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SECOND DIVISION

[G.R. No. 212381. April 22, 2015]

REYNALDO M. JACOMILLE, *petitioner, vs.* **HON. JOSEPH EMILIO A. ABAYA, in his capacity as Secretary of Transportation and Communications (DOTC); ATTY. ALFONSO V. TAN, JR., in his capacity as Assistant Secretary of the Land Transportation Office (LTO); HON. FLORENCIO ABAD, in his capacity as Secretary of Budget and Management (DBM); HON. ARSENIO M. BALISACAN, in his capacity as Director General of the National Economic and Development Authority (NEDA); HON. MARIA GRACIA M. PULIDO TAN, in her capacity as Chairperson of the Commission on Audit (COA) and POWER PLATES DEVELOPMENT CONCEPTS, INC.,/J. KNIERIEM B.V. GOES (JKG) (Joint Venture) represented by its Managing Director, CHRISTIAN S. CALALANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; WHERE THE ISSUE HAS BECOME MOOT AND ACADEMIC, THERE IS NO JUSTICIABLE CONTROVERSY, AND AN ADJUDICATION THEREON WOULD BE OF NO PRACTICAL VALUE; EXCEPTIONS; PRESENT IN CASE AT BAR.— The rule is well-settled that for a court to exercise its power of adjudication, there must be an actual case or controversy – one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution. The case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereon would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. The Court agrees with the OSG that the present controversy has been rendered moot by the passage of GAA 2014. The

essence of petitioner's case is that MVPSP was not sufficiently funded under GAA 2013. Because of GAA 2014, however, the amount of ₱4,843,753,000.00 had been appropriated by Congress to MVPSP before the contract was entered into on February 21, 2014. x x x Nevertheless, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. After all, the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic, if: *first,* there is a grave violation of the Constitution; *second,* the exceptional character of the situation and the paramount public interest is involved; *third,* when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review. x x x In the case at bench, the issues presented must still be passed upon because paramount public interest is involved and the case is capable of repetition yet evading review. MVPSP is a nationwide project which affects new and old registrants of motor vehicles and it involves ₱3,851,600,100.00 of the taxpayers' money. Also, the act complained of is capable of repetition because the procurement process under R.A. No. 9184 is regularly made by various government agencies. Hence, it is but prudent for the Court to rule on the substantial merits of the case.

2. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; *LOCUS STANDI*, DEFINED; *LOCUS STANDI* MAY BE JUSTIFIED BY THE FACT THAT THE CASE PRESENTS A MATTER OF TRANSCENDENTAL IMPORTANCE.— *Locus standi* is defined as the right of appearance in a court of justice on a given question. The fundamental question is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. x x x In the present case, petitioner justifies his *locus standi* by claiming that the petition raises issues of **transcendental importance** and that he institutes the same as a taxpayer's suit. It must be noted that the Court has provided the following instructive guides to determine whether a matter is of transcendental importance, namely: "(1) the

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character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised."

3. ID.; ID.; ID.; ID.; TAXPAYER'S SUIT; TO ESTABLISH A VALID TAXPAYER'S SUIT, THE PERSON SUING AS A TAXPAYER MUST SHOW THAT THE ACT COMPLAINED OF DIRECTLY INVOLVES THE ILLEGAL DISBURSEMENT OF PUBLIC FUNDS DERIVED FROM TAXATION; CASE AT BAR.— A person suing as a taxpayer must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation. Contrary to the assertion of JKG-Power Plates, MVPSP clearly involves the expenditure of public funds. While the motor vehicle registrants will pay for the license plates, the bid documents and contract for MVPSP indicate that the government shall bear the burden of paying for the project. Every portion of the national treasury, when appropriated by Congress, must be properly allocated and disbursed. Necessarily, an allegation that public funds in the amount of ₱3.851 billion shall be used in a project that has undergone an improper procurement process cannot be easily brushed off by the Court.

4. ID.; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 9184 (THE GOVERNMENT PROCUREMENT REFORM ACT); PUBLIC BIDDING; REFERS TO THE METHOD OF GOVERNMENT PROCUREMENT WHICH IS GOVERNED BY THE PRINCIPLES OF TRANSPARENCY, COMPETITIVENESS, SIMPLICITY AND ACCOUNTABILITY. — Currently, the law that governs the government procurement processes would be R.A. No. 9184. As early as the year 1900, competitive public biddings were used by the government to procure materials and to build public infrastructures. Back then, however, the provisions for the procurement of public projects were to be found in different laws and regulations. Thus, R.A. No. 9184 was specifically enacted to consolidate the rules on procurement. Public bidding, as a method of government procurement, is governed by the principles of transparency, competitiveness, simplicity and accountability. These principles permeate the provisions of R.A. No. 9184 from the procurement

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process to the implementation of awarded contracts. The declared policy of R.A. No. 9184 is to promote the ideals of good governance in all government branches, departments, agencies, subdivisions, and instrumentalities, including government-owned and/or -controlled corporations and local government units.

5. ID.; ID.; ID.; PERIOD OF ACTION ON PROCUREMENT ACTIVITIES; THE 3-MONTH PERIOD FROM THE OPENING OF THE BIDS UP TO THE AWARD OF THE CONTRACT IS MANDATORY AND NON-COMPLIANCE THEREWITH AFFECTS THE VALIDITY OF THE BIDDING PROCESS.— R.A. No. 9184 provides the different periods within which certain stages of the procurement process must be completed, especially in the awarding stage of the contract. x x x Petitioner contends that the public respondents failed to comply with the periods provided by law, specifically the 3-month period from the opening of the bids up to the award of the contract under Sec. 38 of R.A. No. 9184. The OSG admits that the 3-month period was not complied with, but argues that it was not fatal because the provision was only directory. The Court does not agree with the OSG that the 3-month period is merely directory. The said provision contains the word "shall" which is mandatory in character. Such period was placed in a separate provision under Section 38, rather than compressed with Section 37, to emphasize its importance. There is nothing in the law which states that the 3-month period can be disregarded. Non-compliance with the period will certainly affect the validity of the bidding process. In fact, Section 38.1 of the IRR of R.A. No. 9184 reaffirms the obligatory 3-month period x x x. Nevertheless, *the mandatory period of three (3) months under Section 38 was complied with by the public respondents.* he law clearly refers to the period from the opening of the bids up to the award of the contract and not, as petitioner claims, up to the posting of the notice of award in the PhilGEPS website. The opening of the bids was done on May 6 and 7, 2013, and the notice of award was issued after two and a half months, or on July 22, 2013.

6. ID.; ID.; ID.; NOTICE AND EXECUTION OF AWARD; THE WINNING BIDDER SHALL FORMALLY ENTER INTO A CONTRACT WITH THE PROCURING ENTITY WITHIN TEN CALENDAR DAYS FROM RECEIPT OF THE NOTICE OF AWARD AND THE PROCURING

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ENTITY SHALL ISSUE TO THE WINNING BIDDER THE NOTICE TO PROCEED NOT LATER THAN SEVEN CALENDAR DAYS FROM THE DATE OF APPROVAL OF THE CONTRACT BY THE APPROPRIATE AUTHORITY. — The specific periods of Section 37 x x x were not observed. The said provision states that within ten (10) calendar days from receipt of the notice of award, the winning bidder shall formally enter into a contract with the procuring entity. It also provides that the procuring entity shall issue to the winning bidder the notice to proceed not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. Here, the notice of award was issued by the DOTC on July 22, 2013. Yet, the contract was signed only on February 21, 2014, or seven (7) months, thereafter. Also, the notice to proceed was issued on February 17, 2014, prior to the signing of the contract.

7. ID.; ID.; ID.; REQUIRES THE SUFFICIENCY OF FUNDS NOT ONLY AT THE TIME OF THE SIGNING OF THE CONTRACT BUT ALSO UPON THE COMMENCEMENT OF THE PROCUREMENT PROCESS.— Before the enactment of R.A. No. 9184, there were already laws that required sufficient appropriation before the government could enter into a contract. x x x The requirement of availability of funds before the execution of a government contract, however, has been **modified** by R.A. No. 9184. **The said law presents a novel policy which requires, not only the sufficiency of funds at the time of the signing of the contract, but also upon the commencement of the procurement process.** This progressive shift can be gleaned from several provisions of R.A. No. 9184 x x x. The x x x provisions of R.A. No. 9184 demonstrate that the law requires the availability of funds before the procuring entity commences the procurement of a government project. As early as the conception of the ABC, the procuring entity is mandated by law to ensure that its budget is within the GAA and/or continuing appropriation. In the procurement planning stage, the procuring entity is again reminded that all procurement must be within its approved budget. Also, even before the issuance of the invitation to bid, the law requires a pre-procurement conference to confirm the certification that the funds for the government project are indeed available. x x x [T]he provisions of R.A. No. 9184 requiring a procuring agency to secure a corresponding appropriation before engaging in the procurement process must

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be upheld. The law was so enacted to protect the welfare of the prospective bidders and the general public. Unless R.A. No. 9184 is amended or repealed, all future government projects must first have a sufficient appropriation before engaging the procurement activity.

8. ID.; LEGISLATIVE DEPARTMENT; GENERAL APPROPRIATIONS ACT; MULTI-YEAR OBLIGATIONAL AUTHORITY, DEFINED; WITH THE ISSUANCE THEREOF, THE DEPARTMENT OF BUDGET AND MANAGEMENT COMMITS TO RECOMMEND TO CONGRESS THE FUNDING OF THE MULTI-YEAR PROJECT UNTIL ITS COMPLETION.— MYOA or Multi-Year Obligational Authority is an authorization document issued by the DBM to government agencies that undertake MYP with funding requirements spread over two (2) years or more. Such projects are evidenced by MYC entered into by the parties. x x x As early as October 27, 2004, the DBM issued the DBM Circular No. 2004-12 to prescribe the guidelines and procedure to implement the MYOA requirement. x x x. The DBM explained the nature of MYOA. When the government entered into MYC, it was committed to annually pay a given amount to the contractor/supplier of the project, even without the government planning for its payment. Thus, the imperative for MYOA arose, which gave an assurance that the financial commitments included in MYC are considered in the succeeding proposed budget submitted to Congress. With the issuance of MYOA, the DBM commits to recommend to Congress the funding of the MYP until its completion. Evidently, without MYOA, the government runs the risk of breach of contractual obligations if its financial commitments are not met for lack of funding.

9. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; LAND TRANSPORTATION OFFICE; MOTOR VEHICLE LICENCE PLATE STANDARDIZATION PROGRAM; CONSIDERED A MULTI-YEAR PROJECT WHICH INVOLVES MULTI-YEAR CONTRACT AND REQUIRES MULTI-YEAR OBLIGATIONAL AUTHORITY, AS IT IS A PROJECT WHICH WILL TAKE MORE THAN ONE YEAR TO COMPLETE AND FUNDS WERE NOT FULLY ALLOTTED TO THE PROJECT AT THE TIME THE NOTICE OF AWARD WAS ISSUED.— MVPSP falls within the definition of MYP because it is a project which will take

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more than one (1) year to complete. Whether MVPSP involves MYC, however, depends on the determining factor of the **availability of appropriation in full during its first year of implementation**. If in the affirmative, then the project is MYP that does not involve MYC; otherwise, it is MYP that involves MYC and necessarily requires MYOA. The ultimate question, therefore, is: what is considered the first year of implementation of MVPSP? x x x The Court holds that the first year of implementation of MVPSP was 2013 when the notice of award was issued on July 22, 2013.The issuance of the notice of award ignites the implementation stage of a project, and the procuring agency must ensure that funds are fully allotted therein. An agency can only issue a notice of award once the DBM has released a SARO or ABM for the full cost of the project. If the funds are not fully allotted to the project at the time the notice of award was issued, then MYOA will guarantee that the DBM commits to recommend to Congress the funding of the project until its completion. Thus, MVPSP is MYP, which involves MYC and requires MYOA. This will prevent the scheme of delaying the project to circumvent the requirement of MYOA. x x x Sec. 38 of R.A. No. 9184 provides that the procurement process, from the opening of bids up to the award of contract, shall not exceed three (3) months. This is a mandatory provision and non-compliance thereto shall affect the validity of the bidding process. Procuring agencies have no other option but to observe the 3-month period and issue the notice of award on time. Thus, they will be forced to secure the MYOA from the DBM beforehand.

APPEARANCES OF COUNSEL

Jesus Malcolm G. Madriaga for petitioner.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

Government projects are the tangible manifestation of hard-earned public funds. These undertakings are built brick-by-brick through the combined efforts of the nation's taxpayers.

Our laws have ventured into great lengths to establish the rigorous safeguards and procedures in the planning, procurement and implementation of these projects, through robust policies on fiscal governance and public accountability. And the Judiciary must do its part and carry out its duty to ensure that these projects do not result in regretful potholes, stale construction sites and substandard products, looming into the memories of empty promises and generic assurances.

Before this Court is a petition for *certiorari* and prohibition under Rule 65 of the 1997 Revised Rules of Civil Procedure which assails the legality of the procurement of the Land Transportation Office Motor Vehicle License Plate Standardization Program.

The Antecedents

The Department of Transportation and Communications *(DOTC)* is the primary policy, planning, programming, coordinating, implementing, regulating, and administrative entity of the Executive Branch of the government in the promotion, development and regulation of dependable and coordinated networks of transportation and communications systems as well as in the fast, safe, efficient, and reliable postal, transportation and communication services. One of its line agencies is the Land Transportation Office *(LTO)* which is tasked, among others, to register motor vehicles and regulate their operation.

In accordance with its mandate, the LTO is required to issue motor vehicle license plates which serve to identify the registered vehicles as they ply the roads. These plates should at all times be conspicuously displayed on the front and rear portions of the registered vehicles to assure quick and expedient identification should there be a need, as in the case of motor vehicle accidents or infraction of traffic rules.

Recently, the LTO formulated the Motor Vehicle License Plate Standardization Program *(MVPSP)* to supply the new license plates for both old and new vehicle registrants. On February 20, 2013, the DOTC published in newspapers of general circulation the Invitation To Bid for the supply and delivery of motor vehicle license plates for the MVPSP, to wit:

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The Department of Transportation and Communications (DOTC)/ Land Transportation Office (LTO) are inviting bids for its LTO MV Plate Standardization Program which involves the procurement, supply and delivery of Motor Vehicle License Plates. The program shall run from July 2013 until June 2018 when the supply and delivery of the Motor Vehicle License Plates of the LTO MV Plate Standardization program is completed.

The LTO, through the General Appropriations Act, intends to apply the sum of Three Billion Eight Hundred Fifty One Million Six Hundred Thousand One Hundred Pesos (Php 3,851,600,100.00) being the Approved Budget for the Contract (ABC), for payment of approximately 5,236,439 for Motor Vehicles (MV) and approximately 9,968,017 for motorcycles (MC), under the contract for the Supply and Delivery of Motor Vehicle License Plate for the Land Transportation Office Motor Vehicle License Plate Standardization Program or the "LTO MV Plate Standardization Program.[1]

On February 25, 2013, the DOTC Bids and Awards Committee *(BAC)* issued BAC General Bid Bulletin No. 002-2013 setting the Submission and Opening of Bids on March 25, 2013. On February 28, 2013, the first Pre-Bid Conference was held at the offices of the BAC.

On March 6, 2013, BAC General Bid Bulletin No. 003-2013 was issued, amending paragraph 1 of the Invitation to Bid, to wit:

The Department of Transportation and Communication (DOTC) / Land Transportation Office (LTO), through the General Appropriations Act, intends to apply the sum of Three Billion Eight Hundred Fifty One Million Six Hundred Thousand One Hundred Pesos (Php 3,851,600,100.00) being the Approved Budget for the Contract (ABC), to payments for:

a. Lot 1 – Motor Vehicle License Plates (MV): 5,236,439 pairs for MV amounting to Two Billion Three Hundred Fifty Six Million Three Hundred Ninety Seven Thousand Five Hundred Fifty Pesos (Php 2,356,397,550.00)

b. Lot 2 – Motorcycles Plates (MC): 9,968,017 pieces for MC amounting to One Billion Four Hundred Ninety Five Million

[1] *Rollo,* p. 247.

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> Two Hundred Two Thousand Five Hundred Fifty Pesos (Php 1,495,202,550.00) under the contract for the Supply and Delivery of Motor Vehicle License Plate for the Land Transportation Office Motor Vehicle License Plate Standardization Program (herein after the "LTO MV Plate Standardization Program")."

On March 7, 2013, the second Pre-Bid Conference was held at the office of the BAC. On March 8, 2013, BAC General Bid Bulletin No. 005-2013 extended the submission and opening of bids to April 8, 2013 to give the prospective bidders ample time to prepare their bidding documents. On April 22, 2013, the BAC again rescheduled the submission and opening of bids to May 6, 2013.

On May 6 and 7, 2013, the BAC proceeded with the opening of bids. After examining the eligibility documents and technical proposals submitted by eight (8) interested groups, only two (2) were found eligible by the DOTC, to wit:

a. The joint venture of the Netherlands' J. Knieriem B.V. Goes and local company Power Plates Development Concepts, Inc. *(JKG-Power Plates)*; and

b. The joint venture of Spain's Industrias Samar't and local company Datatrail Corporation *(Industrias Samar't-Datatrial)*.

As the only eligible bidders, their financial proposals were then opened to reveal that JKG-Power Plates made the lowest offers. For Lot 1, JKG-Power Plates proposed to supply the MV License Plates for a total of ₱1.98 Billion, while Industrias Samar't-Datatrial offered it at ₱2.03 Billion. On the other hand, for Lot 2, JKG-Power Plates aimed to supply the MC License Plates for a total of ₱1.196 Billion, while Industrias Samar't-Datatrial's offer was at ₱1.275 Billion.

On July 22, 2013, the DOTC issued the Notice of Award to JKG-Power Plates.[2] It was only on August 8, 2013, however, when JKG-Power Plates signified its *conforme* on the Notice of

[2] *Id*. at 131.

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Award.[3] On August 12, 2013, the Notice of Award was posted in the DOTC website; while the Award Notice Abstract was posted in the Philippine Government Electronic Procurement System *(PhilGEPS)* website on even date.

Despite the notice of award, the contract signing of the project was not immediately undertaken. On February 17, 2014, the DOTC issued the Notice to Proceed[4] to JKG-Power Plates and directed it to commence delivery of the items within seven (7) calendar days from the date of the issuance of the said notice.

On February 21, 2014, the contract for MVPSP[5] was finally signed by Jose Perpetuo M. Lotilla, as DOTC Undersecretary for Legal Affairs, and by Christian S. Calalang, as Chief Executive Officer of JKG-Power Plates. It was approved by public respondent Joseph Emilio A. Abaya *(Secretary Abaya)*, as DOTC Secretary.

On March 11, 2014, the Senate Committee on Public Services, pursuant to Resolution No. 31, conducted an inquiry in aid of legislation on the reported delays in the release of motor vehicle license plates, stickers and tags by the LTO. On April 4, 2014, JKG-Power Plates delivered the first batch of plates to the DOTC/LTO.[6]

On May 19, 2014, petitioner Reynaldo M. Jacomille *(petitioner)* filed this subject petition for *certiorari* and prohibition, assailing the legality of MVPSP anchored on the following

GROUNDS

I

LACK OF ADEQUATE BUDGETARY APPROPRIATIONS IN THE GENERAL APPROPRIATIONS ACT OF 2013, WHEN THE PROJECT WAS BIDDED;

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[3] *Id*.

[4] *Id*. at 132.

[5] *Id*. at 133-135.

[6] *Id*. at 136.

II

FAILURE OF THE PROCURING ENTITY TO OBTAIN FIRST THE REQUIRED MULTI-YEAR OBLIGATION AUTHORITY (MYOA) FROM THE DEPARTMENT OF BUDGET AND MANAGEMENT;

III

NON-REFERRAL OF THE MULTI-BILLION PROJECT TO THE INVESTMENT COORDINATION COMMITTEE/NATIONAL ECONOMIC DEVELOPMENT AUTHORITY FOR ITS REVIEW AND APPROVAL.[7]

Arguments of Petitioner

Petitioner, by counsel and assisted by Retired Justice Leonardo A. Quisumbing, instituted this taxpayer suit, averring that he was a diligent citizen paying his correct taxes to the Philippine Government regularly; that he was a registered vehicle owner, as evidenced by the Certificate of Registration of his motor vehicle and a registered licensed driver; that he would be affected by the government issuance of vehicle plates thru its MVPSP upon his renewal of the registration of his vehicle; that not being a participant to the bidding process, he could not avail of the administrative remedies and procedure provided under Republic Act (R.A.) No. 9184 or the Government Procurement Reform Act, and its Implementing Rules and Regulations *(IRR)*; that as far as he was concerned, there was no appeal or any plain or speedy remedy available to him; and that he firmly believed that the actuation of the DOTC in proceeding with the bidding process and giving the award to JKG-Power Plates without the requisite MYOA and adequate budgetary appropriations was null and void.

As to the substantive merits, petitioner raised several arguments. *First,* the procurement process of MVPSP exceeded the mandatory periods prescribed by R.A. No. 9184 and its IRR. The notice of award was issued by the DOTC *beyond the three (3)-month period set by law* since the last day fell on

[7] *Id*. at 12.

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August 7, 2013. The said notice was posted in the PhilGEPS website only on August 12, 2013.

Moreover, with R.A. No. 9184 requiring that the contract signing be done within (10) calendar days from the receipt of the winning bidder of the notice of award, which in this case was posted on August 12, 2013, the contract was signed only on February 21, 2014, way beyond the required 10-day period, because MVPSP was not adequately funded.

Second, when the procurement for MVPSP was commenced, there was no adequate funding. The invitation to bid for MVPSP, published on February 20, 2013, stated that the source of funding in the amount of ₱3,851,600,100.00 would be the General Appropriations Act *(GAA)*.

A perusal of R.A. No. 10352 or the General Appropriations Act of 2013 *(GAA 2013)*, would show that Congress appropriated only the amount of ₱187,293,000.00 under the specific heading of Motor Vehicle Plate-Making Project.[8]

Noticeably then, *the DOTC bidded out MVPSP even while there was no sufficient funds legally appropriated* for this purpose under the GAA 2013. Petitioner saw this as a clear misrepresentation or even a deception by the said office against the government and the general public as a whole. Petitioner also pointed to the Senate Committee on Public Services Hearing on March 11, 2014, wherein it was admitted that there was no adequate budgetary appropriation for MVPSP in GAA 2013.

In his Reply,[9] dated October 16, 2014, petitioner claimed that the appropriation in the *General Appropriations Act of 2014 (GAA 2014) could not be applied to MVPSP*. The said project, as contemplated in the invitation to bid, was not the same as the "Motor Vehicle Registration and Driver's Licensing Regulatory Services" mentioned in GAA 2014.

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[8] Section II, (b) (1), Vol. 108, No. 1, page 1145 of GAA 2013.

[9] *Rollo*, pp. 282-329.

Third, the *DOTC failed to obtain the required Multi-Year Obligational Authority (MYOA) from the Department of Budget and Management (DBM)*. The invitation to bid for MVPSP provided for the payment of license plates, which would be delivered within a period of five (5) years.

Section 33 of the General Provisions of R.A. No. 9206, or the General Appropriations Act of 2009, states that "[i]n the implementation of multi-year projects, no agency shall enter into a multi-year contract without a Multi-Year Obligational Authority issued by the DBM for the purpose." This provision had been substantially re-enacted under the General Provisions of GAA 2013. Given that MVPSP would entail the delivery of plates within a period of five (5) years, petitioner posited that it was a multi-year project *(MYP)* which would necessitate a MYOA as a jurisdictional requirement.

Petitioner added that MVPSP involved a multi-year contract *(MYC)*, requiring a MYOA, because at the time of its implementation, the appropriation for it was not available under GAA 2013. The implementation was supposed to have taken place in Fiscal Year 2013 when the notice of award was issued on July 22, 2013.

Lastly, the project had the proposed budget of ₱3,851,600,100.00 for the year 2013 when it was intended to be bidded out and awarded to the lowest bidder. As required by law, particularly the IRR of R.A. No. 7718 or the Built-Operate-Transfer Law, all projects with substantial investment must be reviewed and approved first by Investment Coordination Committee *(ICC)* of the National Economic Development Authority *(NEDA)*.

Arguments of Public Respondents

On August 15, 2014, the Office of the Solicitor General *(OSG),* as counsel for the public respondents, filed its Comment.[10]

With respect to procedural matters, the OSG stated that the issues presented had been rendered moot and academic as the gap in the budget of MVPSP was already bridged and covered

[10] *Id*. at 179-228.

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by the full and specific funding by GAA 2014 in the amount of ₱4,843,753,000.00 for the item "Motor Vehicle Registration and Driver's Licensing Regulatory Services."[11] With the signing of MVPSP on February 21, 2014, after the enactment of GAA 2014, the OSG claimed that all objections that petitioner might have, whether right or wrong, had been rendered naught.

Assuming *arguendo* that the petition had not yet been rendered moot and academic, the OSG asserted that the same must be dismissed on the ground of lack of *locus standi* because petitioner failed to prove that he had a personal and substantial interest in the case at hand. According to petitioner, the government's implementation of MVPSP would affect his interest when he would renew his vehicle's registration. Like petitioner, however, other vehicle owners would also be affected by the implementation of MVPSP. The OSG opined that petitioner hardly qualified as an interested party which would clothe him with standing to raise the particular issues in his petition.

On the merits, the OSG argued that, *first,* the timeline for the procurement activity under R.A. No. 9184 was not mandatory. Notably, Section 38 of the said law states that the procurement activity shall be completed within a reasonable period.

The notice of award of contract was issued by the DOTC to JKG-Power Plates as early as July 22, 2013. The signing of the contract with the winning bidder, however, was halted on August 15, 2013, when the DBM informed the DOTC that they should have first secured a MYOA. On January 23, 2014, the Department of Justice (DOJ) issued a resolution,[12] finding that the conflict had been resolved by the enactment of GAA 2014. Finally, on February 21, 2014, the contract for MVPSP was signed. These events would show that, despite exceeding the 3-month period under R.A. No. 9184, the DOTC managed to conclude the procurement activity within a reasonable time.

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[11] *Id*. at 163-164.

[12] *Id*. at 249-259.

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Second, R.A. No. 9184 did not require that the allotment under the GAA be equivalent to the Approved Budget for the Contract *(ABC)*. During the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2248 and House Bill No. 4809, the members agreed that the proposed ABC need not be corresponding to the allotment under the GAA of the procuring entity.

The OSG contended that Sec. 7.5 of the IRR of R.A. No. 9184 highlighted that, in certain instances, a procuring entity may be constrained to begin the procurement process even before the actual approval of the GAA. The amount or budget appearing in the ABC for the project could be sourced – not from the GAA at the time of the start of the procurement process – but from the GAA that was still waiting for approval.

Third, R.A. No. 9184 did not contemplate MYP. Instead, the GPPB, as the implementing body of R.A. No. 9184, issued Circular No. 01-2009, which discussed the MYP and the MYC. The basis of the said circular was DBM Circular Letter 2004-12, which defined the MYOA.

Under DBM Circular Letter 2004-12, only MYC would require a MYOA. In its definition of terms, MYC would not include MYP with appropriations available in full during the first year of implementation. The OSG clarified that MVPSP did not involve MYC because it had an appropriation available in full under GAA 2014. Logically, MVPSP did not require MYOA.

Lastly, as to the allegation that MVPSP was covered by R.A. No. 7718, the OSG relayed that the DOTC and the LTO secured the opinion of the NEDA. In a letter,[13] dated December 23, 2012, the NEDA wrote that MVPSP neither involved a capital investment nor would it be implemented through public-private partnership *(PPP)*. Thus, the said project was not covered by the review and approval process of the ICC.

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[13] *Id*. at 244.

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Arguments of Private Respondent JKG-Power Plates

On July 24, 2014, JKG-Power Plates filed its Comment.[14] JKG-Power Plates averred that petitioner had no *locus standi*. It pointed out that petitioner had admitted that he was not one of the bidders in MVPSP and so he would not suffer any direct injury.

Likewise, the present case was not a proper subject of taxpayer suit because no taxes would be spent for this project. The money to be paid for the plates would not come from taxes, but from payments of vehicle owners, who would pay ₱450.00 for every pair of motor vehicle license plate, and ₱120.00 for every motorcycle license plate. Out of the ₱450.00, the cost of the motor vehicle plate would only be ₱380.00. In effect, the government would even earn ₱70.00 from every pair of plate.[15]

As to its substantial arguments, JKG-Power Plates submitted that there was nothing in R.A. No. 9184 which required full budgetary approval prior to the commencement of the bidding. It also explained that the purpose of MYOA was to ensure that the agency was committed to include the annual budgetary requirements of the project in its budget proposal for the succeeding years while the project was being implemented. Thus, MYOA was not a requirement for projects that already had full funding in the GAA in a specific year. The full budgetary requirement of ₱3.851 billion of MVPSP was already provided for in GAA 2014.

Moreover, JKG-Power Plates asserted that based on R.A. No. 7718, the ICC/NEDA did not have to review and approve MVPSP because the law pertained to a private financing of the construction, operation and maintenance of infrastructure projects. JKG-Power Plates explained that MVPSP was a public contract which supplied the plates to the DOTC with no investment involved.

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[14] *Id*. at 113-130.

[15] *Id*. at 118.

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The Court's Ruling

Before resolving the petition on its merits, the Court shall first rule on the following procedural issues raised by the respondents: (1) whether the issue had been rendered moot and academic; and (2) whether petitioner has a legal standing or *locus standi* to file the present suit.

Procedural Matters

The case is already moot and academic; notwithstanding, the substantive issues needed to be resolved

Petitioner assails the procurement process of MVPSP with a budget of ₱3,851,600,100.00 that was initiated even though the corresponding line item in GAA 2013 only provided an appropriation of ₱187,293,000.00. The OSG, however, points out that GAA 2014 already provided for the full budget of MVPSP in the amount of ₱4,843,753,000.00; hence, the present petition is moot and academic.

The rule is well-settled that for a court to exercise its power of adjudication, there must be an actual case or controversy – one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution. The case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereon would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.[16]

The Court agrees with the OSG that the present controversy has been rendered moot by the passage of GAA 2014. The essence of petitioner's case is that MVPSP was not sufficiently funded under GAA 2013. Because of GAA 2014, however, the

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[16] *Suplico v. NEDA,* 580 Phil. 301, 324 (2008).

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amount of ₱4,843,753,000.00 had been appropriated by Congress to MVPSP before the contract was entered into on February 21, 2014.

By appropriating the amount of ₱4,843,753,000.00 for MVPSP, Congress agreed with the DOTC and the LTO that the said project should be funded and implemented. Verily, the Court cannot question the wisdom of the legislative department in appropriating the full budget of MVPSP in GAA 2014.

Thus, it is settled that MVPSP was adequately funded before the contract was signed by the parties. Petitioner even admits, and the Court takes judicial notice, that the new vehicle plates under MVPSP are being distributed by the LTO and released to new vehicle owners.

Nevertheless, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. After all, the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic, if: *first,* there is a grave violation of the Constitution; *second,* the exceptional character of the situation and the paramount public interest is involved; *third,* when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.[17]

In *David v. Arroyo*,[18] for instance, several petitions assailed the constitutionality of the declaration of a state of national emergency by then President Gloria Macapagal-Arroyo. During the pendency of the suits, the said declaration was lifted. Nonetheless, this Court still resolved the cases on the merits because the issues involved a grave violation of the Constitution and affected the public interest.

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[17] *Mattel Inc. v. Francisco,* 582 Phil. 492, 501-502 (2008).

[18] 522 Phil. 705 (2006).

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Recently, there was *Deutsche Bank AG v. CA,*[19] which involved the consolidation of different petitions for *certiorari* before the CA assailing an order in the rehabilitation court. While the case was on going, the private respondent therein moved to withdraw its earlier motion to consolidate the petitions. The Court ruled that the issue of whether the CA could validly order the consolidation of cases, although rendered moot, was capable of repetition. Thus, the Court proceeded to resolve the issues therein.

In the case at bench, the issues presented must still be passed upon because paramount public interest is involved and the case is capable of repetition yet evading review. MVPSP is a nationwide project which affects new and old registrants of motor vehicles and it involves ₱3,851,600,100.00 of the taxpayers' money. Also, the act complained of is capable of repetition because the procurement process under R.A. No. 9184 is regularly made by various government agencies. Hence, it is but prudent for the Court to rule on the substantial merits of the case.

Petitioner has locus standi to initiate the instant suit

Locus standi is defined as the right of appearance in a court of justice on a given question. The fundamental question is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[20]

In the case of *Aquino v. COMELEC*,[21] this Court resolved the issues raised by the petition due to their "far reaching implications," even though the petitioner had no personality

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[19] G.R. No. 193065, February 27, 2012, 667 SCRA 82.

[20] *Navarro v. Ermita,* G.R. No. 191988, April 12, 2011, 648 SCRA 400, 434.

[21] 318 Phil. 467 (1995).

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to file the suit. Consequently, the Court, in a catena of cases,[22] invariably adopted a liberal stance on *locus standi*, including those cases involving taxpayers.

In the present case, petitioner justifies his *locus standi* by claiming that the petition raises issues of **transcendental importance** and that he institutes the same as a taxpayer's suit. It must be noted that the Court has provided the following instructive guides to determine whether a matter is of transcendental importance, namely: "(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised."[23]

Petitioner sufficiently showed that his case presents a matter of transcendental importance based on the above-cited determinants. He elucidated that, *first,* around ₱3.851 billion in public funds stood to be illegally disbursed; *second*, the IRR of R.A. No. 9184 and R.A. No. 7718 were violated and the contract for MVPSP was awarded to respondent JKG-Power Plates despite the utter disregard of the said laws; *third,* there was no other party with a more direct and specific interest who had raised the issues therein; and *fourth,* MVPSP had a wide range of impact because all registered motor vehicles owners would be affected.[24]

Petitioner also established a valid taxpayer's suit. A person suing as a taxpayer must show that the act complained of directly involves the illegal disbursement of public funds derived from

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[22] Among others, *Imbong v. Executive Secretary*, G.R. No. 204819, April 8, 2014; *Constantino, Jr. v. Cuisia,*509 Phil. 486 (2005); *Francisco v. House of Representatives,* 460 Phil. 830 (2003); *Agan, Jr. v. Philippine International Terminals Co., Inc.*, 450 Phil. 744 (2003); *Del Mar v. Philippine Amusement and Gaming Corporation,* 400 Phil. 307 (2000); *Tatad v. Garcia*, 313 Phil. 296 (1995).

[23] *CREBA v. ERC,* 638 Phil. 542, 556-557 (2010).

[24] *Rollo,* p. 293.

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taxation.[25] Contrary to the assertion of JKG-Power Plates, MVPSP clearly involves the expenditure of public funds. While the motor vehicle registrants will pay for the license plates, the bid documents and contract for MVPSP[26] indicate that the government shall bear the burden of paying for the project. Every portion of the national treasury, when appropriated by Congress, must be properly allocated and disbursed. Necessarily, an allegation that public funds in the amount of ₱3.851 billion shall be used in a project that has undergone an improper procurement process cannot be easily brushed off by the Court.

Having passed the procedural barriers, the Court shall now discuss the substantive merits of the petition on the following issues: (1) whether the MVPSP followed the timelines in R.A. No. 9184 and its IRR; (2) whether MVPSP was sufficiently funded when its procurement process began; (3) whether MYOA is required for MVPSP; and (4) whether the ICC/NEDA is obliged to review and approve MVPSP under R.A. No. 7718.

Substantive Merits

The present petition revolves around the procurement of MVPSP. Currently, the law that governs the government procurement processes would be R.A. No. 9184. As early as the year 1900, competitive public biddings were used by the government to procure materials and to build public infrastructures. Back then, however, the provisions for the procurement of public projects were to be found in different laws and regulations. Thus, R.A. No. 9184 was specifically enacted to consolidate the rules on procurement.

Public bidding, as a method of government procurement, is governed by the principles of transparency, competitiveness, simplicity and accountability. These principles permeate the provisions of R.A. No. 9184 from the procurement process to

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[25] *Land Bank v. Cacayuran,* G.R. No. 191667, April 17, 2013, 696 SCRA 861, 869.

[26] *Rollo,* p. 332.

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the implementation of awarded contracts.[27] The declared policy of R.A. No. 9184 is to promote the ideals of good governance in all government branches, departments, agencies, subdivisions, and instrumentalities, including government-owned and/or -controlled corporations and local government units.[28]

Timeliness of the Procurement Process for MVPSP

The first substantive argument against MVPSP would be the delay in the procurement process. R.A. No. 9184 provides the different periods within which certain stages of the procurement process must be completed, especially in the awarding stage of the contract. The law provides:

> Section 37. *Notice and Execution of Award.* – Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.
>
> Within ten (10) calendar days from receipt of the Notice of Award, the winning bidder shall formally enter into contract with the Procuring Entity. When further approval of higher authority is required, the approving authority for the contract shall be given a maximum of twenty (20) calendar days to approve or disapprove it.
>
> In the case of government owned and/or controlled corporations, the concerned board shall take action on the said recommendation within thirty (30) calendar days from receipt thereof.
>
> The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the contractor.

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[27] *COA v. Link Worth International, Inc.,* 600 Phil. 547, 555 (2009).

[28] Sec. 2, R.A. No. 9184.

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Section 38. *Period of Action on Procurement Activities.* – The procurement process from the opening of bids up to the award of contract **shall** not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned. Without prejudice to the provisions of the preceding section, **the different procurement activities shall be completed within reasonable periods to be specified in the IRR.**

If no action on the contract is taken by the head of the procuring entity, or by his duly authorized representative, or by the concerned board, in the case of government owned and/or controlled corporations, within the periods specified in the preceding paragraph, the contract concerned shall be deemed approved. (Emphases supplied)

Petitioner contends that the public respondents failed to comply with the periods provided by law, specifically the 3-month period from the opening of the bids up to the award of the contract under Sec. 38 of R.A. No. 9184. The OSG admits that the 3-month period was not complied with, but argues that it was not fatal because the provision was only directory.

The Court does not agree with the OSG that the 3-month period is merely directory. The said provision contains the word "shall" which is mandatory in character. Such period was placed in a separate provision under Section 38, rather than compressed with Section 37, to emphasize its importance. There is nothing in the law which states that the 3-month period can be disregarded. Non-compliance with the period will certainly affect the validity of the bidding process. In fact, Section 38.1 of the IRR of R.A. No. 9184 reaffirms the obligatory 3-month period:

The procurement process from the opening of bids up to the award of contract **shall** not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned. All members of the BAC shall be on a "jury duty" type of assignment until the Notice of Award is issued by the Head of the Procuring Entity in order to complete the entire procurement process at the earliest possible time. (Emphasis supplied)

Nevertheless, *the mandatory period of three (3) months under Section 38 was complied with by the public respondents.* The law clearly refers to the period from the opening of the bids up

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to the award of the contract and not, as petitioner claims, up to the posting of the notice of award in the PhilGEPS website. The opening of the bids was done on May 6 and 7, 2013, and the notice of award was issued after two and a half months, or on July 22, 2013.[29]

The specific periods of Section 37, however, were not observed. The said provision states that within ten (10) calendar days from receipt of the notice of award, the winning bidder shall formally enter into a contract with the procuring entity. It also provides that the procuring entity shall issue to the winning bidder the notice to proceed not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority.

Here, the notice of award was issued by the DOTC on July 22, 2013. Yet, the contract was signed only on February 21, 2014, or seven (7) months, thereafter. Also, the notice to proceed was issued on February 17, 2014, prior to the signing of the contract.

The project was not sufficiently funded at the commencement of the procurement process

Before the enactment of R.A. No. 9184, there were already laws that required sufficient appropriation before the government could enter into a contract. The Administrative Code of 1987 expressly prohibits the entering into contracts involving the expenditure of public funds unless two prior requirements are satisfied. *First,* there must be an appropriation law authorizing the expenditure required in the contract. *Second,* there must be a certification by the proper accounting official and auditor, attached to the contract, attesting that funds have been appropriated by law and such funds are available. Failure to comply with any of these two requirements renders the contract void.[30]

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[29] *Rollo*, p. 131.

[30] Sections 46, 47 and 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987.

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The Government Auditing Code of the Philippines also provides for the same provisions.[31] It further declares that any contract entered into contrary to above-cited two requirements shall be void, and the officer or officers entering into the contract shall be liable to the government for any consequent damage.[32]

These laws were applied by jurisprudence to invalidate government contracts without proper appropriations. In *Osmeña v. COA,*[33] the Court invalidated a contract entered into by then Mayor Duterte because the agreed cost for the project was way beyond the appropriated amount. It was stated therein *that "fund availability is, as it has always been, an indispensable prerequisite to the execution of any government contract involving the expenditure of public funds by all government agencies at all levels.*"

Recently, in *PNR v. Kanlaon Construction Enterprise Co., Inc.,*[34] the Court invalidated three contracts between PNR and Kanlaon because they did not comply with the requirement of a certification of appropriation and fund availability. The clear purpose of these requirements is to insure that government contracts are never signed unless supported by the corresponding appropriation law and fund availability.

The requirement of availability of funds before the execution of a government contract, however, has been **modified** by R.A. No. 9184. **The said law presents a novel policy which requires, not only the sufficiency of funds at the time of the signing of the contract, but also upon the commencement of the procurement process.** This progressive shift can be gleaned from several provisions of R.A. No. 9184, to wit:

Section 5. Definition of Terms.– xxx

(a) Approved Budget for the Contract (ABC) – refers to the budget for the contract duly approved by the Head of the Procuring Entity,

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[31] Sections 85 and 86 of the Government Auditing Code of the Philippines.

[32] Section 87 of the Government Auditing Code of the Philippines.

[33] *Osmeña v. COA,* G.R. No. 98355, March 2, 1994, 230 SCRA 585.

[34] G.R. No. 182967, April 6, 2011, 662 SCRA 771.

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as provided for in the General Appropriations Act and/or continuing appropriations, in the National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O.No.518, series of 1979, in the case of Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units.

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Section 7. Procurement Planning and Budgeting Linkage– **All procurement should be within the approved budget of the Procuring Entity** and should be meticulously and judiciously planned by the Procuring Entity concerned. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan to be specified in the IRR.

Section 20. Pre-Procurement Conference. – Prior to the issuance of the Invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional.

The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as reviewing all relevant documents and the draft Invitation to Bid, as well as consultants hired by the agency concerned and the representative of the end -user. (Emphases supplied)

The above-cited provisions of R.A. No. 9184 demonstrate that the law requires the availability of funds before the procuring entity commences the procurement of a government project. As early as the conception of the ABC, the procuring entity is mandated by law to ensure that its budget is within the GAA and/or continuing appropriation. In the procurement planning stage, the procuring entity is again reminded that all procurement must be within its approved budget. Also, even before the issuance of the invitation to bid, the law requires a pre-procurement conference to confirm the certification that the funds for the government project are indeed available.

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In the case at bench, the February 20, 2013 invitation to bid stated that the ABC for MVPSP was ₱3.851 billion and to be funded through the GAA. Yet, GAA 2013 only provided an appropriation of ₱187,293,000.00. During the Senate Committee on Public Works Hearing, it was recognized that the project was not amply covered by GAA 2013, but was funded by GAA 2014, as follows:

THE CHAIRMAN: Hindi. So base din dun sa invitation to bid, ang amount ng proyekto is 3.85 billion, tama, hindi ba?

MR. ABAYA: Yes, Your Honor.

THE CHAIRMAN: Ang nakalagay sa GAA of 2013 ay 187 million lang, saan po kukunin ang pondo nito?

MR. ABAYA: The GAA 2014 provides for the budget, Your Honor.

The OSG counters that the ABC for MVPSP was not required to be exactly equivalent with the line item in the GAA 2013. The OSG cites the discussion in the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2248 and House Bill No. 4809, which eventually became R.A. No. 9184, to wit:

REP. ABAYA: Just for clarification, Mr. Chairman, 'yong definition natin ng "approved budget" particularly is defined with reference to the General Appropriations Act.

THE CHAIRMAN (SEN. ANGARA): Yes.

REP. ABAYA: When we place the "approved budget" for a certain project, that includes usually other right-of-way is included if we are referring to what is stated in the GAA. So, to be more specific, I propose that we amend this and use the phrase "approved project estimate," not "approved budget," in the definition of terms.

THE CHAIRMAN (SEN. ANGARA): We'll consult the expert. Okay.

MR. ENCARNACION: 'Yong approved budget, as I said, sir, earlier, kasi modified the content 'no, otherwise what appear in the GAA is approved budget for the project but that budget is broken down into – sa works 'no contract works, right-of-way, supervision, etcetera. We're only talking of the important parts of the contract. Ito, sa…

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THE CHAIRMAN (SEN. ANGARA): And so, the definition....

REP. ABAYA: Yeah, But in the definition of terms, "the approved budgets are the budget for the contract as approved by the head of the procuring entity in accordance with the GAA.

MR. ENCARNACION: Oho. But for the contract lang. It is less – it could be less than the amount in the GAA. For example, the GAA would be 10 million there, so the contract itself could be 9 million na kasi 9 million maaring right-of-way. So pinag-uusapan natin…

THE CHAIRMAN (SEN. ANGARA): At saka sigura nga Del, that differentiation in the IRR, puwede natin ilagay sa…

REP. ABAYA: Ilagay sa IRR na.

THE CHAIRMAN (SEN. ANGARA): Oo. It's minus the right-of-way, etcetera, etcetera.

The cited discussion does not support the position of the OSG. The recommendation to change the term "approved budget for the contract" to "approved estimate for the project" was not adopted by Congress. Instead, R.A. No. 9184 provides that the ABC refers to the budget for the contract duly approved by the head of the procuring entity, as provided for in the GAA and/or continuing appropriations. Thus, when the budget for government projects is prepared, it must have a basis in law, either in the current GAA, or in continuing appropriations[35] of previous GAAs or other appropriation laws.

The OSG then contends that the IRR of R.A. No. 9184 allows a procuring entity to proceed with the procurement activity even though the GAA, containing the budget of the project, has not been enacted. The IRR provides:

7.5. The ABC as reflected in the APP or PPMP shall be at all times consistent with the appropriations for the project authorized

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[35] An example of a continuing appropriation was discussed in *Araullo v. Aquino III,* G.R. No. 209287, July 1, 2014. The MOOE in the GAA 2011 was a continuing appropriation because it was appropriated for two fiscal years.

in the GAA, continuing, and automatic appropriations, the corporate budget, and the appropriation ordinance, as the case may be. **For NGAs, to facilitate the immediate implementation of projects even pending approval of the GAA, the ABC shall be based on the budget levels under the proposed national budget submitted by the President to Congress.** (Emphasis supplied)

The same provision in the IRR was extended in the GPPB Circular No. 01-2009, as follows:

4.2 To facilitate the immediate implementation of projects even pending approval of the GAA, the ABC shall be based on the budget levels under the NEP submitted to Congress.

4.3 For specifically appropriated projects, agencies can proceed with the procurement activities prior to issuance of the notice of award using as basis the NEP figures.[36]

Although the IRR allows a national government agency to implement a project even pending the approval of the GAA, the contention of the OSG does not reinforce its position. The proposed national budget submitted by the President to Congress is the National Expenditure Program *(NEP)*. The OSG, however, failed to present the 2014 NEP to substantiate its claim that it contained the full budget for MVPSP. More so, the invitation to bid for MVPSP was published on February 20, 2013, even before the 2014 NEP was submitted to Congress.[37]

Nevertheless, a copy of the 2014 NEP can be viewed through the DBM's website.[38] Regrettably, the 2014 NEP does not provide for the sufficient budget for the MVPSP, to wit:

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[36] The same provisions were substantially reiterated in GPPB Circular No. 2010-09.

[37] PNoy Admin Submits Proposed 2014 Budget To Congress; Abad: New Expenditure Plan A Blueprint For Inclusive Growth, July 24, 2013, http://www.dbm.gov.ph/?p=6713 [last accessed: March 4, 2015].

[38] XXIII. Department of Transportation and Communications, 2014 NEP, http://www.dbm.gov.ph/wp-content/uploads/NEP2014/XXIII/A.pdf [last accessed: March 4, 2015].

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		PROPOSED 2014			
Operations by MFO		PS	MOOE	CO	TOTAL
MFO 2:	Motor vehicle registration and driver's licensing regulatory services	314,981,000	2,039,297,000	375,000	2,354,653,000

As can be gleaned from the 2014 NEP above, the proposed budget for the motor vehicle registration and driver's licensing regulatory services was only ₱2,354,653,000.00, which was utterly short to cover the ABC of MVPSP in the amount of ₱3.851 billion. Thus, the DOTC and the LTO cannot claim that they based the ABC of MVPSP on the 2014 NEP when the procurement was commenced.

Worse, on July 22, 2013, the DOTC issued the notice of award to JKG-Power Plates still without a corresponding appropriation under GAA 2013 and, necessarily, without an allotment issued by the DBM. This was contrary to the provisions of GPPB Circular No. 01-2009, to wit:

> 4.7 The notice of award, regardless of whether the procurement is to be conducted through competitive bidding or any of the alternative methods of procurement, shall only be made under the following instances:
>
> 4.7.1 Upon receipt of the ABM or SARO for the full cost of the project; and
>
> 4.7.2 Upon receipt of actual cash transfer for GOCCs/LGUs.

All told, the provisions of R.A. No. 9184 requiring a procuring agency to secure a corresponding appropriation before engaging in the procurement process must be upheld. The law was so enacted to protect the welfare of the prospective bidders and the general public. Unless R.A. No. 9184 is amended or repealed, all future government projects must first have a sufficient appropriation before engaging the procurement activity.

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MYOA must be secured before the commencement of the procurement process

MYOA or Multi-Year Obligational Authority is an authorization document issued by the DBM to government agencies that undertake MYP with funding requirements spread over two (2) years or more. Such projects are evidenced by MYC entered into by the parties. In GAA 2013, the requirement of MYOA is stated as follows:

Sec. 21. Contracting Multi-Year Projects. In the implementation of multi-year projects where the total cost is not provided in this Act, department, bureaus and offices shall request the DBM for the issuance of a Multi-Year Obligational Authority following the guidelines under DBM Circular Letter No. 2004-12 dated October 27, 2004. Notwithstanding the issuance of a Multi-Year Obligation Authority, the obligation to be incurred in any given year, shall in no case exceed the allotment released for the purpose during the year.

As early as October 27, 2004, the DBM issued the DBM Circular No. 2004-12 to prescribe the guidelines and procedure to implement the MYOA requirement. The circular defines the different terms affecting MYOA, such as:

3.1 Multi-Year Obligational Authority (MYOA) – refers to an authority issued by the Department of Budget and Management (DBM) to enable an agency to enter into a multi-year contract whether for locally funded projects (LFPs) or foreign assisted projects (FAPs).

3.2 Multi-Year Project (MYP) – refers to a program/project which will take more than one (1) year to complete including suppliers' credit. These may be classified into:

a. MYPs with appropriations available in full during the first year of implementation

b. MYPs which require multi-year appropriations; and

c. Annual Recurring Projects/Activities which require multi-year appropriations

3.3 Multi-Year Contract (MYC) – refers to a contract for MYPs the implementation of which will take more than one year to complete,

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and require multi-year appropriations. **Thus, contract executed for MYPs with appropriations available in full during the first year of implementation, or those falling under 3.2.a above, do not fall under this definition.** (Emphases supplied)

The GPPB, as the implementing body of R.A. No. 9184, considered the effects of MYOA on government procurement and issued GPPB Circular No. 01-2009 on January 20, 2009, as follows:

4.5 For MYPs, for which the initial funding — sourced from either the existing/current year's budget or the NEP — is not sufficient to cover the total cost of the project, it is required that a MYOA must already have been issued in accord with DBM Circular Letter 2004-12 prior to commencement of any procurement activity. **Thus, the MYOA shall be a pre-requisite for procurement of a multiyear contract.** All procurement activities should be within the total project cost and categories reflected in the MYOA issued by DBM for the said MYP. (Emphasis supplied)

The same policy was expounded in GPPB Circular No. 2010-9, issued on December 30, 2010, viz:

5.4 Consistent with DBM Circular Letter No. 2004-12, **prior to the procurement of multi-year contracts for MYPs, the procuring agency should first secure a MYOA from DBM.** This pre-requisite shall ensure that funding of the procurement activities of such MYP is within the total project cost and categories (e.g. civil work, vehicles, equipment, materials, consultancy, training, operation and maintenance, taxes, loan charges, contingencies and others) reflected in the MYOA. Consistent with the amended DBM Circular on the issuance of MYOA, the MYOA to be issued shall be supported with the Project Evaluation Report (PER) of the Investment Coordination Committee – Technical Board (ICC-TB). Upon approval of the projects by the ICC Cabinet Committee/BEDA Board, the same shall be forwarded by the agency concerned to DBM for reference. (Emphasis supplied)

Likewise, Budget Secretary Florencio Abad issued a memorandum[39] on October 18, 2010 as a Primer on MYOA. Its salient provision reads:

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[39] *Rollo,* pp. 263-266.

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Multi-Year Projects for which the initial funding – sourced either from the existing/current year's budget or the National Expenditure Program (NEP) – is not sufficient to cover the total cost of the project, **it is required that MYOA must already have been issued prior to the commencement of any procurement activity.** (Emphasis and underscoring supplied)

The DBM explained the nature of MYOA.[40] When the government entered into MYC, it was committed to annually pay a given amount to the contractor/supplier of the project, even without the government planning for its payment. Thus, the imperative for MYOA arose, which gave an assurance that the financial commitments included in MYC are considered in the succeeding proposed budget submitted to Congress. With the issuance of MYOA, the DBM commits to recommend to Congress the funding of the MYP until its completion. Evidently, without MYOA, the government runs the risk of breach of contractual obligations if its financial commitments are not met for lack of funding.

The case of *COMELEC v. Quijano-Padilla*,[41] involving the procurement of the Voter's Registration and Identification System Project *(VRIS Project),* mentioned the requirement of MYOA. The said project was awarded to PHOTOKINA on account of its bid in the amount of ₱6.588 billion. Under the GAA, however, the appropriated fund for the project was only ₱1 billion. PHOTOKINA argued that the awarded project was only for the Phase I of the whole VRIS Project and, thus, there was no need to allocate for the entire fund. The Court disagreed with such argument because no MYOA was secured by the procuring agency. The Court held that not only was the arrangement disallowed by our budgetary laws and practices, but it was also disadvantageous to the COMELEC because of the uncertainty that loomed over its modernization project for an indefinite period of time.

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[40] *Id*. at 254-255.

[41] 438 Phil. 72 (2002).

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Here, petitioner contends that MVPSP is MYP and it involves MYC, but the DOTC failed to secure the necessary MYOA. The OSG, on the other hand, argues that although MVPSP is MYP, it does not involve MYC because the appropriations for the project was available in full during its first year of implementation in 2014, thus, there was no need to secure the MYOA.

Indeed, MVPSP falls within the definition of MYP because it is a project which will take more than one (1) year to complete. Whether MVPSP involves MYC, however, depends on the determining factor of the **availability of appropriation in full during its first year of implementation**. If in the affirmative, then the project is MYP that does not involve MYC; otherwise, it is MYP that involves MYC and necessarily requires MYOA.

The ultimate question, therefore, is: what is considered the first year of implementation of MVPSP?

Petitioner contends that the first year of implementation of the project was fiscal year 2013 when the notice of award was issued to JKG-Power Plates on July 22, 2013, pursuant to the invitation to bid. The OSG, on the other hand, avers that it was fiscal year 2014, after the contract was signed by the parties on February 21, 2014, citing the DOJ Resolution.[42]

The Court holds that the first year of implementation of MVPSP was 2013 when the notice of award was issued on July 22, 2013. The issuance of the notice of award ignites the implementation stage of a project, and the procuring agency must ensure that funds are fully allotted therein. An agency can only issue a notice of award once the DBM has released a SARO or ABM for the full cost of the project.[43] If the funds are not fully allotted to the project at the time the notice of award was issued, then MYOA will guarantee that the DBM commits to recommend to Congress the funding of the project

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[42] *Rollo,* p. 214.

[43] See 5.7 of GPPB Circular No. 2010-9 and 4.7 of GPPB Circular No. 01-2009.

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until its completion. Thus, MVPSP is MYP, which involves MYC and requires MYOA.

This will prevent the scheme of delaying the project to circumvent the requirement of MYOA. As stated earlier, Sec. 38 of R.A. No. 9184 provides that the procurement process, from the opening of bids up to the award of contract, shall not exceed three (3) months. This is a mandatory provision and non-compliance thereto shall affect the validity of the bidding process. Procuring agencies have no other option but to observe the 3-month period and issue the notice of award on time. Thus, they will be forced to secure the MYOA from the DBM beforehand.

The Court cannot uphold the position of the OSG because of its detrimental implications. Like in the case at bench, the procuring agencies that did not have the requisite MYOA could simply postpone the signing of the contract until Congress appropriated the full amount of the project. It would defeat the very essence of MYOA which seeks to prevent delays in the implementation of the project due to lack of budget.

As to the issue of when the MYOA should be secured by the procuring agency, DBM Circular No. 2004-12 does not provide for a time period. GPPB Circular No. 01-2009, GPPB Circular No. 2010-9 and DBM Memorandum October 18, 2010, nonetheless, state that MYOA must be secured before the procurement begins. This is in line with the policy of R.A. No. 9184 that a government project's budget must be fully appropriated at the start of the procurement process.

Based on the foregoing discussion, a procuring agency must ensure that it has a sufficient appropriation for the project before commencing the procurement activity. If the procuring agency believes that the project will not be given its full appropriation by the time the notice of award is to be issued, then the procuring agency must also secure the MYOA from the DBM at the start of the procurement process. Hence, the general public will be assured that the government projects are adequately funded and their implementation will not be delayed. These are the practices that must be instilled to achieve effective fiscal governance.

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The review and approval of the ICC/NEDA is not required for MVPSP

Petitioner alleges that MVPSP must be reviewed and approved by the ICC/NEDA under R.A. No. 7718. The OSG counters that MVPSP is not covered by R.A. No. 7718 because it is neither an investment nor a BOT project.

The Court agrees with the OSG that MVPSP is not covered by R.A. No. 7718. The difference between R.A. No. 7718 and R.A. No. 9184 has been discussed in the case of *Department of Foreign Affairs v. Judge Falcon,*[44] as follows:

> Undeniably, **under the BOT Law, wherein the projects are to be privately funded,** the entire information technology project, including the civil works component and the technological aspect thereof, is considered an infrastructure or development project and treated similarly as traditional "infrastructure" projects. xxx
>
> In contrast, **under Republic Act No. 9184 or the Government Procurement Reform Act, which contemplates projects to be funded by public funds,** the term "infrastructure project" was limited to only the "civil works component" of information technology projects. xxx (Emphasis supplied)

Moreover, in a letter,[45] dated December 13, 2012, the NEDA stated that MVPSP was part of the mandate of the LTO; that it did not involve capital investment; and that it would be financed by the national government. It further noted that the project was not covered by R.A. No. 7718, but by R.A. No. 9184. At this point, there is no need to belabor on the other arguments of petitioner.

Conclusion

The Court concludes that MVPSP did not follow the timelines provided in Sec. 37 of R.A. No. 9184. As earlier recited, the project did not have the adequate appropriation when its

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[44] G.R. No. 176657, September 01, 2010, 629 SCRA 644.

[45] *Rollo*, p. 246.

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procurement was commenced on February 20, 2013, contrary to the provisions of Sections 5a, 7 and 20 of R.A. No. 9184. The DOTC and the LTO likewise failed to secure the MYOA before the start of the procurement process even though MVPSP is MYP involving MYC. All these irregularities tainted the earlier procurement process and rendered it null and void.

At the outset, however, the Court has stated that the present petition has been rendered moot and academic by the appropriation for the full amount of the project fund in GAA 2014. Said appropriation "cured" whatever defect the process had.

As to whether the responsible public officials should be held accountable for the irregularities in the procurement process of MVPSP, the Court deems that it is not the proper forum to resolve the issue as it is not a trier of facts and it cannot receive new evidence from the parties to aid it in the prompt resolution of the issue.[46]

WHEREFORE, the petition is **DISMISSED** for being moot and academic.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Leonen, JJ.,* concur.

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[46] *Land Bank of the Philippines v. Yatco Agricultural Enterprise,* G.R. No. 172551, January 15, 2014, 713 SCRA 370, 395.