G.R. No. 207246 – ***JOSE M. ROY III, Petitioner, v. CHAIRPERSON TERESITA J. HERBOSA, THE SECURITIES AND EXCHANGE COMMISSION, PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, AND THE PHILIPPINE STOCK EXCHANGE, Respondents.***

WILSON C. GAMBOA, JR., DANIEL V. CARTAGENA, JOHN WARREN P. GABINETE, ANTONIO V. PESINA, JR., MODESTO MARTIN Y. MANON III, and GERARDO C. EREBAREN, Petitioners-in-Intervention.

Promulgated:

November 22, 2016

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CONCURRING OPINION

BERSAMIN, *J.*:

Petitioner Jose M. Roy III (Roy) initiated this special civil action for *certiorari* and prohibition to seek the declaration of Memorandum Circular No. 8, Series of 2013 (MC No. 8), particularly Section 2 thereof, issued by the Securities and Exchange Commission (SEC) as unconstitutional. Allegedly, MC No. 8 was in contravention of the rule on the nationality of the shareholdings in a public utility pronounced in *Gamboa v. Teves.*[1]

According to Roy, MC No. 8 effectively limited the application of the 60-40 nationality rule to voting and other shares alone; and the SEC thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

Section 2 of MC No. 8 reads:

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, **the required percentage of Filipino shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total**

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[1] G.R. No. 176579, June 28, 2011, 652 SCRA 690; October 9, 2012 (resolution), 682 SCRA 397.

number of outstanding shares of stock, whether or not entitled to vote in the election of directors. (Bold underscoring supplied for emphasis)

I **CONCUR**.

I **VOTE TO DISMISS** the petition for *certiorari* and prohibition of Roy and the petition in intervention. The SEC did not abuse its discretion, least of all gravely, but, on the contrary, strictly complied with the language and tenor of the decision promulgated on June 28, 2011 in *Gamboa v. Teves* and of the resolution promulgated on October 9, 2012 in the same case.

Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. Mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave.[2] The SEC's strict compliance with the interpretation in *Gamboa v. Teves* of the term *capital* as used in Section 11, Article XII of the 1987 Constitution is an indication that it acted without arbitrariness, whimsicality or capriciousness.

In addition, I hereby respectfully give other reasons that compel my vote to dismiss Roy's petition for *certiorari* and prohibition as well as the petition in intervention.

1.
Neither *certiorari* nor prohibition is the proper remedy to assail MC No. 8

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[2] *De los Santos v. Metropolitan Bank and Trust Corporation*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

The remedies of *certiorari* and prohibition respectively provided for in Section 1[3] and Section 2[4] of Rule 65 of the *Rules of Court* are limited to the exercise of *judicial* or *quasi-judicial* functions (except that prohibition also applies to ministerial functions) by the respondent tribunal, board or officer that acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

It is hardly a matter to be disputed that the issuance by the SEC of MC No. 8 was in the exercise of its regulatory functions.[5] In such exercise, the SEC's quasi-judicial functions were not involved. A *quasi-judicial function* relates to the action, discretion, *etc.* of public administrative officers or bodies required to investigate facts, or to ascertain the existence of facts, to hold hearings, and to draw conclusions from the facts as the basis for official actions and for the exercise of discretion of a judicial nature.[6] Indeed, the quasi-judicial or adjudicatory functions of the SEC under its original and exclusive jurisdiction related only to the hearing and determination of controversies and cases involving: (a) intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments; (b) state and corporate affairs in relation to the legal existence of corporations, partnerships and associations or to their franchises; and (c) investors and corporate affairs, particularly in respect of devices and schemes, such as fraudulent practices, employed by directors, officers, business associates, and/or other stockholders, partners, or members of registered firms. They did not relate to the issuance of the regulatory measures like MC No. 8.

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[3] Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

[4] Section 2. *Petition for prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (2a)

[5] See *Securities and Exchange Commission v. Court of Appeals,* G.R. No. 106425 & 106431-32, July 21, 1995, 246 SCRA 738, 740-741. .

[6] *Securities and Exchange Commission v. Universal Rightfield Property Holdings, Inc.,* G.R. No. 181381, July 20, 2015.

In the context of the limitations on the remedies of *certiorari* and prohibition, Roy improperly challenged MC No. 8 by petition for *certiorari* and prohibition.

2.
The Court cannot take cognizance of the petitions for *certiorari* and prohibition in the exercise of its expanded jurisdiction

The Court cannot take cognizance of Roy's petition for *certiorari* and prohibition under its expanded jurisdiction provided in Section 1, paragraph 2,[7] of Article VIII of the Constitution. Such expanded jurisdiction of the Court is confined to reviewing whether or not another branch of the Government (that is, the Executive or the Legislature), including the responsible officials of such other branch, acted without or in excess of jurisdiction, or gravely abused its discretion amounting to lack or excess of jurisdiction.

The expanded jurisdiction of the Court was introduced in the 1987 Constitution precisely to impose on the Court the *duty* of judicial review as the means to neutralize the avoidance or non-interference approach based on the doctrine of political question whenever a controversy came before the Court. As explained in *Araullo v. Aquino III*:[8]

> The background and rationale of the expansion of judicial power under the 1987 Constitution were laid out during the deliberations of the 1986 Constitutional Commission by Commissioner Roberto R. Concepcion (a former Chief Justice of the Philippines) in his sponsorship of the proposed provisions on the Judiciary, where he said:–
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> > The Supreme Court, like all other courts, has one main function: to settle actual controversies involving conflicts of rights which are demandable and enforceable. There are rights which are guaranteed by law but cannot be enforced by a judicial party. In a decided case, a husband complained that his wife was unwilling to perform her duties as a wife. The Court said: "We can tell your wife what her duties as such are and that she is bound to comply with them, but we cannot force her physically to discharge her main marital duty to her husband. There are some rights guaranteed by law, but they are so personal that to enforce them by actual compulsion would be highly derogatory to human dignity."

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[7] Section 1. xxxx

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[8] G.R. No. 209287, July 1, 2014, 728 SCRA 1, 68-69.

> This is why the first part of the second paragraph of Section 1 provides that:
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> > Judicial power includes the duty of courts to settle actual controversies involving rights which are legally demandable or enforceable...
>
> The courts, therefore, cannot entertain, much less decide, hypothetical questions. **In a presidential system of government, the Supreme Court has, also, another important function. The powers of government are generally considered divided into three branches: the Legislative, the Executive and the Judiciary. Each one is supreme within its own sphere and independent of the others. Because of that supremacy power to determine whether a given law is valid or not is vested in courts of justice.**
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> **Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.**
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> **This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.** (Bold emphasis supplied)

Araullo did not stop there, however, and went on to discourse on the procedural aspect of enabling the exercise of the expanded jurisdiction in this wise:

> What are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution?
>
> The present *Rules of Court* uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for *certiorari* and prohibition, and both are governed by Rule 65. A similar remedy of *certiorari* exists under Rule 64, but the remedy is expressly applicable only to the judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.

The ordinary nature and function of the writ of *certiorari* in our present system are aptly explained in *Delos Santos v. Metropolitan Bank and Trust Company*:

> In the common law, from which the remedy of *certiorari* evolved, the writ of *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of *certiorari* was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.
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> The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the *Rules of Court* in which a superior court may issue the writ of certiorari to an inferior court or officer. Section 1, Rule 65 of the *Rules of Court* compellingly provides the requirements for that purpose, *viz*:
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> x x x x
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> The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

Although similar to prohibition in that it will lie for want or excess of jurisdiction, *certiorari* is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. x x x

> **With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions.* This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.**
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> **Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.**
>
> **Necessarily, in discharging its duty under Section 1, *supra*, to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.**[9]

The SEC, albeit under the administrative supervision of the Department of Finance,[10] did not come under the terms *any branch or instrumentality of the Government* used in Section 1, Article VIII of the 1987 Constitution. Although it is an agency vested with adjudicatory as well as regulatory powers, its issuance of MC No. 8 cannot be categorized as an act of either an executive or a legislative character within the context of the phrase *any branch or instrumentality of the Government* used in Section 1, Article VIII of the 1987 Constitution.

Accordingly, the expanded jurisdiction of the Court under Section 1, paragraph 2, Article VIII of the 1987 Constitution was not properly invoked to decide whether or not the SEC had acted with grave abuse of discretion in issuing MC No. 8.

3.
The doctrine of immutability of judgment precludes the Court from re-evaluating the definition of *capital* under Section 11, Article XII of the 1987 Constitution

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[9] Id. at 71-75.

[10] Section 1, Executive Order No. 37 dated April 19, 2011.

In focus is the term *capital* as used in Section 11, Article XII of the Constitution, which provides:

> Section 11. **No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years**. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

In the decision promulgated on June 28, 2011 in *Gamboa v. Teves*, the Court explicitly defined the term *capital* as referring only to shares of stock entitled to vote in the election of directors.[11] In the case of Philippine Long Distance Telephone Company (PLDT), its capital – for purposes of complying with the constitutional requirement on nationality – should include only its common shares, not its total outstanding capital stock comprising both common and non-voting preferred shares.[12]

The Court clarified, however, that –

> Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term capital shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. **In short, the term capital in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.**
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> This interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities. As revealed in the deliberations of the Constitutional Commission, capital refers to the voting stock or **controlling interest** of a corporation, x x x:

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[11] 652 SCRA, at 723.
[12] Id.

x x x x

Thus, 60 percent of the capital assumes, or should result in, **controlling interest** in the corporation. x x x

x x x x

Mere legal title is insufficient to meet the 60 percent Filipino-owned capital required in the Constitution. **Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required.** The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is considered as non-Philippine national[s].[13]

In the June 28, 2011 decision, the Court disposed as follows:

WHEREFORE we PARTLY GRANT the petition and rule that the term "capital" in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is DIRECTED to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law.

SO ORDERED.[14]

Acting subsequently on the motion for reconsideration, the Court promulgated its resolution of October 9, 2012 affirming the foregoing pronouncement of June 28, 2011, holding and disposing:

Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.

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[13] Id. at 726-730.
[14] Id. at 744.

> x x x **Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos.** Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. **In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.** This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.
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> Moreover, such uniform application to each class of shares insures that the "controlling interest" in public utilities always lies in the hands of Filipino citizens. x x x
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> x x x x
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> **WHEREFORE, we DENY the motions for reconsideration WITH FINALITY. No further pleadings shall be entertained.**
>
> SO ORDERED.[15]

The SEC issued MC No. 8 to conform with the Court's pronouncement in its decision of June 28, 2011. As stated, Section 2 of MC No. 8 declared that "[f]or purposes of determining compliance therewith, the required percentage of Filipino shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors."

Roy and the intervenors submit herein, however, that MC No. 8 thereby defied the pronouncement in *Gamboa v. Teves* on the determination of foreign ownership of a public utility by failing "to make a distinction between different classes of shares, and instead offers only a general distinction between voting and all other shares."

I disagree with the submission of Roy and the intervenors.

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[15] 682 SCRA at 443-470.

The objective of the Court in defining the term *capital* as used in Section 11, Article XII of the Constitution was to ensure that both *controlling interest* and *beneficial ownership* were vested in Filipinos. The decision of June 28, 2011 pronounced that *capital* refers only to shares of stock that can vote in the election of directors (*controlling interest*) and owned by Filipinos (*beneficial ownership*). Put differently, 60 percent of the outstanding capital stock (whether or not entitled to vote in the election of directors), coupled with 60 percent of the voting rights, must rest in the hands of Filipinos.

The language and tenor of the assailed Section 2 of MC No. 8 strictly follow the definition of the term *capital* in *Gamboa v. Teves*. Such definition already attained finality at the time Roy filed his petition. The resolution of October 9, 2012 did not *in the least* modify such definition. Hence, the SEC did not abuse its discretion in issuing MC No. 8.

What Roy and the intervenors actually would have the Court do herein is to re-define *capital* so that the 60-40 ownership requirement would apply separately to each class of shares, as discussed in the *body* of the resolution promulgated on October 9, 2012.[16] Such a re-definition, because it would contravene the June 28, 2011 decision or the resolution of October 9, 2012, would actually reopen and relitigate *Gamboa v. Teves*.

Any attempt on the part of Roy and the intervenors to hereby re-define the concept of *capital* will unavoidably disregard the immutability of the final judgment in *Gamboa v. Teves*. That is not permissible. If the main role of the courts of justice is to assist in the enforcement of the law and in the maintenance of peace and order by putting an end to judiciable controversies with finality, nothing serves this role better than the long established doctrine of immutability of judgments.[17] Under the doctrine of finality and immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and even if the modification is made by the court that rendered it or by the Highest Court of the land. Any act that violates this principle must be immediately struck down.[18] This is because the doctrine of immutability of a final judgment serves a *two-fold* purpose, namely: (1) to avoid delay in the

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[16] Id. at 445, where the Court said:

> x x x [T]he 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.

[17] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 4, 2009, 607 SCRA 200, 212-213.

[18] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, controversies cannot drag on indefinitely. The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.[19] Otherwise the rights and obligations of every litigant could hang in suspense for an indefinite period of time.

The only time when the immutable and final judgment may be corrected or modified is when the correction or modification concerns: (1) merely clerical errors; (2) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[20]

The supposed conflict between the dispositive portion or *fallo* of the resolution promulgated on October 9, 2012 and the body of the resolution was not a sufficient cause to disregard the doctrine of immutability. To begin with, the dispositive portion or *fallo* prevails over body of the resolution. It is really fundamental that the dispositive part or *fallo* of a judgment that actually settles and declares the rights and obligations of the parties finally, definitively, and authoritatively controls, *regardless of the presence of inconsistent statements in the body that may tend to confuse*.[21] Indeed, the dispositive part or *fallo* is the final order, while the opinion is but a mere statement, ordering nothing.[22] As pointed out in *Contreras and Gingco v. Felix and China Banking Corp.*:[23]

> x x x More to the point is another well-recognized doctrine, that the final judgment as rendered is the judgment of the court irrespective of all seemingly contrary statements in the decision. "A judgment must be distinguished from an opinion. The latter is the informal expression of the views of the court and cannot prevail against its final order or decision. While the two may be combined in one instrument, the opinion forms no part of the judgment. So, . . . there is a distinction between the findings and conclusions of a court and its judgment. While they may constitute its decision and amount to the rendition of a judgment, they are not the judgment itself. They amount to nothing more than an order for judgment, which must, of course, be distinguished from the judgment." (1 Freeman on Judgments, p. 6) At the root of the doctrine that the premises must yield to the conclusion is perhaps, side by side with the needs of writing finis to

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[19] *Apo Fruits Corporation v. Court of Appeals*, supra, at 213-214.

[20] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Br. 66*, supra, at 56.

[21] *Light Rail Transit Authority v. Court of Appeals*, G.R. Nos. 139275-76 and 140949, November 25, 2004, 444 SCRA 125, 136.

[22] *PH Credit Corporation v. Court of Appeals*, G.R. No. 109648, November 22, 2001, 370 SCRA 155, 166.

[23] 78 Phil. 570, 577-578 (1947).

> litigations, the recognition of the truth that "the trained intuition of the judge continually leads him to right results for which he is puzzled to give [tmu] [un]impeachable legal reasons." "It is an everyday experience of those who study judicial decisions that the results are usually sound, whether the reasoning from which the results purport to flow is sound or not." (The Theory of Judicial Decision, Pound, 36 Harv. Law Review, pp. 9, 51.) It is not infrequent that the grounds of a decision fail to reflect the exact views of the court, especially those of concurring justices in a collegiate court. We often encounter in judicial decisions, lapses, findings, loose statements and generalities which do not bear on the issues or are apparently opposed to the otherwise sound and considered result reached by the court as expressed in the dispositive part, so called, of the decision.

There is also no need to try to harmonize the seeming conflict between the *fallo* of the October 9, 2012 resolution and its body in order to favor Roy and the intervenors. The dispositive portion of the resolution of October 9, 2012, which tersely stated that "we DENY the motions for reconsideration WITH FINALITY," was clear and forthright enough, and should prevail. The only time when the body of the decision or resolution should be controlling is when one can unquestionably find a persuasive showing in the body of the decision or resolution that there was a clear mistake in the dispositive portion.[24] Yet, no effort has been exerted herein to show that there was such an error or mistake in the dispositive portion or *fallo* of the October 9, 2012 resolution.

Under the circumstances, the dispositive portions of both the decision of June 28, 2011 and of the resolution of October 12, 2012 are controlling.

4.
The petition is actually a disguised circumvention of the ban against a second motion for reconsideration

To me, the petition of Roy is an attempt to correct the failure of the dispositive portion of the resolution of October 9, 2012 to echo what was stated in the body of the resolution. In that sense, the petition is actually a second motion for reconsideration disguise as an original petition for *certiorari* and prohibition designed to accomplish something that the intervenors, who were the petitioners in *Gamboa v. Teves*, did not accomplish directly thereat. Hence, the dismissal of the petition and the petition in intervention is fully warranted, for what the intervenors could not do directly should not now be allowed to be done by them indirectly.

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[24] *Cobarrubias v. People*, G.R. No. 160610, August 14, 2009, 596 SCRA 77, 89-90.

In this regard, we reiterate the rule that a second motion for reconsideration is prohibited from being filed in this Court. Section 3, Rule 15 of the *Internal Rules of the Supreme Court* expressly state so, to wit:

> Section 3 *Second motion for reconsideration.* – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> x x x x

Had the intervenors genuinely desired to correct the perceived omission in the resolution of October 9, 2012 in *Gamboa v. Teves*, their proper recourse was not for Roy to bring the petition herein, but to file by themselves a motion for clarification in *Gamboa v. Teves* itself. As the Court observed in *Mahusay v. B.E. San Diego, Inc.*:[25]

> It is a settled rule is that a judgment which has acquired finality becomes immutable and unalterable; hence, it may no longer be modified in any respect except only to correct clerical errors or mistakes. **Clarification after final judgment is, however, allowed when what is involved is a clerical error, not a correction of an erroneous judgment, or dispositive portion of the Decision**. Where there is an ambiguity caused by an omission or mistake in the dispositive portion, the court may clarify such ambiguity, mistake, or omission by an amendment; and in so doing, it may resort to the pleadings filed by the parties, the court's findings of facts and conclusions of law as expressed in the body of the decision. (Bold emphasis supplied.)

The statement in the dispositive portion or *fallo* of the resolution of October 9, 2012 to the effect that "[n]o further pleadings shall be entertained" would not have been a hindrance to the filing of the motion for clarification because such statement referred only to motions that would have sought the reversal or modification of the decision on its merits, or to motions ill-disguised as requests for clarification.[26] Indeed, the intervenors as the petitioners in *Gamboa v. Teves* would not have been precluded from

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[25] G.R. No. 179675, June 8, 2011, 651 SCRA 533, 539-540.

[26] See *Republic v. Unimex Micro Electronics GmBH*, G.R. Nos. 166309-10, November 25, 2008, 571 SCRA 537, 540.

filing such motion that would have presented an unadulterated inquiry arising upon an ambiguity in the decision.[27]

LUCAS P. BERSAMIN
Associate Justice

[27] See *Commissioner on Higher Education v. Mercado*, G.R. No. 157877, March 10, 2006, 484 SCRA 424, 430-431.