EN BANC

G.R. No. 263060 – PINAG-ISANG LAKAS NG MGA MANGGAGAWA SA LRT (PIGLAS), SAMMY MALUNES, LORNA F. SALON, RONALDO I. ESTRELLA, MANOLO E. SANTOS, JAYSON P. LIWAG, FLORIFE A. BLAS, JOEY A. LOBERIANO, JAIME D. BARCOMA, ALLAN M. MARANG, CATALINO M. MELEGRITO, JOHN M. BISCOCHO, RODRIGO C. SARASUA, ROLANDO M. PEREZ, EDUARDO O. ROQUE, RUFINO B. GAURANO, JR., PAUL V. LEGASPI, PONCIANO M. ZAMORA, JOHN R. NUÑEZ, JOEY J. SABANAL, LILIBETH R CASIÑO, EUCLIDA S. GAURANO, NATALIA A. PAYONGAYONG, JUSTINO B. ASAYTUNO, JR., EDUARDO S. MAÑOSCA, ALBERTO S. ASIS, JR., WILHEMINE T. POLINTAN, RONALDO A. GELLE, VICENTE RAMIREZ, JOEL G. EVANGELISTA, RICARDO C. SANTOS, MAXIMO VITANGCOL, ARNOLD E. ESTORES, ANTONIO VILLAMOR, JR., BENJAMIN CANDOLE, ORLANDO MACAYBA, EDUARDO L. BERBA, HERNANI M. LIBANTINO, ESTELA R. ATIENZA, CARLITO R. MANZANILLA, EDMUNDO B. QUEMADA, CRISPIN G. YAPCHIONGCO, TEOFILO RIZ L. MOCORRO, JR., EDGARDO F. VICILLAJE, EDWARD M. DIAZ, RENATO L. TAPALLA, ARIEL I. DIMAWALA, RAMIR R. GORDO, MATEO C. HAO, JR., BENJAMIN A. ABIDIN, BRENDO M. MAKILING, MARITO N. HEBRERO, DANIEL F. IJIRAN, WILFREDO G. DE RAMOS, EDITHA L. DELA ROSA, FERNANDO C. MALLARI, RODOLFO V. GAMBOA, MARILYN M. BRAVO, ALBERTO O. BRAVO, GENEROSO C. RAPOSA, REINERIO V. RIPAY, EDWARD F. MARIANO, REGGIE B. FELIXMENIA, DESIDERIO S. MOSQUEDA, JR., ELIZALDE D. JANAPIN, APOLINARIO M. POLGEN, CYRIL T. MAYOR, VICTOR C. SANCHEZ, EDMUNDO A. LIONGSON, JR., ALBERTO T. DELA CRUZ, ROGELIO V. LUMABAN, SANTIAGO D. CLARIN, ROLANDO P. DE GUZMAN, CARLOS O. SAMONTE, JR., RICARDO B. AÑO, JR., ALFONSO C. TRINIDAD, JR., MELCHOR C. REGALADO, ARTHUR B. HERMITANIO, ALEJANDRO M. DIAZ, RONNIE M. GONZALES, DENNIS T. CRUZ, ROSELL L. VILLANUEVA, ELMER B. CRUZ, MAYNARDO MAUR A. MENDELBAR, EDGARDO L. ESPINOSA, JESSIE A. DUQUE, MARIO S. DELA CRUZ, CRISANTO S. MAGNAYE, AGRIPINO A. GOROSPE, JR., ELPIDIO P. VARGAS, REDEN A. NOLASCO, ERNESTO A. SERENA, RHODELIO G. CRUZ, RODOLFO C. CAMERINO, CARLOS D. BANDILLA, MELCHOR G. ALARCON, EDWIN R. JUAT, MANUEL M. FLOGIO, REYNALDO S. DEL ROSARIO, RAMON R. AMIGLEO, FELIX N. ARRIOLA, PASCUAL D. PARAGAS, GLICERIO M. SAYAT, JR., RICARDO D. EVANGELISTA, JOSELITO G. CONCIO, RAMON R. CAGUIAT, WILLIAM O. VILLANUEVA, ROMEO F. MIRAFUENTE, JOSE MARI A. CENIDOZA, ROMEO G. TAGUD, QUIGAO ROMULO, EDUARDO DELA CRUZ SANTOS, MICHAEL ROMBLON, ROMEO

M. PLAGANAS, JAIME C. ABULENCIA, RICARDO D. DALUSONG, DANA S. KINGKING, ELMER BOBADILLA, DELIA C. CUPCUPIN, MARLON E. SANTOS, ALLAN J. CORTEZ, JOENEL G. BALIGUAT, JOEL A. MARAÑO, EDUARDO A. AGUILA, ARIEL A. BUSTAMANTE, BERNARDINO G. MATIAS, AQUILINO J. EBEN, CRISENDO C. CASAS, ENRIQUE L. FLORES, EDGARDO C. RAMOS, EXEJESON EVANGELO B. RUAZOL, LEOPOLDO M. CAZEÑA, SERWIN S. BARRERA, GERARDO R. DE GUZMAN, VALENTIN D. BORBON, LAURENCE B. SACDALAN, NOEL B. ESGASANE, RONILO C. DE VERA, GUILLERMO H. DUMAN, PEDRO G. TESIORNA, CEZAR BATTUNG, ALLAN R. ARTUBA, MICHAEL A. GUINTO, FRANCISCO F. FLORES, MAURICIO O. DELA CRUZ, JR., ATILANO G. JOB, RUBEN T. BERNAL, AGNES V. DELA CRUZ, DANTE P. MENDOZA, LARRY M. HERNANDEZ, MARIA RUTCHIE R. RELIMBO, EMERSON R. LUMABI, WILFREDO R. BANDIALA, JEREMIAH V. MAHINAY, RAYMUNDO C. LITAN, JR., CESAR B. CUENCO, JR., REYNALDO T. IGNACIO, JOSEPH P. RODRIGUEZ, CESAR CAÑETE, NELSON J. LABAYO, CLARYMAR D. ESTOQUE, GODOFREDO M. BELINO, ARTEMIO B. SALIG, ARNOLD M. DIMALANTA, RAINERO L. GAKO, NEPTALE S. PADASAS, NELFRED M. DELETINA, ANASTACIO G. JANAVAN, JR., ROBINSON D. VINZON SILVESTRE ALVANO, WILFREDO R. BANDILA, RODOLFO C. HERESE, DANILO A. MARIANO, MEDWIN MESINA, LARRY ORATE, DANILO RIVERA, RUEL MAGBALANA, GODOFREDO BUENO, LARRY TAN, JOSE MARI A. CENIDOZA, HAROLD FLORES, ANTONIO H. BALANGUE, JR., (dec.) rep. by wife, DINAH E. BALANGUE, RONALD G. REYES (dec.) rep. by wife EMELITA G. REYES, TERESITA M. VELASQUEZ (dec.) rep. by sister LOLITA V. BALANSAG, PAMPILO P. BALASBAS (dec.) rep. by daughter LILETH A. BALASBAS, ISIDRO T. CORTES (dec.) rep. by wife MARILOU M. CORTES, ARMANDO NODADO (dec.) rep. by GLICERIA V. NODADO, RICARDO PATRIARCA, JR., (dec.) rep. by wife JOSEPHINE G. PATRIARCA, ARNOLD DV. MENDOZA (dec.) rep. by wife CECILIA T. MENDOZA, VIRGILIO C. CRUZ (dec.) rep. by wife ALMIRA CRUZ, DANILO P. YU (dec.) rep. by wife ANGELINA G. YU, JESUS C. FAJARDO (dec.) rep. by wife RODELYN R. FAJARDO, TEOFANES G. TESIORNA (dec.) rep. by wife WILMA P. TESIORNA, GREGORIO P. SALVEDIA (dec.) rep. by wife VERONICA G. SALVEDIA, PETER C. DIA (dec.) rep. by daughter DIANA F. DIA, REYNALDO C. VERANO (dec.) rep. by wife MA. VICTORIA A. VERANO, ARIEL A. MAGNO (dec.) rep. by wife VICTORIA R. MAGNO, ALBERTO H. RAMOS (dec.) rep. by son ALBERTO Y. RAMOS, JR., ANTONIO V. LEGASPI (dec.) rep. by wife EMILY P. LEGASPI, AURELIO A. PAGTAKHAN (dec.) rep. by ANTONETTE C. PAGTAKHAN, EDMUNDO G. GONZALES (dec.) rep. by wife IMELDA N. GONZALES, RESTITUTO FELIPE (dec.) rep. by son JIMMY A. FELIPE, ARNULFO S. DE LARA (dec.) rep. by wife ZENAIDA DE LARA, VICTOR BABIERA, ANTHONY DE LUNA,

ELMER CRUZ, GIOVANNI V. MUESCAN, MA. ELIZABETH M. REYES, EDISON JOSE Z. DORDAS, GEORGE B. DELA CUEVA, ENRIQUE P. ESPAÑOL, LUISITO C. DELA CRUZ, JOSE EDWIN S.J. BORJA, ROLANDO B. CANLAS, and LEUVINO M. DE LIMA, Petitioners, **v. COMMISSION ON AUDIT (COA), LIGHT RAIL TRANSIT AUTHORITY (LRTA) and METRO TRANSIT ORGANIZATION, INC. (MTOI),** Respondents.

Promulgated:

July 23, 2024

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DISSENTING OPINION

LEONEN, *J.*:

The majority opinion affirmed the pronouncements in the Resolution entitled *PIGLAS NFWU-KMU v. Light Rail Transit Authority*,[1] which supposedly settled with finality the liability of the Light Rail Transit Authority (LRTA) and Metro Transit Organization, Inc. (MTOI) regarding the illegal dismissal complaint and other monetary claims of petitioners in the present case. The *ponencia* affirmed the doctrine in *Light Rail Transit Authority v. Venus*,[2] stating that labor tribunals have no jurisdiction over a government-owned and controlled corporation (GOCC) with an original charter. Thus, the *ponencia* concluded that the decision of the labor arbiter finding LRTA and MTOI solidarily liable for petitioners' illegal dismissal is void and did not attain finality.

I dissent.

Labor tribunals have jurisdiction over LRTA, arising from the latter's agreement for the operation and management of the light rail transit system (O&M Agreement) with MTOI. This jurisdiction was upheld in *Light Rail Transit Authority v. Mendoza* and reiterated in *Light Rail Transit Authority v. Pili*[3] and *Light Rail Transit Authority v. Alvarez*.[4] I submit that the rulings in these cases, including the facts established, are relevant in the present case where the ultimate issue is whether LRTA may be held solidarily liable with MTOI for petitioners' illegal dismissal notwithstanding the absence of a direct employer-employee relationship.

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1 G.R. No. 182928, July 8, 2009 [Notice, Second Division].
2 520 Phil. 233 (2006) [Per J. Puno, Second Division].
3 786 Phil. 624 (2016) [Per Acting C.J. Carpio, Second Division].
4 801 Phil. 40 (2016) [Per J. Jardeleza, Third Division].

As will be discussed, it is evident from the various incidents, starting from the petitioners' conduct of strike due to LRTA's non-renewal of O&M Agreement, LRTA's takeover of MTOI's operations, the labor arbiter's finding of illegal dismissal, and attempt to dissolve MTOI outside the pendency of the case, that MTOI is not only an alter ego of LRTA but that it is also hiding behind its separate corporate personality to evade its liabilities for petitioners' illegal dismissal.

I

While I agree that illegal dismissal was the main issue in *Venus*, its pronouncements are not applicable in the present case. In *Venus*, the Court refused to recognize the existence of an employer-employee relationship because the employees of MTOI, who were already covered by the Department of Labor and Employment, cannot also be considered as government employees since LRTA is a GOCC, with Executive Order No. 603 as its original charter. Employees of GOCCs with original charter are covered by the Civil Service Commission. The Court refused to pierce the corporate veil, recounting previous instances where the separate personalities of LRTA and MTOI were upheld. Moreover, there were supposedly no badges of fraud. In so doing, the Court relied on a legal opinion of the Department of Justice which failed to explain how "the records [did] not show that control was used to commit a fraud or wrong."[5] It is significant to note that said opinion refused to acknowledge a different outcome since it will lead to a confusing situation:

> Here, the records do not show that control was used to commit a fraud or wrong. In fact, it appears that piercing the corporate veil for the purpose of delivery of public service, would lead to a confusing situation since the outcome would be that Metro will be treated as a mere alter ego of LRTA, not having a separate corporate personality from LRTA, when dealing with the issue of strike, and a separate juridical entity not covered by the Civil Service when it comes to other matters. Under the Constitution, a government corporation is either one witb original charter or one without original charter, but never both.[6]

It must be emphasized that the Court is not precluded from examining *Venus* and relaxing the principle of *res judicata* "if blind and stubborn adherence to *res judicata* would involve the sacrifice of justice to technicality."[7]

In my view, the majority should have reversed *Venus* since the doctrine effectively exempts any government instrumentality with an original charter

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5 *Light Rail Transit Authority v. Venus, Jr.*, 520 Phil 233, 247 (2006) [Per J. Puno, Second Division].

6 *Id.*

7 *Aledro-Ruña v. Lead Export and Agro-Development Corporation*, 836 Phil. 946, 961 (2018) [Per J. Gesmundo, Third Division].

from any liabilities under the Labor Code. In contracting with MTOI for the operation of its light rail system, the LRTA is bound with the legal implications of its contractual relationship. However, its original charter does not give LRTA the license to escape the consequences of the O&M Agreement termination and the resulting loss of petitioners' employment.

The majority failed to consider the nature of relationship between LRTA and MTOI in analyzing each organization's respective liabilities to the illegally dismissed employees. There was no discussion on the implications of the O&M Agreement that LRTA executed in its corporate capacity for the operation of its railway lines.

At the outset, it must be clarified that LRTA is not a GOCC. In *Light Rail Transit Authority v. Quezon City*,[8] this Court clarified its nature as a government instrumentality with corporate powers conducting business for profit in the mass transport industry and enjoying operational immunity in the management of the light rail system.[9]

A government instrumentality with corporate powers is a broader term, and not all those falling under this classification may be considered as a GOCC.[10] Under the Administrative Code, a GOCC is defined as follows:

> SEC. 2. *General Terms Defined.* — . . . .
>
> (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: *Provided*, That government-owned or controlled corporations may further be categorized by the Department of Budget, the Civil Service Commission, and the Commission on Audit for the purpose of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.[11]

In *Light Rail Transit Authority v. City of Pasay*,[12] the Court *En Banc* extensively discussed that LRTA is a government instrumentality with corporate powers, and not a GOCC:

> A close scrutiny of the definition of "GOCC" in Section 2(13) will show that LRTA would not fall under such definition. *LRTA is a government*

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8 864 Phil. 963 (2019) [Per J. Lazaro-Javier, Second Division].

9 *Id.* at 981.

10 *Light Rail Transit Authority v. City of Pasay*, G.R. No. 211299, June 28, 2022 [Per J. Hernando, *En Banc*].

11 ADMINISTRATIVE CODE, Introductory Provisions, sec. 2(13).

12 G.R. No. 211299, June 28, 2022 [Per J. Hernando, *En Banc*].

"instrumentality" that does not qualify as a "GOCC." As explained in the *2006 MIAA Case*:

. . . .

From the foregoing, it is apparent that *the primary test in determining whether an entity is a GOCC is how it was organized.* In other words, the *2006 MIAA Case* provides that unless a government instrumentality was organized as a stock or non-stock corporation, then it must not be considered as a GOCC as defined in the Administrative Code.

A cursory perusal of the LRTA charter would reveal that it was not organized as a stock corporation because it has no capital stock divided into shares. In fact, the LRTA has no stockholders or voting shares. Article 6, Section 15 of Executive Order No. (EO) 603 or the LRTA Charter which created the LRTA, provides:

Sec. 15. *Capitalization.* — The Authority shall have an authorized capital of FIVE HUNDRED MILLION PESOS (P500,000,000.00) which shall be fully subscribed by the Republic of the Philippines and other government institutions, corporations, instrumentalities, and agencies, whether national or local, within the framework of their respective charters. The authorized capital shall be used for the purpose of financing the Authority's business transactions and shall be paid as follows:

(1) The sum of TWO HUNDRED MILLION PESOS (P200,000,000.00) to be taken from the general fund in the National Treasury out of appropriations available for the purpose.

(2) The balance of the authorized capital amounting to THREE HUNDRED MILLION PESOS (P300,000,000.00) shall be released from the National Treasury out of appropriations available for the purpose, or subscribed and paid by government institutions as may be authorized pursuant to this Section, with the approval of the President.

To reiterate, Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x." From the above, it is clear that LRTA has capital but it is not divided into shares of stock. LRTA has no stockholders or voting shares. Hence, LRTA is not a stock corporation.

The LRTA is also not a non-stock corporation.

Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agricultural and like chambers." LRTA was not organized for any of these purposes. LRTA, a public utility, was organized to be "primarily responsible for tbe construction, operation, maintenance, and/or lease of light rail transit systems in the Philippines, giving due regard to the reasonable requirements of the public transportation system of the country" for public use.

Moreover, *the same LRTA charter would reveal that the LRTA has no members.* Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." This implies that a non-stock corporation must have members, which the LRTA does not have.

Since the LRTA is neither a stock nor a non-stock corporation, LRTA does not qualify as a GOCC. As pointed out by *J.* Dimaampao, under the doctrine laid down in the *2006 MIAA Case*, this alone already qualifies LRTA as a government instrumentality, but if only to further refine this, the relevant provisions of the Administrative Code must be read in conjunction with Section 3 (n) of the GOCC Governance Act of 2011 that was obviously enacted after the *2006 MIAA Case*, and provides for a more specific definition of government instrumentalities, to wit:

(n) *Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE)* refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO). (Emphasis supplied)

. . . .

From the foregoing, the following elements in order to qualify as a government instrumentality with corporate powers (GICP) or government corporate entity (GCE) can be distilled, to wit:

(a) agency of the government;
(b) neither a corporation nor agency integrated within the departmental framework;
(c) vested by law with special functions or jurisdiction;
(d) endowed with some if not all corporate powers;
(e) administering special funds; and
(f) enjoying operational autonomy usually through a charter.

As applied in this case, LRTA still clearly qualifies as a GICP/GCE under the definition provided in Section 3 (n) of the GOCC Governance Act of 2011.

LRTA is an agency of the government

An agency of the government refers to "any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein." *There is no dispute that LRTA is a unit of the*

government. It performs public service, it is attached to the Department of Transportation (DOTr), and its authorized capital is fully subscribed by the Republic of the Philippines.

LRTA is neither a corporation nor is it integrated within the departmental framework

As previously explained, LRTA is not a GOCC precisely because it is neither a stock nor non-stock corporation. LRTA is also not integrated within the departmental framework despite being attached to the DOTr, as will be discussed in detail later.

LRTA is vested with special functions

LRTA is given the primary responsibility for the "construction, operation, maintenance, and/or lease of light rail transit systems in the Philippines, giving due regard to the reasonable requirements of the public transportation system of the country."

LRTA is endowed with corporate powers

LRTA was specifically created as a "corporate body" that is capable, among others, to prescribe and modify its own by-laws, to sue and be sued, and to contract any obligation.

LRTA administers special funds

LRTA is capitalized by up to P3,000,000,000.00, and is tasked to manage its own revenues to meet its expenditures, to contract domestic and foreign loans to carry out its operations, and to establish a sinking fund to redeem bonds it issues.

LRTA enjoys operational autonomy through its charter

As held in the *2019 LRTA Case*, LRTA exists by virtue of a charter and its powers and functions are vested in and exercised by its Board of Directors independent of outside interference.

Undoubtedly, in light of the ruling in *2006 MIAA Case* and the statutory definition under the GOCC Governance Act of 2011, We conclude that LRTA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. LRTA is like any other government instrumentality, the only difference is that LRTA is vested with corporate powers.

LRTA is merely an attached agency to the DOTr.

The City posits a theory that LRTA cannot be a government instrumentality since the latter is allegedly integrated within the department framework, and is thus inconsistent with the definition of a government instrumentality in the Administrative Code, to wit:

Obviously, for a government agency to be considered as an instrumentality, it must not be integrated within a department framework, meaning it must not be included, incorporated or attached to any department under the executive branch of the government. As it specifically provided in its charter, LRTA is attached to the Ministry of Transportation and Communication (now Department of Transportation and Communication, DOTC, for brevity). This is likewise affirmed in Executive Order No. 210 dated 7 July 1987 amending E.O. 603 to conform with the reorganization of the DOTC to which the LRTA is attached.

Section 2 (10) of the Introductory Provisions of the Administrative Code defines a government instrumentality as:

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

The City's myopic interpretation of the above provision holds no water and is actually contradictory to its own position that LRTA is a GOCC. In line with Our pronouncements in the *2006 MIAA Case*, *We must stress that the term government instrumentality is a broader and more general term than GOCC, and hence should be interpreted in such light. A government instrumentality may or may not be a GOCC, but a GOCC is a government instrumentality by definition.* By claiming that LRTA is a GOCC, the City is already admitting that the LRTA is a government instrumentality so there is no sense in claiming otherwise. The only issue at this juncture is whether or not the LRTA, a government instrumentality, falls under the definition of a GOCC.

If only to emphasize the absurdity of interpreting Section 2 (10) of the Introductory Provisions of the Administrative Code to mean that attached agencies are "integrated within the department framework," should this Court hypothetically apply respondent's theory, then all the attached agencies to the DOTr can no longer be considered as government instrumentalities, including the MIAA, MCIAA, Philippine National Railways (PNR), Philippine Ports Authority (PPA), etc.

For reference, it must be noted that We have already ruled several attached agencies, including the MIAA and MCIAA (both are agencies attached to the DOTr), to be government instrumentalities.

. . . .

Given the forgoing, the City's arguments are utterly unmeritorious for having no legal basis as jurisprudence would clearly show that being an attached agency to a Department does not equate to being "integrated within the departmental framework."[13] (Emphasis in the original, citations omitted)

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13 *Id.*

Relevant is the 1941 case of *Manila Hotel Employees Association v. Manila Hotel Company*,[14] where the Court upheld the jurisdiction of the Court of Industrial Relations, now the National Labor Relations Commission, over the labor complaint filed by the employees of the Manila Hotel, a subsidiary of Manila Railroad Company, which was then a GOCC:

> There is nothing in the law that could be construed to exclude the employees and laborers of government-owned corporations from the benefit and protection thereof or to exempt such corporations from the operation of that law. On the other hand, it is well settled that *when the government enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation. By engaging in a particular business thru the instrumentality of a corporation, the government divests itself pro hac vice of its sovereign character, so as to render the corporation subject to the rules of law governing private corporations*. When the state acts in its proprietary capacity, it is amenable to all the rules of law which bind private individuals. "There is not one law for the sovereign and another for the subject, but when the sovereign engages in business and the conduct of business enterprises, and contracts with individuals, whenever the contract in any form comes before the courts, *the rights and obligation of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the dealer, contractor and suitor*."[15] (Emphasis supplied, citations omitted)

This was reiterated in *Philippine National Bank v. Pabalan*,[16] where the prevailing party was ordered to proceed against the funds of a government corporate entity through garnishment proceedings, without considering the public nature of these funds.[17]

Here, in exercising its proprietary functions through the execution of the O&M Agreement with MTOI, LRTA abandoned its sovereign character. It subjected itself to the liabilities arising from such contractual relations, particularly its subcontracting of workers for the light rail system.

Article 97 of the Labor Code specifically includes "government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions, or organizations" in its definition, where all relevant provisions of the Code apply. Articles 106 to 110 of the Labor Code, as amended, provide the regulations in jointly subcontracting work, where the principal acts as the indirect employer of the employees of the subcontractor:

> Art. 106. Contractor or subcontractor. Whenever an employer enters into a contract with another person for the performance of the former's

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14 73 Phil. 374 (1941) [Per J. Ozaeta, *En Banc*].

15 *Id.* at 388–389.

16 173 Phil. 25 (1978) [Per Acting C.J. Fernando, Second Division].

17 *Id.* at 29.

work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor *fails to pay the wages of his employees* in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Art. 107. Indirect employer. *The provisions of the immediately preceding article shall likewise apply to any* person, partnership, association or *corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.*

Art. 108. Posting of bond. An employer or indirect employer may require the contractor or subcontractor to furnish a bond equal to the cost of labor under contract, on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.

Art. 109. Solidary liability. The provisions of existing laws to the contrary notwithstanding, *every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code*. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

Art. 110. Worker preference in case of bankruptcy. In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before claims of the government and other creditors may be paid. (Emphasis supplied)

In *Rosewood Processing, Inc. v. NLRC*,[18] the Court discussed the extent of liability of an indirect employer and the rationale of making its contractor solidarily liable:

> The first two grounds are meritorious. Legally untenable, however, is the contention that petitioner is not liable for any wage differential for the reason that it paid the employees in accordance with the contract for security services which it had entered into with the security agency. Notwithstanding the service contract between the petitioner and the security agency, the former is still solidarily liable to the employees, who were not privy to said contract, pursuant to the aforecited provisions of the Code. *Labor standard legislations are enacted to alleviate the plight of workers whose wages barely meet the spiraling costs of their basic needs. They are considered written in every contract, and stipulations in violation thereof are considered not written.* Similarly, legislated wage increases are deemed amendments to the contract. Thus, *employers cannot hide behind their contracts in order to evade their or their contractors' or subcontractors' liability for noncompliance with the statutory minimum wage.*
>
> The *joint and several liability of the employer or principal was enacted to ensure compliance with the provisions of the Code, principally those on statutory minimum wage.* The contractor or subcontractor is made liable by virtue of his or her status as a direct employer, and the principal as the indirect employer of the contractor's employees. This liability facilitates, if not guarantees, payment of the workers' compensation, thus, giving the workers ample protection as mandated by the 1987 Constitution. This is not unduly burdensome to the employer. Should the indirect employer be constrained to pay the workers, it can recover whatever amount it had paid in accordance with the terms of the service contract between itself and the contractor.
>
> Withal, fairness likewise dictates that the petitioner should not, however, be held liable for wage differentials incurred while the complainants were assigned to other companies. Under these cited provisions of the Labor Code, should the contractor fail to pay the wages of its employees in accordance with law, *the indirect employer (the petitioner in this case), is jointly and severally liable with the contractor, but such responsibility should be understood to be limited to the extent of the work performed under the contract, in the same manner and extent that he is liable to the employees directly employed by him. This liability of petitioner covers the payment of the workers' performance of any work, task, job or project. So long as the work, task, job or project has been performed for petitioner's benefit or on its behalf, the liability accrues for such period even if, later on, the employees are eventually transferred or reassigned elsewhere.*
>
> We repeat: The indirect employer's liability to the contractor's *employees extends only to the period during which they were working for the petitioner, and the fact that they were reassigned to another principal necessarily ends such responsibility.* The principal is made liable to his indirect employees, because it can protect itself from irresponsible contractors by withholding such sums and paying them directly to the employees or by requiring a bond from the contractor or subcontractor for this purpose.

[18] 352 Phil. 1013 (1998) [Per J. Panganiban, First Division].

> Similarly, *the solidary liability for payment of back wages and separation pay is limited*, under Article 106, "to the extent of the work performed under the contract"; under Article 107, to "the performance of any work, task, job or project"; and under Article 109, to "the extent of their civil liability under this Chapter [on payment of wages]."
>
> These provisions cannot apply to petitioner, considering that the complainants were no longer working for or assigned to it when they were illegally dismissed. *Furthermore, an order to pay back wages and separation pay is invested with a punitive character, such that an indirect employer should not be made liable without a finding that it had committed or conspired in the illegal dismissal.*
>
> The liability arising from an illegal dismissal is unlike an order to pay the statutory minimum wage, because the workers' right to such wage is derived from law. The proposition that payment of back wages and separation pay should be covered by Article 109, which holds an indirect employer solidarily responsible with his contractor or subcontractor for "any violation of any provision of this Code," *would have been tenable if there were proof — there was none in this case — that the principal/employer had conspired with the contractor in the acts giving rise to the illegal dismissal.*[19] (Emphasis supplied, citations omitted)

In *Government Service Insurance System v. National Labor Relations Commission*,[20] the Court held that an original charter does not absolve a GOCC of liabilities as an indirect employer contracting with a private corporation for services rendered to the government. Thus, the Government Service Insurance System was held liable to pay wage differentials, 13th month pay, and unpaid wages of the security guards hired by its security agency:

> The fact that there is no actual and direct employer-employee relationship between petitioner and respondents does not absolve the former from liability for the latter's monetary claims. When petitioner contracted DNL Security's services, petitioner became an indirect employer of respondents, pursuant to Article 107 of the Labor Code, which reads:
>
> ART. 107. Indirect employer. — The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.
>
> After DNL Security failed to pay respondents the correct wages and other monetary benefits, petitioner, as principal, became jointly and severally liable, as provided in Articles 106 and 109 of the Labor Code, which state:
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> . . . .

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19 *Id.* at 1033–1035.

20 649 Phil. 538 (2010) [Per J. Nachura, Second Division].

> This statutory scheme is designed to give the workers ample protection, consonant with labor and social justice provisions of the 1987 Constitution.[21]

There is no dispute that petitioners are private employees of MTOI who lost their employment due to LRTA's unilateral cancellation of the O&M Agreement. Contrary to the pronouncement of *Venus,* LRTA's original charter does not shield it from the scope of Labor Code provisions. In choosing to subcontract the operations of the railways to MTOI, a private corporation, LRTA bound itself to the consequences of entering in a labor supply agreement. Thus, it became the indirect employer of petitioners by operation of Article 107 of the Labor Code.

LRTA's liability as indirect employer of petitioner was correctly recognized and upheld in *Light Rail Transit Authority v. Mendoza.*[22] In that case, the Court recognized the effects of conducting its business through MTOI, a private corporation. In addition, LRTA obligated itself to fund the full payment of separation pay of MTOI's employees:

> First. *LRTA obligated, itself to fund METRO's retirement fund to answer for the retirement or severance/resignation of METRO employees as part of METRO's "operating expenses."* Under Article 4.05.1 of the O & M agreement between LRTA and Metro, "The Authority shall reimburse METRO for . . . "OPERATING EXPENSES . . . ." In the letter to LRTA dated July 12, 2001, the Acting Chairman of the METRO Board of Directors at the time, Wilfredo Trinidad, reminded *LRTA* that *funding provisions for the retirement fund have always been considered operating expenses of Metro. The coverage of operating expenses to include provisions for the retirement fund has never been denied by LRTA.*
>
> In the same letter, Trinidad stressed that as a consequence of the nonrenewal of the O & M agreement by LRTA, METRO was compelled to close its business operations effective September 30, 2000. This created, Trinidad added, a legal obligation to pay the qualified employees separation benefits under existing company policy and collective bargaining agreements. The METRO Board of Directors approved the payment of 50% of the employees' separation pay because that was only what the Employees' Retirement Fund could accommodate.
>
> The evidence supports Trinidad's position. We refer principally to Resolution No. 00-44 38 issued by the LRTA Board of Directors on July 28, 2000, in anticipation of and in preparation for the expiration of the O & M agreement with METRO on July 31, 2000.
>
> Specifically, the *LRTA anticipated and prepared for the (1) non-renewal (at its own behest) of the agreement, (2) the eventual cessation of METRO operations, and (3) the involuntary loss of jobs of the METRO employees*; thus, (1) the extension of a two-month bridging fund for METRO from August 1, 2000, to coincide with the agreement's expiration on July 31, 2000; (2) METRO's cessation of operations — it closed on

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21 *Id.* at 548–549.

22 767 Phil. 458 (2015) [Per J. Brion, Second Division].

> September 30, 2000, the last day of the bridging fund — and most significantly to the employees adversely affected; (3) the updating of the "Metro, Inc., Employee Retirement Fund with the Bureau of Treasury to ensure that the fund fully covers all retirement benefits payable to the employees of Metro, Inc."
>
> The *clear language of Resolution No. 00-44, to our mind, established the LRTA's obligation for the 50% unpaid balance of the respondents' separation pay.* Without doubt, it bound itself to provide the necessary funding to METRO's Employee Retirement Fund to fully compensate the employees who had been involuntary retired by the cessation of operations of METRO. This is not at all surprising considering that METRO was a wholly owned subsidiary of the LRTA.[23] (Emphasis supplied)

Aside from LRTA's voluntary recognition of its contractual duty to pay the separation pay of MTOI's employees in full, the majority failed to acknowledge the express ruling in *Mendoza* that even if LRTA did not obligate itself, it will still be liable by virtue of its O&M Agreement as an indirect employer of MTOI's employees:

> Second. Even on the assumption that the LRTA did not obligate itself to fully cover the separation benefits of the respondents and others similarly situated, it still cannot avoid liability for the respondents' claim. *It is solidarily liable as an indirect employer under the law for the respondents' separation pay. This liability arises from the O & M agreement it had with METRO, which created a principal-job contractor relationship between them*, an arrangement it admitted when it argued before the CA that METRO was an independent job contractor [40] who, it insinuated, should be solely responsible for the respondents' claim.
>
> Under Article 107 of the Labor Code, an indirect employer is "any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project."
>
> On the other hand, Article 109 on solidary liability, mandates that . . . "every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provisions of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers."
>
> Department Order No. 18-02, s. 2002, the rules implementing Articles 106 to 109 of the Labor Code, provides in its Section 19 that "the principal shall also be solidarily liable in case the contract between the principal is preterminated for reasons not attributable to the contractor or subcontractor."
>
> *Although the cessation of METRO's operations was due to a nonrenewal of the O & M agreement and not a pretermination of the contract, the cause of the nonrenewal and the effect on the employees are the same as in the contract pretermination contemplated in the rules.* The agreement was not renewed through no fault of METRO, as it was solely at

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[23] *Id.* at 469–471.

> the behest of LRTA. The fact is, under the circumstances, METRO really had no choice on the matter, considering that it was a mere subsidiary of LRTA.
>
> *Nevertheless, whether it is a pretermination or a nonrenewal of the contract, the same adverse effect befalls the workers affected, like the respondents in this case — the involuntary loss of their employment, one of the contingencies addressed and sought to be rectified by the rules.*[24] (Emphasis supplied)

While the existence of an employer-employee relationship was not an issue in *Mendoza*, the Court recognized that it is possible to separate this issue from the liability of an indirect employer, who may be held liable despite its character as a government instrumentality.

There is no dispute that petitioners are employees of MTOI. Furthermore, as the parent company that exercised complete control and dominion over MTOI, it is understandable why petitioners impleaded LRTA in their complaint for illegal dismissal before the labor arbiter. As recognized in *Mendoza,* it was LRTA's act of letting the O&M Agreement lapse, resulting in the closure of MTOI and loss of employment of petitioners.

Petitioners' cause of action against LRTA originated from its O&M Agreement, which created an indirect employer-employee relationship by operation of law. Article 109 of the Labor Code, as amended provides the solidary liability of the direct and indirect employers for any violations of the Code,[25] including violations of the right to security of tenure and the right of employees to organize and collectively bargain.

Aside from illegal dismissal, petitioners' cause of action against LRTA is also anchored on alleged unfair labor practice. They contend that LRTA's closure of MTOI did not only defy the Department Secretary of Labor and Employment's return to work order, but also constituted an act of unfair labor practice of union busting to deprive them of their security of tenure through contractualization of LRTA's labor force.[26]

It is not disputed that petitioners and LRTA have no direct employer-employee relationship. Hence, they could not have filed the complaint against LRTA before the Civil Service Commission. Their complaint falls within the jurisdiction of the labor arbiter, who properly took cognizance over the same. The ultimate issue to be resolved in this case is whether LRTA can be made liable for illegal dismissal and unfair labor practices as petitioners' indirect

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[24] *Id.* at 471–472.

[25] LABOR CODE, art. 109 provides:
Article 109. Solidary liability. The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

[26] *Rollo*, p. 180.

employer. Considering the foregoing, the majority should have reviewed and reversed the doctrine in *Venus* and considered *Mendoza* as the relevant jurisprudence governing LRTA's liabilities over petitioners' claims.

II

There is significant basis to pierce the corporate veil of MTOI as a business conduit or alter ego of LRTA, its parent corporation.

In *Pantranco Employees Association v. NLRC*,[27] the Court discussed the instances when piercing the corporate veil is allowed, such as "where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation."[28] Citing *PNB v. Ritratto Group Inc.*,[29] the Court outlined circumstances indicating when a subsidiary is an instrumentality of a parent corporation:

> 1. The parent corporation owns all or most of the capital stock of the subsidiary;
>
> 2. The parent and subsidiary corporations have common directors or officers;
>
> 3. The parent corporation finances the subsidiary;
>
> 4. The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;
>
> 5. The subsidiary has grossly inadequate capital;
>
> 6. The parent corporation pays the salaries and other expenses or losses of the subsidiary;
>
> 7. The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation;
>
> 8. In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or *its business or financial responsibility is referred to as the parent corporation's own*;
>
> 9. The parent corporation uses the property of the subsidiary as its own;
>
> 10. The directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take their orders from the parent corporation;

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27 600 Phil. 645 (2009) [Per J. Nachura, Third Division].

28 *Id.* at 663.

29 414 Phil. 494 (2001) [Per J. Kapunan, First Division].

> 11 The formal legal requirements of the subsidiary are not observed.[30]

All the circumstances are present here. LRTA obtained full control of MTOI in 1989 when it acquired MTOI and maintained 99.99% ownership of its subscribed shares.[31] In *Mendoza*, it was established that in carrying out the O&M Agreement, LRTA exercised significant, if not total control of the finances of MTOI. Aside from a revolving fund of PHP 5,000,000.00 which was annually paid to MTOI, LRTA reimburses operating expenses which included all salaries and benefits of its rank-and-file employees, managers, and top management. It also approved collective bargaining agreements between MTOI with its labor unions.

Control over the affairs of MTOI continued after LRTA unilaterally decided not to renew the O&M Agreement. LRTA considered the financial liabilities of MTOI as its own by responsibility through the following acts as culled from *Mendoza:*

> The evidence supports Trinidad's position. We refer principally to Resolution No. 00-44 issued by the LRTA Board of Directors on July 28, 2000, in anticipation of and in preparation for the expiration of the O & M agreement with [MTOI] on July 31, 2000.
>
> Specifically, the LRTA anticipated and prepared for the (1) non-renewal (at its own behest) of the agreement, (2) the eventual cessation of [MTOI] operations, and (3) the involuntary loss of jobs of the [MTOI] employees; thus, (1) the extension of a two-month bridging fund for METRO from August 1, 2000, to coincide with the agreement's expiration on July 31, 2000; (2) [MTOI]'s cessation of operations—it closed on September 30, 2000, the last day of the bridging fund—and most significantly to the employees adversely affected; (3) the updating of the "Metro, Inc., Employee Retirement Fund with the Bureau of Treasury to ensure that the fund fully covers all retirement benefits payable to the employees of Metro, Inc."
>
> The clear language of Resolution No. 00-44, to our mind, established the LRTA's obligation for the 50% unpaid balance of the respondents' separation pay. Without doubt, it bound itself to provide the necessary funding to [MTOI]'s Employee Retirement Fund to fully compensate the employees who had been involuntary retired by the cessation of operations of [MTOI]. This is not at all surprising considering that [MTOI] was a wholly owned subsidiary of the LRTA.[32]

An examination of the records also shows that LRTA included the separation pay of MTOI employees amounting to PHP 271,848,000.00 in its 2002 Corporate Operating Budget from the Department of Budget and Management.[33] In its Comment to the present Petition, the LRTA relies on a

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30 *Id.* at 664–665.
31 *Rollo*, p. 502.
32 *LRTA v. Mendoza*, 767 Phil. 458, 470–471 (2015) [Per J. Brion, Second Division].
33 *Rollo*, p. 508.

2009 Resolution,[34] which brushed aside the inclusion of petitioners' separation pay as a "non-legal sentiment."[35] However, this is a material circumstance in showing that MTOI was a mere instrumentality of LRTA as the latter took financial responsibility over the former's liabilities.[36]

It also does not appear that MTOI has sufficient capital and properties to pay for its liabilities to petitioners. In 2007, LRTA filed a petition for dissolution of MTOI, where it admitted that the latter has no assets and properties except for "old and unserviceable equipment and furniture."[37] Hence, to post a bond to perfect its appeal in *Metro Transit Organization, Inc. v. PIGLAS NFWU-KMU*,[38] MTOI had to secure an LRTA board resolution authorizing the use of its property as guarantee for the judgment. However, MTOI failed to comply, which eventually led to the dismissal of its appeal:

> As borne by the records, petitioners filed a property bond which was conditionally accepted by the NLRC subject to the following conditions specified in its 24 February 2006 Order:
>
> > The conditional acceptance of petitioner's property bond was subject to the submission of the following: 1) Certified copy of Board Resolution or a Certificate from the Corporate Secretary of Light Rail Transit Authority stating that the Corporation President is authorized by a Board Resolution to submit title as guarantee of judgment award; 2) Certified Copy of the Titles issued by the Registry of Deeds of Pasay City; 3) Certified Copy of the current tax declarations of Titles; 4) Tax clearance from the City Treasurer of Pasay City; 5) Appraisal report of an accredited appraisal company attesting to the fair market value of property within ten (10) days from receipt of this Order. Failure to comply therewith will result in the dismissal of the appeal for non-perfection thereof.
>
> In the same Order, the NLRC warned that failure of the petitioners to comply with the conditions would result in the dismissal of the appeal for non-perfection thereof. Petitioners were directed to comply with its given conditions within 10 days from receipt of the Order with a caveat that their failure will result in the dismissal of the appeal. Subsequently, in its 19 May 2006 Resolution, the NLRC finally made a factual finding that petitioners failed to comply with the conditions attached to their posting of the property bond. Thus, the NLRC dismissed petitioners' appeal for non-perfection thereof.
>
> Essentially, the failure of petitioners to comply with the conditions for the posting of the property bond is tantamount to a failure to post the bond as required by law. What is even more salient is the fact that the NLRC had stressed that petitioners had, for more than a month from receipt of its 24 February 2006 Order, to comply with the conditions set forth therein for

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34 *PIGLAS NFWU-KMU v. LRTA*, G.R. No. 182928, July 8, 2009 [Notice, Second Division].
35 *Rollo*, pp. 964–965.
36 *PNB v. Ritratto Group, Inc.* 414 Phil. 494 (2001) [Per J. Kapunan, First Division].
37 *Rollo*, p. 886.
38 574 Phil. 481 (2008) [Per J. Chico-Nazario, Third Division].

> the posting of the property bond. It cannot be gainsaid that the NLRC had given petitioners a period of 10 days from receipt of the Order with a warning that non-compliance would result in the dismissal of their appeal for failure to perfect the same. Petitioners therefore disregarded the rudiments of the law in the perfection of their appeal. We are without recourse but to take petitioners' failure against their interest.[39]

The totality of these circumstances shows the complete dominance of LRTA over MTOI's affairs. There is also no indication that MTOI had any other businesses aside from the O&M Agreement.

In *Maricalum Mining Corporation v. Florentino,*[40] the requirements of piercing the corporate veil were discussed in detail:

> In the case at bench, complainants mainly harp their cause on the alter ego theory. Under this theory, piercing the veil of corporate fiction may be allowed only if the following elements concur:
>
> > 1) Control — not mere stock control, but complete domination not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
> > 2) Such control must have been used by the defendant to commit a fraud or a wrong, to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiffs legal right; and
> > 3) The said control and breach of duty must have proximately caused the injury or unjust loss complained of.
>
> The elements of the alter ego theory were discussed in *Philippine National Bank v. Hydro Resources Contractors Corporation*, to wit:
>
> > The first prong is the "instrumentality" or "control" test. This test requires that the subsidiary be completely under the control and domination of the parent. It examines the parent corporation's relationship with the subsidiary. It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored. It seeks to establish whether the subsidiary corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, "is operating the business directly for itself."
> >
> > The second prong is the "fraud" test. This test requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. It examines the relationship of the plaintiff to the corporation. It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms the plaintiff creditor. As such, it requires a showing of "an element of injustice or fundamental unfairness."

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39 *Id.* at 494–495.

40 836 Phil. 655 (2018) [Per J. Gesmundo, Third Division].

> The third prong is the "harm" test. This test requires the plaintiff to show that the defendant's control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered. A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant's exercise of control and improper use of the corporate form and, thereby, suffer damages.
>
> To summarize, piercing the corporate veil based on the alter ego theory requires the concurrence of three elements: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. The absence of any of these elements prevents piercing the corporate veil. . . .
>
> Again, all these three elements must concur before the corporate veil may be pierced under the alter ego theory. Keeping in mind the parameters, guidelines and indicators for proper piercing of the corporate veil, the Court now proceeds to determine whether Maricalum Mining's corporate veil may be pierced in order to allow complainants to enforce their monetary awards against G Holdings.[41]

In the 2008 case filed against PIGLAS NFWU-KMU by MTOI,[42] LRTA no longer renewed the O&M Agreement due to the alleged refusal of the MTOI workers on strike to comply with the DOLE secretary's return to work order:

> The striking PIGLAS members refused to accede to the Return to Work Order. Following their continued non-compliance, on 28 July 2000, the LRTA formally informed petitioner MTO that it had issued a Board Resolution which: (1) allowed the expiration after 31 July 2000 of LRTA's MOA with petitioner MTO; and (2) directed the LRTA to take over the operations and maintenance of the LRT Line. By virtue of said Resolution, petitioner MTO sent termination notices to its employees, including herein respondents.[43]

Ultimately, it was LRTA's unilateral action which led to the dismissal of petitioners. Hence, petitioners' causes of action for illegal dismissal and unfair labor practice are not solely against MTOI but also against LRTA. The suspect timing of LRTA's non-renewal of the O&M Agreement, its closure of MTOI and takeover of the latter's operations, which happened five days after the strike, inevitably show the intent to evade MTOI's liability for illegally dismissing petitioners. The labor arbiter found that LRTA violated the DOLE secretary's return to work order in closing MTOI, which led to petitioners'

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41 *Id.* at 684–686.

42 *Metro Transit Organization, Inc. v. PIGLAS NFWU-KMU*, 574 Phil. 481 (2008) [Per J. Chico-Nazario, Third Division].

43 *Id.* at 487.

eventual dismissal and LRTA's contractualization of labor force after taking over MTOI's operations:

> Moreover, in the instant case, it is necessary to disregard respondent's separate identities as it evidently appears that respondent [MTOI] acted as a mere alter ego or business conduit of respondent LRTA in defeating public convenience, and justify respondents' illegal and fraudulent means by which complainant union was busted resulting in complainants' termination from employment and the implementation of contractualization of labor by respondents.
>
> . . . .
>
> With the foregoing disquisition, this Office finds that respondents acted in cahoots with each other in terminating the management contract in order to evade their obligations to the employees including the complainants. Thus, this Office finds respondents Metro Transit Organization, Inc. and Light Rail Transit Authority guilty of illegal dismissal. Complainants are therefore entitled to the reliefs owing to an illegally dismissed employee under Article 279 of the Labor Code. But considering the length of time that has elapsed from the date complainants were separated from their employment, this Office is of the view that their reinstatement is no longer feasible and thus, instead of reinstatement, payment of complainant's separation pay equivalent to one month salary for every year of service with full back wages and other benefits in accordance with the provisions of the Labor Code, in the absence of a copy of the appropriate collective bargaining agreement between the parties, appears in order. Thus, complainants should be paid their back wages reckoned from August 1, 2000 up to the issuance of this decision as well as their separation pay, as computed by the Computation and Examination Unit of this Arbitration Branch, copies of said computations are hereto attached as Annexes "A" to "A-5" and made an integral part of this decision.[44]

In my view, the majority should have upheld the findings of the labor arbiter and refused LRTA from using the Labor Code's provision on original charter as a shield to evade its liabilities as petitioners' indirect employer. Moreover, there is a final and executory judgment of the labor arbiter that LRTA's closure and takeover of MTOI's operations was illegal as it violated the security of tenure of petitioners as regular employees. This ruling should no longer be relitigated as this attained finality on May 19, 2006[45] due to LRTA and MTOI's failure to perfect an appeal. Hence, there is no reason for the Commission on Audit to deny petitioners' money claims against LRTA, especially since MTOI has no sufficient assets to answer for the same.

Sadly, in dismissing the present Petition, the majority committed a disservice to petitioners, who have been vigilantly asserting their rights for almost two decades now. The Commission on Audit gravely abused its discretion in failing to recognize LRTA's payment of petitioners' monetary claims as a consequence of the latter's illegal dismissal.

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44 *Rollo*, pp. 186–187.

45 *Id.* at 193.

ACCORDINGLY, I vote to **GRANT** the Petition and **REVERSE** the Commission on Audit's December 17, 2020 Decision No. 2020-556 and January 28, 2022 Resolution No. 2022-009 in COA C.P. Case No. 2018-559.

MARVIC M.V.F. LEONEN
Senior Associate Justice