertaining to, growing out of, or connected with, the aforesaid purposes, objects or powers, or any part thereof.

Clearly, in Section 11 of P.D. No. 1869, the powers granted to PAGCOR is broad enough to include the power to enter into a joint venture agreement with private corporations like BELLE and FILGAME relating to the operation, management and conduct not only of gambling casinos but also of those relating to jai-alai as legalized gambling.

Where the language of the statute is clear, it is the duty of the court to enforce it according to the plain meaning of the word. There is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation, and, when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning. When an act is expressed in clear and concise terms, and the sense is manifest and leads to nothing absurd, there can be no reason not to adopt the sense which it naturally presents. To go elsewhere in search of conjectures in order to find a different meaning is not so much to interpret the law as to elude it.[35]

Under the rule *potestas delegata non delegari potest* a delegated power cannot be delegated. This is based upon the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment acting immediately upon the matter of legislation and not through the intervening mind of another.[36] However, the said rule is inapplicable in the case

---

[35] H. Black, *op. cit.*, note 16 at 49-50.

[36] *US vs. Barrias*, 11 Phil. 327, 330 [1908].

Supreme Court E-Library

at bar. The legislative grant of franchise to PAGCOR has not accorded unto the latter legislative powers nor quasi-legislative powers. The joint venture Agreement was entered by PAGCOR with FILGAME and BELLE pursuant to the powers granted under P.D. No. 1869 to PAGCOR to "enter into, make, perform, and carry out contracts of every kind and for any purpose pertaining to the business of the corporation x x x with any person, firm or corporation." Under the joint venture Agreement, BELLE and FILGAME will provide financial requirements and technical assistance to PAGCOR in connection with the use of their operational facilities. *PAGCOR however shall still manage, regulate and control all aspects of jai-alai operations*. The subject joint venture Agreement is in consonance with the powers granted to PAGCOR that it may "do anything and everything necessary, proper, desirable, convenient or suitable for the accomplishment of any of the purposes or attainment of any of the objects or the furtherance of any of the powers herein stated, either alone or in association with other corporations, firms or individuals."

It should be noted that the joint venture Agreement entered into by and among PAGCOR, BELLE and FILGAME, does not involve any infrastructure contract or project which is governed by P.D. No. 1594.[37] Neither does it involve the sale and furnishing of supplies, materials and equipment to the government under E.O. 301. In *Kilosbayan, Incorporated vs. Morato,*[38] this Court ruled that Section 1 of E.O. 301 denominated as "Decentralizing Actions on Government Negotiated Contracts, Lease Contracts and Records Disposal," applies only to contracts for the *purchase* of supplies, materials and equipment. In the joint venture Agreement in question, it is BELLE and FILGAME which will, in fact, provide the financial requirements and technical assistance to PAGCOR in connection with the use of their operational facilities. Hence, there is no necessity for

---

[37] Entitled "Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts."

[38] See note 2, *supra* at 151.

Supreme Court E-Library

PAGCOR to conduct a public bidding before entering into the said joint venture Agreement with BELLE and FILGAME especially since there is nothing in the provisions of P.D. No. 1869 which would require that contracts like the Joint Venture Agreement in question be submitted for public bidding.

Finally, *while on one hand, jai-alai, as a form of legalized gambling under the control and supervision of PAGCOR, does not promote good morals, on the other hand it is expected to provide entertainment to the public and much* needed revenues to the government. *In balancing those two apparently conflicting interests, it must be stressed that courts are not supposed to pass upon and do not pass upon questions of wisdom or expediency of legislation, for it is not within their province to supervise and keep legislation within the bounds of propriety. That is primarily and exclusively a legislative concern.*[39] *Any shortcoming of a statute is for the legislature alone to correct by appropriate enactment.*[40]

In view of all the foregoing, I vote to dismiss the consolidated petitions in G.R. No. 138298 and G.R. No. 138982.

Bellosillo, Kapunan, and *Quisumbing, JJ.*, concur.

---

[39] *Morfe vs. Mutuc*, 22 SCRA 424, 450 [1968]; *Quintos vs. Lacson*, 97 Phil. 290, 293 [1955]; *People vs. Carlos*, 78 Phil 535, 548 [1947]; *Angara vs. Electoral Commission*, 63 Phil 139, 158 [1936].

[40] *Lacson vs. Roque*, 92 Phil 456, 470 [1935]; *Cornejo vs. Naval*, 54 Phil. 809, 814 [1930].