

The Hacienda Luisita Corporate Give-Away <http://y.ahoo.it/wlxM92>

CURRENT LEGAL CONCERNS

10 July 2011

Atty. Elpidio V. Peria

The Hacienda Luisita Corporate Give-Away: How The Supreme Court Tried to Dispense Social Justice While Condemning Landless Farmers to Perpetual Penury

The Supreme Court decision in Hacienda Luisita Incorporated v. Presidential Agrarian Reform Council, et.al promulgated last July 5, 2011 constituted a give-away to corporate entities that have similarly availed of the stock distribution option to comply with the mandate of the Comprehensive Agrarian Reform Program (CARP), the signature policy of the first Aquino administration that until now has not been fully implemented, over two decades after its establishment.

In a press release reacting to the decision, even Sen. Gringo Honasan, who heads the Senate Committee on Agrarian Reform, referred to around seven large corporate landholdings in the country which may have similar stock distribution schemes that may be affected by this decision.

Perhaps too aware of such fact, the Supreme Court sought to prevent the application of the principles enunciated in this decision to similar cases where various corporate farms may have availed of similar stock distribution schemes, Associate Justice Presbitero Velasco belatedly mentioned in the last sentence prior to the dispositive part that the Decision will apply to this petition only (*pro hac vice*, which means “this time only”), meaning, its doctrinal value and application to similar cases is limited.

Secondly, the constitutional challenge to sec. 31 of Republic Act 6657, the law on CARP was warded off on various grounds notwithstanding Chief Justice Corona's eloquent dissent arguing for the opposite, that the said provision of the law is unconstitutional.

Sec. 31 is the assailed provision of the CARP law providing the legal basis for stock distribution instead of land, to landless farmers.

Whether Chief Justice Corona is posturing or not for posterity for his dissent, it is the stand that gives the Hacienda Luisita farmers their proper due, most of whom belong to the RA (re-affirm) faction of the Philippine Left, who undoubtedly may have questioned his appointment before as Chief Justice during the time of President Gloria Macapagal Arroyo.

To the disinterested observer, Chief Justice Corona is only speaking his independent stance on the issue, but if he wants to be considered great, he should have swayed a lot more justices to his position.

This is now the challenge for those who seek to have this decision reconsidered, build on the dissents by the Chief Justice and Justices Mendoza, Sereno and Brion and aim for at least 2 justices to reverse their stand, as it is currently a 6-4 decision.

One illogicality of the decision that was forcefully hammered through by the dissent of Justice Sereno is, since the Presidential Agrarian Reform Council (PARC) decision nullifying the stock distribution program of Hacienda Luisita was affirmed, there should not have been any legal basis for the ruling that farmers-workers-beneficiaries (FWBs) of Hacienda Luisita should now have to undergo another referendum to make their choices known whether they want land or stocks.

The Supreme Court has relied on the so-called “operative facts doctrine”, a rule of equity usually invoked in situations where declarations of unconstitutionality of the law or executive acts result in unfair results, thus the doctrine is invoked to prevent inequitable results from those who may have relied or have taken action under the law or executive acts declared as unconstitutional.

But if equity is to be followed, and the operative fact is noted that most farmers have remained mired in poverty in Hacienda Luisita in spite of the stock distribution program for over 16 years, then, the logical result should have been to order the distribution of the land, not to ask them again to vote on the legally questionable stock distribution program.

Furthermore, if the stock distribution is chosen by the farmers in this soon-to-be scheduled referendum, if not reconsidered by the Supreme Court, the inequity will be perpetuated since, even Justice Sereno noted :

while the majority states that a stock distribution option agreement can only be valid if the majority of the shares or the control of the corporation is in the hands of the farmers, they still ruled that the doctrine of operative facts led them to unqualifiedly validate the present corporate arrangement wherein the FWBs control only 33% of the shares of petitioner HLI, without ordering in the dispositive portion of the Decision a condition precedent to the holding of the referendum – the restructuring of HLI whereby majority control is firmly lodged in the FWBs

The inequity will remain given that the farmers would stand to control only around 33% of the shares of corporate entity of the Hacienda Luisita.

Perhaps that kind of operative fact is the one that will convince the other Justices to finally side with the farmers in a reconsideration of this Decision.

Another operative fact that those who will work to reconsider this decision should look into is the unquestioned acceptance by the Supreme Court of supposed benefits given to the farmers, according to the records of the Hacienda Luisita, Inc., when even the Supreme Court itself said that these supposed benefits are being questioned by farmers, though in the end, it was accepting of these allegations without further discussing what proofs were presented to show that these are true.

This is what the Supreme Court said these supposed benefits were, culled from page 193 of the case's Rollo:

From 1989 to 2005, the FWBs were said to have received from HLI salaries and cash benefits, hospital and medical benefits, 240-square meter homelots, 3% of the gross produce from agricultural lands, and 3% of the proceeds of the sale of the 500-hectare

converted land and the 80.51-hectare lot sold to SCTEX. HLI shares totaling 118,391,976.85 were distributed as of April 22, 2005.

These are the facts the Supreme Court should not be blind about, not the invalidated 1989 referendum on the stock distribution plan where allegedly 93% of the farmers voted in favor of the said scheme.

Finally, the fact also that the farmers themselves say, notwithstanding their political leanings which fosters hatred of landlords, they don't want this stock distribution scheme, should be *res ipsa loquitor* (the thing speaks for itself) already to the Supreme Court.

The ball is now in the Supreme Court, but so it is with Chief Justice Corona. If he wants to totally convince the public of his independence of mind and superb leadership skills in the current Supreme Court, he should work on at least two justices to see through the legal arguments and look at the social justice element of this case.

OOo

Any comments? Email me at :pingperia16@yahoo.com