his offense. He should have been more loyal to petitioner company from which he has derived his family bread and butter for seventeen (17) years.

WHEREFORE, the decision of the National Labor Relations Commission in NLRC Case No. V-0247-94, is MODIFIED by deleting the award for separation pay in favor of private respondent Beato Singuran.

SO ORDERED.

Regalado (Chairman), Romero, Mendoza, and *Torres, Jr., JJ.,* concur.

EN BANC

[G.R. No. 122156. February 3, 1997]

MANILA PRINCE HOTEL, *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM, MANILA HOTEL CORPORATION, COMMITTEE ON PRIVATIZATION** and **OFFICE OF THE GOVERNMENT CORPORATE COUNSEL,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTION; DEFINED.**— A constitution is a system of fundamental laws for the governance and administration of a nation. It is supreme, imperious, absolute and unalterable except by the authority from which it emanates. It has been defined as the *fundamental and paramount law of the nation.* It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which government is founded. The fundamental conception in other words is that it is a supreme law to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered.

2. **ID.; ID.; DEEMED WRITTEN IN EVERY STATUTE AND CONTRACT.**— Under the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect. Thus, *since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract.* Adhering to the doctrine of constitutional supremacy, the subject constitutional provision is, as it should be, impliedly written in the bidding rules issued by respondent GSIS, lest the bidding rules be nullified for being violative of the Constitution. It is a basic principle in constitutional law that all laws and contracts must conform with the fundamental law of the land. Those which violate the Constitution lose their reason for being.

3. **ID.; ID.; CONSIDERED SELF-EXECUTING RATHER THAN NON-SELF-EXECUTING.**— In case of doubt, the Constitution should be considered self-executing rather than non-self-executing. . . Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute. (Cruz, Isagani A., *Constitutional Law,* 1993 ed., pp. 8-10)

4. **ID.; ID.; SELF-EXECUTING PROVISIONS; LEGISLATURE NOT PRECLUDED FROM ENACTING LAWS ENFORCING PROVISIONS.**— Quite apparently, Sec. 10, second par., of Art. XII is couched in such a way as not to make it appear that it is non-self-executing but simply for purposes of style. But, certainly, the legislature is not precluded from enacting further laws to enforce the constitutional provision so long as the contemplated statute squares with the Constitution. Minor details may be left to the legislature without the self-executing nature of constitutional provisions. The omission from a constitution of any express provision for a remedy for enforcing a right or liability is not necessarily an indication that it was not intended to be self-executing. The rule is that a self-executing provision of the constitution does not necessarily exhaust legislative power on the subject, but any legislation must be in harmony with the

constitution, further the exercise of constitutional right and make it more available. Subsequent legislation however does not necessarily mean that the subject constitutional provision is not, by itself, fully enforceable.

5. **ID.; ID.; ID.; A PROVISION MAY BE SELF-EXECUTING IN ONE PART AND NON-SELF-EXECUTING IN ANOTHER.—** Respondents also argue that the non-self-executing nature of Sec. 10, second par., of Art. XII is implied from the tenor of the first and third paragraphs of the same section which undoubtedly are not self-executing. The argument is flawed. If the first and third paragraphs are not self-executing because Congress is still to enact measures to encourage the formation and operation of enterprises fully owned by Filipinos, as in the first paragraph, and the State still needs legislation to regulate and exercise authority over foreign investments within its national jurisdiction, as in the third paragraph, then *a fortiori*, by the same logic, the second paragraph can only be self-executing as it does not by its language require any legislation in order to give preference to qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony. A constitutional provision may be self-executing in one part and non-self-executing in another.

6. **ID.; ID.; NATIONAL PATRIMONY; PROVISION ON PREFERENCE TO QUALIFIED FILIPINOS, SELF-EXECUTING.—** Sec. 10, second par., Art. XII of the 1987 Constitution is a mandatory, positive command which is complete in itself and which needs no further guidelines or implementing laws or rules for its enforcement. From its very words the provision does not require any legislation to put it in operation. It is *per se* judicially enforceable. When our Constitution mandates that *[i]n the grant of rights, privileges, and concessions covering national economy and patrimony, the State shall give preference to qualified Filipinos,* it means just that — qualified Filipinos shall be preferred. And when our Constitution declares that a right exists in certain specified circumstances an action may be maintained to enforce such right notwithstanding the absence of any legislation on the subject; consequently, if there is no statute especially enacted to enforce such constitutional right, such right enforces itself by its own inherent potency and puissance, and from which all legislations must take their bearings. Where there is a right there is a remedy. *Ubi jus ibi remedium.*

7. **ID.; ID.; ID.; INCLUDES THE NATIONAL RESOURCES AND CULTURAL HERITAGE.**— When the Constitution speaks of national patrimony, it refers not only to the natural resources of the Philippines, as the Constitution could have very well used the term *natural resources*, but also to the *cultural heritage* of the Filipinos.

8. **ID.; ID.; ID.; MANILA HOTEL CORPORATION, EMBRACED THEREIN; FILIPINO FIRST POLICY PROVISION, APPLICABLE IN SALES OF HOTEL STOCKS.**— For more than eight (8) decades Manila Hotel has bore mute witness to the triumphs and failures, loves and frustrations of the Filipinos; its existence is impressed with public interest; its own historicity associated with our struggle for sovereignty, independence and nationhood. Verily, Manila Hotel has become part of our national economy and patrimony. For sure, 51% of the equity of the MHC comes within the purview of the constitutional shelter for it comprises the majority and controlling stock, so that anyone who acquires or owns the 51% will have actual control and management of the hotel. In this instance, 51% of the MHC cannot be disassociated from the hotel and the land on which the hotel edifice stands. Consequently, we cannot sustain respondents' claim that the *Filipino First Policy* provision is not applicable *since what is being sold is only 51% of the outstanding shares of the corporation, not the Hotel building nor the land upon which the building stands.*

9. **ID.; STATE; SALE BY THE GSIS OF 51% OF ITS SHARE IN MANILA HOTEL CORP., A STATE ACTION, SUBJECT TO CONSTITUTIONAL COMMAND.**— In constitutional jurisprudence, the acts of persons distinct from the government are considered "*state action*" covered by the Constitution (1) when the activity it engages in is a "*public function*"; (2) when the government is so-significantly involved with the private actor as to make the government responsible for his action; and, (3) when the government has approved or authorized the action. It is evident that the act of respondent GSIS in selling 51% of its share in respondent MHC comes under the second and third categories of "*state action*." Without doubt therefore the transaction, although entered into by respondent GSIS, is in fact a transaction of the State and therefore subject to the constitutional command.

10. **ID.; CONSTITUTION; WHEN THE CONSTITUTION ADDRESSES THE STATE, IT REFERS TO BOTH PEOPLE AND GOVERNMENT.—** When the Constitution addresses the State it refers not only to the people but also to the government as elements of the State. After all, government is composed of three (3) divisions of power — legislative, executive and judicial. Accordingly, a constitutional mandate directed to the State is correspondingly directed to the three (3) branches of government. It is undeniable that in this case the subject constitutional injunction is addressed among others to the Executive Department and respondent GSIS, a government instrumentality deriving its authority from the State.

11. **ID.; ID.; NATIONAL PATRIMONY; PREFERENCE TO QUALIFIED FILIPINOS; SALE OF STOCKS OF MANILA HOTEL CORPORATION BY THE GSIS; FILIPINOS ALLOWED TO MATCH THE BID OF FOREIGN ENTITY.—** In the instant case, where a foreign firm submits the highest bid in a public bidding concerning the grant of rights, privileges and concessions covering the national economy and patrimony, thereby exceeding the bid of a Filipino, there is no question that the Filipino will have to be allowed to match the bid of the foreign entity. And if the Filipino matches the bid of a foreign firm the award should go to the Filipino. It must be so if we are to give life and meaning to the *Filipino First Policy* provision of the 1987 Constitution. For, while this may neither be expressly stated nor contemplated in the bidding rules, the constitutional fiat is omnipresent to be simply disregarded. To ignore it would be to sanction a perilous skirting of the basic law.

12. **REMEDIAL LAW; ACTIONS; FOREIGN BIDDERS WITHOUT CAUSE OF ACTION AGAINST GSIS BEFORE ACCEPTANCE OF BID.—** The argument of respondents that petitioner is now estopped from questioning the sale to Renong Berhad since petitioner was well aware from the beginning that a foreigner could participate in the bidding is meritless. Undoubtedly, Filipinos and foreigners alike were invited to the bidding. But foreigners may be awarded the sale only if no Filipino qualifies, or if the qualified Filipino fails to match the highest bid tendered by the foreign entity. In the case before us, while petitioner was already preferred at the inception of the bidding because of the constitutional mandate, petitioner had not yet matched the bid offered by Renong Berhad. Thus it did not

have the right or personality then to compel respondent GSIS to accept its earlier bid. Rightly, only after it had matched the bid of the foreign firm and the apparent disregard by respondent GSIS of petitioner's matching bid did the latter have a cause of action.

13. **ID.; SPECIAL CIVIL ACTION, *CERTIORARI*; FAILURE OF THE GSIS TO EXECUTE CORRESPONDING DOCUMENTS WHERE PETITIONER HAD MATCHED THE BID PRICE BY FOREIGN BIDDER, A GRAVE ABUSE OF DISCRETION.**— Since petitioner has already matched the bid price tendered by Renong Berhad pursuant to the bidding rules, respondent GSIS is left with no alternative but to award to petitioner the block of shares of MHC and to execute the necessary agreements and documents to effect the sale in accordance not only with the bidding guidelines and procedures but with the Constitution as well. The refusal of respondent GSIS to execute the corresponding documents with petitioner as provided in the bidding rules after the latter has matched the bid of the Malaysian firm clearly constitutes grave abuse of discretion.

14. **ID.; SUPREME COURT; DUTY BOUND TO MAKE SURE THAT CONTRACTS DO NOT VIOLATE THE CONSTITUTION OR THE LAWS.**— While it is no business of the Court to intervene in contracts of the kind referred to or set itself up as the judge of whether they are viable or attainable, it is its bounden duty to make sure that they do not violate the Constitution or the laws, or are not adopted or implemented with grave abuse of discretion amounting to lack or excess of jurisdiction. It will never shirk that duty, no matter how buffeted by winds of unfair and ill-informed criticism. Indeed, the Court will always defer to the Constitution in the proper governance of a free society; after all, there is nothing so sacrosanct in any economic policy as to draw itself beyond judicial review when the Constitution is involved.

PADILLA, *J., concurring opinion:*

1. **POLITICAL LAW; CONSTITUTION; PATRIMONY OF THE NATION, CONSTRUED.**— A study of the 1935 Constitution, where the concept of "national patrimony" originated, would show that its framers decided to adopt the even more comprehensive expression "Patrimony of the Nation" in the belief that the phrase encircles a concept embracing not only the natural resources of

the country but practically everything that belongs to the Filipino people, the tangible and the material as well as the intangible and the spiritual assets and possessions of the people. It is to be noted that the framers did not stop with conservation. They knew that conservation alone does not spell progress; and that this may be achieved only through development as a correlative factor to assure to the people not only the exclusive ownership, but also the exclusive benefits of their national patrimony. Moreover, the concept of national patrimony has been viewed as referring not only to our rich natural resources but also to the cultural heritage of our race. There is no doubt in my mind that the Manila Hotel is very much a part of our national patrimony and, as such deserves constitutional protection as to who shall own it and benefit from its operation. This institution has played an important role in our nation's history, having been the venue of many a historical event, and serving as it did, and as it does, as the Philippine Guest House for visiting foreign heads of state, dignitaries, celebrities, and others.

2. **ID.; ID.; MANILA HOTEL, PART OF OUR NATIONAL PATRIMONY.**— There is no doubt in my mind that the Manila Hotel is very much a part of our national patrimony and, as such, deserves constitutional protection as to who shall own it and benefit from its operation. This institution has played an important role in our nation's history, having been the venue of many a historical event, and serving as it did, and as it does, as the Philippine Guest House for visiting foreign heads of state, dignitaries, celebrities, and others.

3. **ID.; ID.; PREFERENCE TO QUALIFIED FILIPINOS; APPLIED TO SALES OF SHARE OF STOCKS OF MANILA HOTEL.**— "Preference to qualified Filipinos," to be meaningful, must refer not only to things that are peripheral, collateral, or tangential. It must touch and affect the very "heart of the existing order." In the field of public bidding in the acquisition of things that pertain to the national patrimony, preference to qualified Filipinos must allow a qualified Filipino to match or equal the higher bid of a non-Filipino; the preference shall not operate only when the bids of the qualified Filipino and the non-Filipino are equal in which case, the award should undisputedly be made to the qualified Filipino. The Constitutional preference should give the qualified Filipino an opportunity to match or equal the higher bid of the non-Filipino bidder if the

preference of the qualified Filipino bidder is to be significant at all. While government agencies, including the courts should re-condition their thinking to such a trend, and make it easy and even attractive for foreign investors to come to our shores, yet we should not preclude ourselves from reserving to us Filipinos certain areas where our national identity, culture and heritage are involved. In the hotel industry, for instance, foreign investors have established themselves creditably, such as in the Shangri-La, the Nikko, the Peninsula, and Mandarin Hotels. This should not stop us from retaining 51% of the capital stock of the Manila Hotel Corporation in the hands of Filipinos. This would be in keeping with the intent of the Filipino people to preserve our national patrimony, including our historical and cultural heritage in the hands of Filipinos.

VITUG, *J., separate opinion:*

1. **POLITICAL LAW; CONSTITUTION; NATIONAL PATRIMONY; PROVISION GIVING PREFERENCE TO QUALIFIED FILIPINOS, SELF-EXECUTORY.**— The provision in our fundamental law which provides that "(i)n the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos" is self-executory. The provision verily does not need, although it can obviously be amplified or regulated by, an enabling law or a set of rules.

2. **ID.; ID.; ID.; PATRIMONY INCLUDES CULTURAL HERITAGE OF THE COUNTRY; MANILA HOTEL, EMBRACED THEREIN.**— The term "patrimony" does not merely refer to the country's natural resources but also to its cultural heritage. A "historical landmark," to use the words of Mr. Justice Justo P. Torres, Jr., Manila Hotel has now indeed become part of Philippine heritage.

3. **ADMINISTRATIVE LAW; GOVERNMENT SERVICE INSURANCE SYSTEM; SALE OF ITS SHARE IN MANILA HOTEL CORPORATION, AN ACT OF THE STATE; CONSTITUTIONAL REQUIREMENT SHOULD BE COMPLIED WITH.**— The act of the Government Service Insurance System ("GSIS"), a government entity which derives its authority from the State, in selling 51% of its share in MHC should be considered an act of the State subject to the Constitutional mandate.

4. **POLITICAL LAW; CONSTITUTION; NATIONAL PATRIMONY; PREFERENCE TO QUALIFIED FILIPINOS; DOES NOT REFER TO ALLOWING QUALIFIED FILIPINOS TO MATCH FOREIGN BID.**— On the pivotal issue of the degree of "preference to qualified Filipinos," I find it somewhat difficult to take the same path traversed by the forceful reasoning of Justice Puno. In the particular case before us, the only meaningful preference, it seems, would really be to allow the qualified Filipino to match the foreign bid for, as a practical matter, I cannot see any bid that literally calls for millions of dollars to be at par (to the last cent) with another. The magnitude of the bids is such that it becomes hardly possible for the competing bids to stand exactly "equal" which alone, under the dissenting view, could trigger the right of preference.

MENDOZA, *J., separate opinion:*

POLITICAL LAW; CONSTITUTION; NATIONAL PATRIMONY; PREFERENCE TO QUALIFIED FILIPINOS; FILIPINO BIDDERS SHOULD BE ALLOWED TO EQUAL BID OF FOREIGN FIRM IN SALE OF STOCKS OF MANILA HOTEL CORPORATION. — I take the view that in the context of the present controversy the only way to enforce the constitutional mandate that "[i]n the grant of rights, privileges and concessions covering the national patrimony the State shall give preference to qualified Filipinos" is to allow petitioner Philippine corporation to equal the bid of the Malaysian firm Renong Berhad for the purchase of the controlling shares of stocks in the Manila Hotel Corporation. Indeed, it is the only way a qualified Filipino or Philippine corporation can be given *preference* in the enjoyment of a right, privilege or concession given by the State, by favoring it over a foreign national or corporation. Under the rules on public bidding of the Government Service and Insurance System, if petitioner and the Malaysian firm had offered the same price per share, "priority [would be given] to the bidder seeking the larger ownership interest in MHC," so that if petitioner bid for more shares, it would be preferred to the Malaysian corporation for that reason and not because it is a Philippine corporation. Consequently, it is only in cases like the present one, where an alien corporation is the highest bidder, that preferential treatment of the Philippine corporation is mandated not by declaring it winner but by allowing it "to match the highest bid in terms of price per share" before it is awarded the shares of stocks. That, to me, is what "preference to qualified Filipinos" means in the context of this case — by favoring Filipinos whenever they are at a disadvantage *vis-a-vis* foreigners.

TORRES, JR., *J., separate opinion:*

POLITICAL LAW; CONSTITUTION; PATRIMONY OF THE NATION; MANILA HOTEL, EMBRACED WITHIN THE MEANING THEREOF; SALE OF ITS STOCKS SHOULD BE LIMITED TO QUALIFIED FILIPINOS.— Section 10, Article XII of the 1987 Constitution should be read in conjunction with Article II of the same Constitution pertaining to "Declaration of Principles and State Policies" which ordain - "The State shall develop a self-reliant and independent national economy, effectively controlled by Filipinos." (Sec. 19), Interestingly, the matter of giving preference to "qualified Filipinos" was one of the highlights in the 1987 Constitution Commission proceedings. The nationalistic provisions of the 1987 Constitution reflect the history and spirit of the Malolos Constitution of 1898, the 1935 Constitution and the 1973 Constitution. I subscribe to the view that history, culture, heritage, and tradition are not legislated and is the product of events, customs, usages and practices. It is actually a product of growth and acceptance by the collective *mores* of a race. It is the spirit and soul of a people. The Manila Hotel is part of our history, culture and heritage. Every inch of the Manila Hotel is witness to historic events (too numerous to mention) which shaped our history for almost 84 years. The history of the Manila Hotel should not be placed in the auction block of a purely business transaction, where profit subverts the cherished historical values of our people. The Filipino should be first under his Constitution and in his own land.

PUNO, *J., dissenting opinion:*

1. **POLITICAL LAW; CONSTITUTION; AS A RULE PROVISIONS THEREOF ARE SELF-EXECUTING.**— A Constitution provides the guiding policies and principles upon which is built the substantial foundation and general framework of the law and government. As a rule, its provisions are deemed self-executing and can be enforced without further legislative

action. Some of its provisions, however, can be implemented only through appropriate laws enacted by the Legislature, hence not self-executing. Courts as a rule consider the provisions of the Constitution as self-executing, rather than as requiring future legislation for their enforcement. The reason is not difficult to discern. For if they are not treated as self-executing, the mandate of the fundamental law ratified by the sovereign people can be easily ignored and nullified by Congress. Suffused with wisdom of the ages is the unyielding rule that legislative actions may give breath to constitutional rights but congressional inaction should not suffocate them.

2. **ID.; ID.; PROVISIONS ARE NOT SELF-EXECUTING WHERE IT MERELY ANNOUNCES A POLICY AND EMPOWERS THE LEGISLATURE TO ENACT LAWS TO CARRY THE POLICY INTO EFFECT.**— Contrariwise, case law lays down the rule that a constitutional provision is not self-executing where it merely announces a policy and its language empowers the Legislature to prescribe the means by which the policy shall be carried into effect.

3. **ID.; ID.; FIRST PARAGRAPH OF SECTION 10, ARTICLE 12, NOT SELF-EXECUTING.**— The first paragraph directs Congress to reserve certain areas of investments in the country to Filipino citizens or to corporations sixty per cent of whose capital stock is owned by Filipinos. It further commands Congress to enact laws that will encourage the formation and operation of one hundred percent Filipino-owned enterprises. In checkered contrast, the second paragraph orders the entire State to give preference to qualified Filipinos in the grant of rights and privileges covering the national economy and patrimony. The third paragraph also directs the State to regulate foreign investments in line with our national goals and well-set priorities. The first paragraph of Section 10 is not self-executing. By its express text, there is a categorical command for Congress to enact laws restricting foreign ownership in certain areas of investments in the country and to encourage the formation and operation of wholly-owned Filipino enterprises.

4. **ID.; ID.; NATIONAL PATRIMONY; PREFERENCE TO QUALIFIED FILIPINOS UNDER PARAGRAPHS 2 AND 3 OF SECTION 10, ARTICLE 12, SELF-EXECUTING.**— The second and third paragraphs of Section 10 are different. They are directed to the State and not to Congress alone which is but one

of the three great branches of our government. Their coverage is also broader for they cover "the national economy and patrimony" and "foreign investments within [the] national jurisdiction" and not merely "certain areas of investments." Beyond debate, they cannot be read as granting Congress the exclusive power to implement by law the policy of giving preference to qualified Filipinos in the conferral of rights and privileges covering our national economy and patrimony. Their language does not suggest that any of the State agency or instrumentality has the privilege to hedge or to refuse its implementation for any reason whatsoever. Their duty to implement is unconditional and it is now. The second and the third paragraphs of Section 10, Article XII are thus self-executing.

5. **ID.; ID.; ID.; MANILA HOTEL CORPORATION, PART OF THE NATIONAL PATRIMONY.**— The second issue is whether the sale of a majority of the stocks of the Manila Hotel Corporation involves the disposition of part of our national patrimony. The records of the Constitutional Commission show that the Commissioners entertained the same view as to its meaning. According to Commissioner Nolledo, "patrimony" refers not only to our rich natural resources but also to the cultural heritage of our race. By this yardstick, the sale of Manila Hotel falls within the coverage of the constitutional provision giving preferential treatment to qualified Filipinos in the grant of rights involving our national patrimony.

6. **ID.; STATE; GSIS, EMBRACED WITHIN THE MEANING THEREOF.**— The third issue is whether the constitutional command to the State includes the respondent GSIS. A look at its charter will reveal that GSIS is a government-owned and controlled corporation that administers funds that come from the monthly contributions of government employees and the government. The funds are held in trust for a distinct purpose which cannot be disposed of indifferently. They are to be used to finance the retirement, disability and life insurance benefits of the employees and the administrative and operational expenses of the GSIS. Excess funds, however, are allowed to be invested in business and other ventures for the benefit of the employees. The GSIS is not a pure private corporation. It is essentially a public corporation created by Congress and granted an original charter to serve a public purpose. It is subject to the jurisdictions of the Civil Service Commission and the Commission on Audit.

As a state-owned and controlled corporation, it is skin-bound to adhere to the policies spelled out in the Constitution especially those designed to promote the general welfare of the people. One of these policies is the Filipino First policy which the people elevated as a constitutional command.

7. **ID.; CONSTITUTION; PROVISIONS THEREOF DEEMED INCLUDED IN ALL LEGISLATIONS AND ALL STATE ACTIONS.**— The constitutional command to enforce the Filipino First policy is addressed to the State and not to Congress alone. Hence, the word "laws" should not be understood as limited to legislations but all state actions which include applicable rules and regulations adopted by agencies and instrumentalities of the State in the exercise of their rule-making power.

8. **ID.; ID.; NATIONAL PATRIMONY; PREFERENCE TO QUALIFIED FILIPINOS; STATE NOT PROHIBITED FROM GRANTING RIGHTS TO FOREIGN FIRM IN THE ABSENCE OF QUALIFIED FILIPINOS.**— In the absence of qualified Filipinos, the State is not prohibited from granting these rights, privileges and concessions to foreigners if the act will promote the weal of the nation.

9. **ID.; ID.; ID.; ID.; CASE AT BAR.**— The right of preference of petitioner arises only if it tied the bid of Renong Berhad. In that instance, all things stand equal, and petitioner, as a qualified Filipino bidder, should be preferred. It is with deep regret that I cannot subscribe to the view that petitioner has a right to match the bid of Renong Berhad. Petitioner's submission must be supported by the rules but even if we examine the rules inside-out a thousand times, they can not justify the claimed right. Under the rules, the right to match the highest bid arises only "if for any reason, the highest bidder cannot be awarded the block of shares x x x." No reason has arisen that will prevent the award to Renong Berhad. It deserves the award as a matter of right for the rules clearly did not give to the petitioner as a qualified Filipino the privilege to match the higher bid of a foreigner. What the rules did not grant, petitioner cannot demand. Our sympathies may be with petitioner but the court has no power to extend the latitude and longtitude of the right of preference as defined by the rules. We are duty-bound to respect that determination even if we differ with the wisdom of their judgment. The right they grant may be

little but we must uphold the grant for as long as the right of preference is not denied. It is only when a State action amounts to a denial of the right that the Court can come in and strike down the denial as unconstitutional.

10. **REMEDIAL LAW; ACTIONS; ESTOPPEL; PARTY ESTOPPED FROM ASSAILING THE WINNING BID OF FOREIGN FIRM FROM BEING AWARE OF THE RULES AND REGULATIONS OF THE BIDDINGS IT AGREED TO RESPECT.**— I submit that petitioner is estopped from assailing the winning bid of Renong Berhad. Petitioner was aware of the rules and regulations of the bidding. It knew that the rules and regulations do not provide that a qualified Filipino bidder can match the winning bid after submitting an inferior bid. It knew that the bid was open to foreigners and that foreigners qualified even during the first bidding. Petitioner cannot be allowed to repudiate the rules which it agreed to respect. It cannot be allowed to obey the rules when it wins and disregard them when it loses. If sustained, petitioners' stance will wreak havoc on the essence of bidding.

PANGANIBAN, ***J., separate dissenting opinion:***

POLITICAL LAW; CONSTITUTION; PATRIMONY OF THE NATION; PREFERENCE TO QUALIFIED FILIPINOS; LOSING FILIPINO NOT GIVEN RIGHT TO EQUAL THE HIGHEST FOREIGN BID.— The majority contends the Constitution should be interpreted to mean that, after a bidding process is concluded, the losing Filipino bidder should be given the right to equal the highest foreign bid, and thus to win. However, the Constitution [Sec. 10 (2), Art. XII] simply states that "in the grant of rights x x x covering the national economy and patrimony, the State shall give preference to qualified Filipinos." The majority concedes that there is no law *defining the extent or degree* of such preference. *Specifically, no statute empowers a losing Filipino bidder to increase his bid and equal that of the winning foreigner*. In the absence of such empowering law, the majority's strained interpretation, I respectfully submit, constitutes unadulterated *judicial legislation, which makes bidding a ridiculous sham where no Filipino can lose and where no foreigner can win.* Only in the Philippines! Aside from being prohibited by the Constitution, such judicial legislation is short-sighted and, viewed properly, gravely prejudicial to long-term Filipino interests. In the absence of a law specifying the degree or extent of the "Filipino First" policy of the Constitution, the constitutional preference for the "qualified Filipinos" may be allowed only where all the bids are equal. In this manner, we put the Filipino ahead without self-destructing him and without being unfair to the foreigner. In short, the Constitution mandates a victory for the qualified Filipino only when the scores are tied. But not when the ballgame is over and the foreigner clearly posted the highest score.

APPEARANCES OF COUNSEL

Arturo M. Tolentino for petitioner.
The Government Corporate Counsel for GSIS.
Yulo Torres Tarriela & Bello Law Offices for Manila Hotel Corp.

D E C I S I O N

BELLOSILLO, *J.*:

The *Filipino First Policy* enshrined in the 1987 Constitution, *i.e., in the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos,*[1] is invoked by petitioner in its bid to acquire 51% of the shares of the Manila Hotel Corporation (MHC) which owns the historic Manila Hotel. Opposing, respondents maintain that the provision is not self-executing but requires an implementing legislation for its enforcement. Corollarily, they ask whether the 51% shares form part of the national economy and patrimony covered by the protective mantle of the Constitution

The controversy arose when respondent Government Service Insurance System (GSIS), pursuant to the privatization program of the Philippine Government under Proclamation No. 50 dated 8 December 1986, decided to sell through public bidding 30% to

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[1] See Sec. 10, par. 2, Art. XII, *1987 Constitution.*

51% of the issued and outstanding shares of respondent MHC. The winning bidder, or the eventual "strategic partner," is *to provide management expertise and/or an international marketing reservation system, and financial support to strengthen the profitability and performance of the Manila Hotel.*[2] In a close bidding held on 18 September 1995 only two (2) bidders participated: petitioner Manila Prince Hotel Corporation, a Filipino corporation, which offered to buy 51% of the MHC or 15,300,000 shares at P41.58 per share, and Renong Berhad, a Malaysian firm, with ITT-Sheraton as its hotel operator, which bid for the same number of shares at P44.00 per share, or P2.42 more than the bid of petitioner.

Pertinent provisions of the bidding rules prepared by respondent GSIS state —

I. EXECUTION OF THE NECESSARY CONTRACTS WITH GSIS/ MHC —

1. The Highest Bidder must comply with the conditions set forth below by October 23, 1995 (reset to November 3, 1995) or the Highest Bidder will lose the right to purchase the Block of Shares and GSIS will instead offer the Block of Shares to the other Qualified Bidders:

a. The Highest Bidder must negotiate and execute with the GSIS/MHC the Management Contract, International Marketing/ Reservation System Contract or other type of contract specified by the Highest Bidder in its strategic plan for the Manila Hotel x x x

b. The Highest Bidder must execute the Stock Purchase and Sale Agreement with GSIS x x x

K. DECLARATION OF THE WINNING BIDDER/STRATEGIC PARTNER —

The Highest Bidder will be declared the Winning Bidder/Strategic Partner after the following conditions are met:

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[2] Par. I. *Introduction and Highlights; Guidelines and Procedures: Second Prequalifications and Public Bidding of the MHC Privatization;* Annex "A", *Consolidated Reply to Comments of Respondents; Rollo*, p. 142.

a. Execution of the necessary contracts with GSIS/MHC not later than October 23, 1995 (reset to November 3, 1995); and

b. Requisite approvals from the GSIS/MHC and COP (Committee on Privatization)/OGCC (Office of the Government Corporate Counsel) are obtained."[3]

Pending the declaration of Renong Berhard as the winning bidder/strategic partner and the execution of the necessary contracts, petitioner in a letter to respondent GSIS dated 28 September 1995 matched the bid price of P44.00 per share tendered by Renong Berhad.[4] In a subsequent letter dated 10 October 1995 petitioner sent a manager's check issued by Philtrust Bank for Thirty-three Million Pesos (P33,000,000.00) *as Bid Security to match the bid of the Malaysian Group, Messrs. Renong Berhad* x x x[5] which respondent GSIS refused to accept.

On 17 October 1995, perhaps apprehensive that respondent GSIS has disregarded the tender of the matching bid and that the sale of 51% of the MHC may be hastened by respondent GSIS and consummated with Renong Berhad, petitioner came to this Court on prohibition and mandamus. On 18 October 1995 the Court issued a temporary restraining order enjoining respondents from perfecting and consummating the sale to the Malaysian firm.

On 10 September 1996 the instant case was accepted by the Court *En Banc* after it was referred to it by the First Division. The case was then set for oral arguments with former Chief Justice Enrique M. Fernando and Fr. Joaquin G. Bernas, S.J., as *amici curiae*.

In the main, petitioner invokes Sec. 10, second par., Art. XII, of the 1987 Constitution and submits that the Manila Hotel *has been identified with the Filipino nation and has practically become a historical monument which reflects the vibrancy of Philippine heritage and culture. It is a proud legacy of an earlier generation*

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[3] Par. V. *Guidelines for the Public Bidding, Id.*, pp. 153-154.

[4] Annex "A", *Petition for Prohibition and Mandamus with Temporary Restraining Order; Rollo*, pp. 13-14.

[5] Annex "B", *Petition for Prohibition and Mandamus with Temporary Restraining Order; Id.*, p. 15.

of Filipinos who believed in the nobility and sacredness of independence and its power and capacity to release the full potential of the Filipino people. To all intents and purposes, it has become a part of the national patrimony.[6] Petitioner also argues that since 51% of the shares of the MHC carries with it the ownership of the business of the hotel which is owned by respondent GSIS, a government-owned and controlled corporation, the hotel business of respondent GSIS being a part of the tourism industry is unquestionably a part of the *national economy.* Thus, any transaction involving 51% of the shares of stock of the MHC is clearly covered by the term *national economy,* to which Sec. 10, second par., Art. XII, 1987 Constitution, applies.[7]

It is also the thesis of petitioner that since Manila Hotel is part of the national patrimony and its business also unquestionably part of the national economy petitioner should be preferred after it has matched the bid offer of the Malaysian firm. For the bidding rules mandate that *if for any reason, the Highest Bidder cannot be awarded the Block of Shares, GSIS may offer this to the other Qualified Bidders that have validly submitted bids provided that these Qualified Bidders are willing to match the highest bid in terms of price per share.*[8]

Respondents except. They maintain that: *First*, Sec. 10, second par., Art. XII, of the 1987 Constitution is merely a statement of principle and policy since it *is not a self-executing provision and requires implementing legislation(s) x x x Thus, for the said provision to operate, there must be existing laws "to lay down conditions under which business may be done."*[9]

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[6] *Petition for Prohibition and Mandamus with Temporary Restraining Order,* pp. 5-6; *Id.*, pp. 6-7.

[7] *Consolidated Reply to Comments of Respondents*, p. 17; *Id.*, p. 133.

[8] Par. V. J. 1, *Guidelines for Public Bidding, Guidelines and Procedures: Second Prequalifications and Public Bidding of the MHC Privatization,* Annex "A", Consolidated Reply to Comments of Respondents; *Id.*, p. 154.

[9] *Respondents' Joint Comment with Urgent Motion to Lift Temporary Restraining Order,* p. 9; *Rollo*, p. 44.

Second, granting that this provision is self-executing, Manila Hotel does not fall under the term *national patrimony* which only refers to lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna and all marine wealth in its territorial sea, and exclusive marine zone as cited in the first and second paragraphs of Sec. 2, Art. XII, 1987 Constitution. According to respondents, while petitioner speaks of the guests who have slept in the hotel and the events that have transpired therein which make the hotel historic, these alone do not make the hotel fall under the *patrimony* of the nation. What is more, the mandate of the Constitution is addressed to the State, not to respondent GSIS which possesses a personality of its own separate and distinct from the Philippines as a State.

Third, granting that the Manila Hotel forms part of the *national patrimony,* the constitutional provision invoked is still inapplicable since what is being sold is only 51% of the outstanding shares of the corporation, not the hotel building nor the land upon which the building stands. Certainly, 51% of the equity of the MHC cannot be considered part of the *national patrimony.* Moreover, if the disposition of the shares of the MHC is really contrary to the Constitution, petitioner should have questioned it right from the beginning and not after it had lost in the bidding.

Fourth, the reliance by petitioner on par. V., subpar. J. 1., of the bidding rules which provides that *if for any reason, the Highest Bidder cannot be awarded the Block of Shares, GSIS may offer this to the other Qualified Bidders that have validly submitted bids provided that these Qualified Bidders are willing to match the highest bid in terms of price per share,* is misplaced. Respondents postulate that the privilege of submitting a matching bid has not yet arisen since it only takes place *if for any reason, the Highest Bidder cannot be awarded the Block of Shares.* Thus the submission by petitioner of a matching bid is premature since Renong Berhad could still very well be awarded the block of shares and the condition giving rise to the exercise of the privilege to submit a matching bid had not yet taken place.

Finally, the prayer for prohibition grounded on grave abuse of discretion should fail since respondent GSIS did not exercise its discretion in a capricious, whimsical manner, and if ever it did abuse its discretion it was not so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law. Similarly, the petition for mandamus should fail as petitioner has no clear legal right to what it demands and respondents do not have an imperative duty to perform the act required of them by petitioner.

We now resolve. A constitution is a system of fundamental laws for the governance and administration of a nation. It is supreme, imperious, absolute and unalterable except by the authority from which it emanates. It has been defined as *the fundamental and paramount law of the nation.*[10] It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which government is founded. The fundamental conception in other words is that it is a supreme law to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered.[11] Under the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect. Thus, *since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract.*

Admittedly, some constitutions are merely declarations of policies and principles. Their provisions command the legislature to enact laws and carry out the purposes of the framers who merely establish an outline of government providing for the different departments of the governmental machinery and securing certain

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[10] *Marbury v. Madison,* 5 U.S. 138 (1803).

[11] 11 Am Jur. 606.

fundamental and inalienable rights of citizens.[12] A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing. But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected, is self-executing. Thus a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.[13]

As against constitutions of the past, modern constitutions have been generally drafted upon a different principle and have often become in effect extensive codes of laws intended to operate directly upon the people in a manner similar to that of statutory enactments, and the function of constitutional conventions has evolved into one more like that of a legislative body. Hence, unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the constitution are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law.[14] This can be cataclysmic. That is why the prevailing view is, as it has always been, that —

> x x x in case of doubt, the Constitution should be considered self-executing rather than non-self-executing x x x Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute.[15]

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[12] 16 Am Jur. 2d 281.

[13] *Id.*, p. 282.

[14] See Note 12.

[15] Cruz, Isagani A., *Constitutional Law*, 1993 ed., pp. 8-10.

Respondents argue that Sec. 10, second par., Art. XII, of the 1987 Constitution is clearly not self-executing, as they quote from discussions on the floor of the 1986 Constitutional Commission —

MR. RODRIGO. Madam President, I am asking this question as the Chairman of the Committee on Style. If the wording of "PREFERENCE" is given to "QUALIFIED FILIPINOS," can it be understood as a preference to qualified Filipinos *vis-a-vis* Filipinos who are not qualified. So, why do we not make it clear? To qualified Filipinos as against aliens?

THE PRESIDENT. What is the question of Commissioner Rodrigo? Is it to remove the word "QUALIFIED?"

MR. RODRIGO. No, no, but say definitely "TO QUALIFIED FILIPINOS" as against whom? As against aliens or over aliens?

MR. NOLLEDO. Madam President, I think that is understood. We use the word "QUALIFIED" because the *existing laws or prospective laws will always lay down conditions under which business may be done. For example, qualifications on capital, qualifications on the setting up of other financial structures, et cetera* (italics supplied by respondents).

MR. RODRIGO. It is just a matter of style.

MR. NOLLEDO. Yes.[16]

Quite apparently, Sec. 10, second par., of Art. XII is couched in such a way as not to make it appear that it is non-self-executing but simply for purposes of style. But, certainly, the legislature is not precluded from enacting further laws to enforce the constitutional provision so long as the contemplated statute squares with the Constitution. Minor details may be left to the legislature without impairing the self-executing nature of constitutional provisions.

In self-executing constitutional provisions, the legislature may still enact legislation to facilitate the exercise of powers directly granted by the constitution, further the operation of such a

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[16] Record of the Constitutional Commission, Vol. 3, 22 August 1986, p. 608.

provision, prescribe a practice to be used for its enforcement, provide a convenient remedy for the protection of the rights secured or the determination thereof, or place reasonable safeguards around the exercise of the right. The mere fact that legislation may supplement and add to or prescribe a penalty for the violation of a self-executing constitutional provision does not render such a provision ineffective in the absence of such legislation. The omission from a constitution of any express provision for a remedy for enforcing a right or liability is not necessarily an indication that it was not intended to be self-executing. The rule is that a self-executing provision of the constitution does not necessarily exhaust legislative power on the subject, but any legislation must be in harmony with the constitution, further the exercise of constitutional right and make it more available.[17] Subsequent legislation however does not necessarily mean that the subject constitutional provision is not, by itself, fully enforceable.

Respondents also argue that the non-self-executing nature of Sec. 10, second par., of Art. XII is implied from the tenor of the first and third paragraphs of the same section which undoubtedly are not self-executing.[18] The argument is flawed. If the first and third paragraphs are not self-executing because Congress is still to enact measures to encourage the formation and operation of enterprises fully owned by Filipinos, as in the first paragraph, and the State still needs legislation to regulate and exercise authority over foreign investments within its national jurisdiction, as in the third paragraph, then *a fortiori*, by the same logic, the second paragraph can only be self-executing as it does not by its language require any legislation in order to give preference to qualified Filipinos in the grant of rights, privileges and concessions covering

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[17] 16 Am Jur 2d 283-284.

[18] Sec. 10, first par., reads: *The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.*

the national economy and patrimony. A constitutional provision may be self-executing in one part and non-self-executing in another.[19]

Even the cases cited by respondents holding that certain constitutional provisions are merely statements of principles and policies, which are basically not self-executing and only placed in the Constitution as moral incentives to legislation, not as judicially enforceable rights — are simply not in point. *Basco v. Philippine Amusements and Gaming Corporation*[20] speaks of constitutional provisions on personal dignity,[21] the sanctity of family life,[22] the vital role of the youth in nation-building,[23] the promotion of social justice,[24] and the values of education.[25]

Sec. 10, third par., reads: *The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.*

[19] *State ex rel. Miller v. O'Malley*, 342 Mo 641, 117 SW2d 319.

[20] G.R. No. 91649, 14 May 1991, 197 SCRA 52.

[21] Sec. 11, Art. II *(Declaration of Principles and State Policies)*, provides that *[t]he State values the dignity of every human person and guarantees full respect for human rights.*

[22] Sec. 12, Art. II, provides that *[t]he State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government.*

[23] Sec. 13, Art. II, provides that *[t]he State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.*

[24] Sec. 1, Art. XIII (Social Justice and Human Rights), provides that *[the] Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.*

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Sec. 2, Art. XIII, provides that *[t]he promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.*

[25] Sec. 2, Art. XIV (Education, Science and Technology, Arts, Culture, and Sports), provides that *[t]he State shall*:

Tolentino v. Secretary of Finance[26] refers to constitutional provisions on social justice and human rights[27] and on education.[28] Lastly, *Kilosbayan, Inc. v. Morato*[29] cites provisions on the promotion of general welfare,[30] the sanctity of family life,[31] the vital role of the youth in nation-building[32] and the promotion of total human liberation and development.[33] A reading of these

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(1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;

(2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;

(3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;

(4) Encourage non-formal, informal, and indigenous learning, independent, and out-of-school study programs particularly those that respond to community needs; and

(5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

[26] G.R. No. 115455, 25 August 1994, 235 SCRA 630.

[27] See Note 25.

[28] Sec. 1, Art. XIV, provides that *[t]he State shall protect and promote the right of all citizens to quality education at all levels of education and shall take appropriate steps to make such education accessible to all.*

[29] G.R. No. 118910, 17 July 1995.

[30] Sec. 5, Art. II (Declaration of Principles and State Policies), provides that *[t]he maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.*

[31] See Note 23.

[32] See Note 24.

[33] Sec. 17, Art. II, provides that *[t]he State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.*

provisions indeed clearly shows that they are not judicially enforceable constitutional rights but merely guidelines for legislation. The very terms of the provisions manifest that they are only principles upon which legislations must be based. *Res ipsa loquitur.*

On the other hand, Sec. 10, second par., Art. XII of the 1987 Constitution is a mandatory, positive command which is complete in itself and which needs no further guidelines or implementing laws or rules for its enforcement. From its very words the provision does not require any legislation to put it in operation. It is *per se* judicially enforceable. When our Constitution mandates that *[i]n the grant of rights, privileges, and concessions covering national economy and patrimony, the State shall give preference to qualified Filipinos,* it means just that — qualified Filipinos shall be preferred. And when our Constitution declares that a right exists in certain specified circumstances an action may be maintained to enforce such right notwithstanding the absence of any legislation on the subject; consequently, if there is no statute especially enacted to enforce such constitutional right, such right enforces itself by its own inherent potency and puissance, and from which all legislations must take their bearings. Where there is a right there is a remedy. *Ubi jus ibi remedium.*

As regards our *national patrimony,* a member of the 1986 Constitutional Commission[34] explains —

> The patrimony of the Nation that should be conserved and developed refers not only to our rich natural resources but also to the cultural heritage of our race. It also refers to our intelligence in arts, sciences and letters. Therefore, we should develop not only our lands, forests, mines and other natural resources but also the mental ability or faculty of our people.

We agree. In its plain and ordinary meaning, the term *patrimony* pertains to heritage.[35] When the Constitution speaks of *national*

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[34] Nolledo, Jose N., *The New Constitution of the Philippines Annotated,* 1990 ed., p. 72.

[35] Webster's *Third New International Dictionary,* 1986 ed., p. 1656.

patrimony, it refers not only to the natural resources of the Philippines, as the Constitution could have very well used the term *natural resources*, but also to the *cultural heritage* of the Filipinos.

Manila Hotel has become a landmark — a living testimonial of Philippine heritage. While it was restrictively an American hotel when it first opened in 1912, it immediately evolved to be truly Filipino. Formerly a concourse for the elite, it has since then become the venue of various significant events which have shaped Philippine history. It was called the *Cultural Center of the 1930's*. It was the site of the festivities during the inauguration of the Philippine Commonwealth. Dubbed as the *Official Guest House of the Philippine Government* it plays host to dignitaries and official visitors who are accorded the traditional Philippine hospitality.[36]

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[36] The guest list of the Manila Hotel includes *Gen. Douglas MacArthur, the Duke of Windsor, President Richard Nixon of U.S.A., Emperor Akihito of Japan, President Dwight Eisenhower of U.S.A., President Nguyen Van Thieu of Vietnam, President Park Chung Hee of Korea, Prime Minister Richard Holt of Australia, Prime Minister Keith Holyoake of New Zealand, President Lyndon Johnson of U.S.A., President Jose Lopez Portillo of Mexico, Princess Margaret of England, Prime Minister Malcolm Fraser of Australia, Prime Minister Yasuhiro Nakasone of Japan, Prime Minister Pierre Elliot Trudeau of Canada, President Raul Alfonsin of Argentina, President Felipe Gonzalez of Spain, Prime Minister Noboru Takeshita of Japan, Prime Minister Hussain Muhammad Ershad of Bangladesh, Prime Minister Bob Hawke of Australia, Prime Minister Yasuhiro Nakasone of Japan, Premier Li Peng of China, Sultan Hassanal Bolkiah of Brunei, President Ramaswami Venkataraman of India, Prime Minister Go Chok Tong of Singapore, Prime Minister Enrique Silva Cimma of Chile, Princess Chulaborn and Mahacharri Sirindhorn of Thailand, Prime Minister Tomiichi Murayama of Japan, Sultan Azlan Shah and Raja Permaisuri Agong of Malaysia, President Kim Young Sam of Korea, Princess Infanta Elena of Spain, President William Clinton of U.S.A., Prime Minister Mahathir Mohamad of Malaysia, King Juan Carlos I and Queen Sofia of Spain, President Carlos Saul Menem of Argentina, Prime Ministers Chatichai Choonhavan and Prem Tinsulanonda of Thailand, Prime Minister Benazir Bhutto of Pakistan, President Vaclav Havel of Czech Republic, Gen. Norman Schwarzkopf of U.S.A., President Ernesto Perez Balladares of Panama, Prime Minister Adolfas Slezevicius of Lithuania, President Akbar Hashemi Rafsanjani of Iran, President Askar Akayev of Kyrgyztan, President Ong Teng Cheong of Singapore, President Frei Ruiz Tagle of Chile, President Le Duc Anh of Vietnam, and Prime Minister Julius Chan of Papua New Guinea, see Memorandum for Petitioner,* pp. 16-19.

The history of the hotel has been chronicled in the book *The Manila Hotel: The Heart and Memory of a City.*[37] During World War II the hotel was converted by the Japanese Military Administration into a military headquarters. When the American forces returned to recapture Manila the hotel was selected by the Japanese together with Intramuros as the two (2) places for their final stand. Thereafter, in the 1950's and 1960's, the hotel became the center of political activities, playing host to almost every political convention. In 1970 the hotel reopened after a renovation and reaped numerous international recognitions, an acknowledgment of the Filipino talent and ingenuity. In 1986 the hotel was the site of a failed *coup d'etat* where an aspirant for vice-president was "proclaimed" President of the Philippine Republic.

For more than eight (8) decades Manila Hotel has bore mute witness to the triumphs and failures, loves and frustrations of the Filipinos; its existence is impressed with public interest; its own historicity associated with our struggle for sovereignty, independence and nationhood. Verily, Manila Hotel has become part of our national economy and patrimony. For sure, 51% of the equity of the MHC comes within the purview of the constitutional shelter for it comprises the majority and controlling stock, so that anyone who acquires or owns the 51% will have actual control and management of the hotel. In this instance, 51% of the MHC cannot be disassociated from the hotel and the land on which the hotel edifice stands. Consequently, we cannot sustain respondents' claim that the *Filipino First Policy* provision is not applicable *since what is being sold is only 51% of the outstanding shares of the corporation, not the Hotel building nor the land upon which the building stands.*[38]

The argument is pure sophistry. The term *qualified Filipinos* as used in our Constitution also includes corporations at least 60% of which is owned by Filipinos. This is very clear from the proceedings of the 1986 Constitutional Commission —

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[37] Authored by Beth Day Romulo.

[38] See Note 9, pp. 15-16; *Rollo*, pp. 50-51.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. I would like to introduce an amendment to the Nolledo amendment. And the amendment would consist in substituting the words "QUALIFIED FILIPINOS" with the following: "CITIZENS OF THE PHILIPPINES OR CORPORATIONS OR ASSOCIATIONS WHOSE CAPITAL OR CONTROLLING STOCK IS WHOLLY OWNED BY SUCH CITIZENS."

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MR. MONSOD. Madam President, apparently the proponent is agreeable, but we have to raise a question. Suppose it is a corporation that is 80-percent Filipino, do we not give it preference?

MR. DAVIDE. The Nolledo amendment would refer to an individual Filipino. What about a corporation wholly owned by Filipino citizens?

MR. MONSOD. At least 60 percent, Madam President.

MR. DAVIDE. Is that the intention?

MR. MONSOD. Yes, because, in fact, we would be limiting it if we say that the preference should only be 100-percent Filipino.

MR. DAVIDE. I want to get that meaning clear because "QUALIFIED FILIPINOS" may refer only to individuals and not to juridical personalities or entities.

MR. MONSOD. We agree, Madam President.[39]

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MR. RODRIGO. Before we vote, may I request that the amendment be read again.

MR. NOLLEDO. The amendment will read: "IN THE GRANT OF RIGHTS, PRIVILEGES AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS." And the word "Filipinos" here, as intended by the proponents, will include not only individual Filipinos but also Filipino-controlled entities or entities fully-controlled by Filipinos.[40]

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[39] Record of the Constitutional Commission, Vol. 3, 22 August 1986, p. 607.

[40] *Id.*, p. 612.

The phrase *preference to qualified Filipinos* was explained thus —

MR. FOZ. Madam President, I would like to request Commissioner Nolledo to please restate his amendment so that I can ask a question.

MR. NOLLEDO. "IN THE GRANT OF RIGHTS, PRIVILEGES AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS."

MR. FOZ. In connection with that amendment, if a foreign enterprise is qualified and a Filipino enterprise is also qualified, will the Filipino enterprise still be given a preference?

MR. NOLLEDO. Obviously.

MR. FOZ. If the foreigner is more qualified in some aspects than the Filipino enterprise, will the Filipino still be preferred?

MR. NOLLEDO. The answer is "yes."

MR. FOZ. Thank you.[41]

Expounding further on the *Filipino First Policy* provision Commissioner Nolledo continues —

MR. NOLLEDO. Yes, Madam President. Instead of "MUST," it will be "SHALL — THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS." This embodies the so-called "Filipino First" policy. That means that Filipinos should be given preference in the grant of concessions, privileges and rights covering the national patrimony.[42]

The exchange of views in the sessions of the Constitutional Commission regarding the subject provision was still further clarified by Commissioner Nolledo-[43]

"Paragraph 2 of Section 10 explicitly mandates the "Pro-Filipino" bias in all economic concerns. It is better known as the FILIPINO FIRST Policy x x x This provision was never found in previous Constitutions x x x

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[41] *Id.*, p. 616.

[42] *Id.*, p. 606.

[43] Nolledo, J.N., *The New Constitution of the Philippines Annotated,* 1990 ed., pp. 930-931.

The term "qualified Filipinos" simply means that preference shall be given to those citizens who can make a viable contribution to the common good, because of credible competence and efficiency. It certainly does NOT mandate the pampering and preferential treatment to Filipino citizens or organizations that are incompetent or inefficient, since such an indiscriminate preference would be counterproductive and inimical to the common good.

In the granting of economic rights, privileges, and concessions, when a choice has to be made between a "qualified foreigner" and a "qualified Filipino," the latter shall be chosen over the former."

Lastly, the word *qualified* is also determinable. Petitioner was so considered by respondent GSIS and selected as one of the *qualified bidders*. It was pre-qualified by respondent GSIS in accordance with its own guidelines so that the sole inference here is that petitioner has been found to be possessed of proven management expertise in the hotel industry, or it has significant equity ownership in another hotel company, or it has an overall management and marketing proficiency to successfully operate the Manila Hotel.[44]

The penchant to try to whittle away the mandate of the Constitution by arguing that the subject provision is not self-executory and requires implementing legislation is quite disturbing. The attempt to violate a clear constitutional provision — by the government itself — is only too distressing. To adopt such a line of reasoning is to renounce the duty to ensure faithfulness to the Constitution. For, even some of the provisions of the Constitution which evidently need implementing legislation have juridical life of their own and can be the source of a judicial remedy. We cannot simply afford the government a defense that arises out of the failure to enact further enabling, implementing or guiding legislation. In fine, the discourse of Fr. Joaquin G. Bernas, S.J., on constitutional government is apt —

The executive department has a constitutional duty to implement laws, including the Constitution, even before Congress acts — provided

[44] Bidders were required to have at least one of the these qualifications to be able to participate in the bidding process; see Note 2.

that there are discoverable legal standards for executive action. When the executive acts, it must be guided by its own understanding of the constitutional command and of applicable laws. The responsibility for reading and understanding the Constitution and the laws is not the sole prerogative of Congress. If it were, the executive would have to ask Congress, or perhaps the Court, for an interpretation every time the executive is confronted by a constitutional command. That is not how constitutional government operates.[45]

Respondents further argue that the constitutional provision is addressed to the State, not to respondent GSIS which by itself possesses a separate and distinct personality. This argument again is at best specious. It is undisputed that the sale of 51% of the MHC could only be carried out with the prior approval of the State acting through respondent Committee on Privatization. As correctly pointed out by Fr. Joaquin G. Bernas, S.J., this fact alone makes the sale of the assets of respondents GSIS and MHC a "*state action*." In constitutional jurisprudence, the acts of persons distinct from the government are considered "*state action*" covered by the Constitution (1) when the activity it engages in is a "*public function*"; (2) when the government is so significantly involved with the private actor as to make the government responsible for his action; and, (3) when the government has approved or authorized the action. It is evident that the act of respondent GSIS in selling 51% of its share in respondent MHC comes under the second and third categories of "*state action*." Without doubt therefore the transaction, although entered into by respondent GSIS, is in fact a transaction of the State and therefore subject to the constitutional command.[46]

When the Constitution addresses the State it refers not only to the people but also to the government as elements of the State. After all, government is composed of three (3) divisions of power — legislative, executive and judicial. Accordingly, a constitutional mandate directed to the State is correspondingly directed to the three (3) branches of government. It is undeniable that in this case

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[45] Memorandum of Fr. Joaquin G. Bernas, S.J., p. 6.

[46] *Id.*, pp. 3-4.

the subject constitutional injunction is addressed among others to the Executive Department and respondent GSIS, a government instrumentality deriving its authority from the State.

It should be stressed that while the Malaysian firm offered the higher bid it is not yet the winning bidder. The bidding rules expressly provide that the highest bidder shall only be declared the winning bidder after it has negotiated and executed the necessary contracts, and secured the requisite approvals. Since the *Filipino First Policy* provision of the Constitution bestows preference on *qualified Filipinos* the mere tending of the highest bid is not an assurance that the highest bidder will be declared the winning bidder. Resultantly, respondents are not bound to make the award yet, nor are they under obligation to enter into one with the highest bidder. For in choosing the awardee respondents are mandated to abide by the dictates of the 1987 Constitution the provisions of which are presumed to be known to all the bidders and other interested parties.

Adhering to the doctrine of constitutional supremacy, the subject constitutional provision is, as it should be, impliedly written in the bidding rules issued by respondent GSIS, lest the bidding rules be nullified for being violative of the Constitution. It is a basic principle in constitutional law that all laws and contracts must conform with the fundamental law of the land. Those which violate the Constitution lose their reason for being.

Paragraph V. J. 1 of the bidding rules provides that *[i]f for any reason the Highest Bidder cannot be awarded the Block of Shares, GSIS may offer this to other Qualified Bidders that have validly submitted bids provided that these Qualified Bidders are willing to match the highest bid in terms of price per share.*[47] Certainly, the constitutional mandate itself is *reason enough* not to award the block of shares immediately to the foreign bidder notwithstanding its submission of a higher, or even the highest, bid. In fact, we cannot conceive of a *stronger reason* than the constitutional injunction itself.

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[47] See Note 8.

In the instant case, where a foreign firm submits the highest bid in a public bidding concerning the grant of rights, privileges and concessions covering the national economy and patrimony, thereby exceeding the bid of a Filipino, there is no question that the Filipino will have to be allowed to match the bid of the foreign entity. And if the Filipino matches the bid of a foreign firm the award should go to the Filipino. It must be so if we are to give life and meaning to the *Filipino First Policy* provision of the 1987 Constitution. For, while this may neither be expressly stated nor contemplated in the bidding rules, the constitutional fiat is omnipresent to be simply disregarded. To ignore it would be to sanction a perilous skirting of the basic law.

This Court does not discount the apprehension that this policy may discourage foreign investors. But the Constitution and laws of the Philippines are understood to be always open to public scrutiny. These are given factors which investors must consider when venturing into business in a foreign jurisdiction. Any person therefore desiring to do business in the Philippines or with any of its agencies or instrumentalities is presumed to know his rights and obligations under the Constitution and the laws of the forum.

The argument of respondents that petitioner is now estopped from questioning the sale to Renong Berhad since petitioner was well aware from the beginning that a foreigner could participate in the bidding is meritless. Undoubtedly, Filipinos and foreigners alike were invited to the bidding. But foreigners may be awarded the sale only if no Filipino qualifies, or if the qualified Filipino fails to match the highest bid tendered by the foreign entity. In the case before us, while petitioner was already preferred at the inception of the bidding because of the constitutional mandate, petitioner had not yet matched the bid offered by Renong Berhad. Thus it did not have the right or personality then to compel respondent GSIS to accept its earlier bid. Rightly, only after it had matched the bid of the foreign firm and the apparent disregard by respondent GSIS of petitioner's matching bid did the latter have a cause of action.

Besides, there is no time frame for invoking the constitutional safeguard unless perhaps the award has been finally made. To insist on selling the Manila Hotel to foreigners when there is a Filipino group willing to match the bid of the foreign group is to insist that government be treated as any other ordinary market player, and bound by its mistakes or gross errors of judgment, regardless of the consequences to the Filipino people. The miscomprehension of the Constitution is regrettable. Thus we would rather remedy the indiscretion while there is still an opportunity to do so than let the government develop the habit of forgetting that the Constitution lays down the basic conditions and parameters for its actions.

Since petitioner has already matched the bid price tendered by Renong Berhad pursuant to the bidding rules, respondent GSIS is left with no alternative but to award to petitioner the block of shares of MHC and to execute the necessary agreements and documents to effect the sale in accordance not only with the bidding guidelines and procedures but with the Constitution as well. The refusal of respondent GSIS to execute the corresponding documents with petitioner as provided in the bidding rules after the latter has matched the bid of the Malaysian firm clearly constitutes grave abuse of discretion.

The *Filipino First Policy* is a product of Philippine nationalism. It is embodied in the 1987 Constitution not merely to be used as a guideline for future legislation but primarily to be enforced; so must it be enforced. This Court as the ultimate guardian of the Constitution will never shun, under any reasonable circumstance, the duty of upholding the majesty of the Constitution which it is tasked to defend. It is worth emphasizing that it is not the intention of this Court to impede and diminish, much less undermine, the influx of foreign investments. Far from it, the Court encourages and welcomes more business opportunities but avowedly sanctions the preference for Filipinos whenever such preference is ordained by the Constitution. The position of the Court on this matter could have not been more appropriately articulated by Chief Justice Narvasa —

> As scrupulously as it has tried to observe that it is not its function to substitute its judgment for that of the legislature or the executive about the wisdom and feasibility of legislation economic in nature, the

Supreme Court has not been spared criticism for decisions perceived as obstacles to economic progress and development x x x in connection with a temporary injunction issued by the Court's First Division against the sale of the Manila Hotel to a Malaysian Firm and its partner, certain statements were published in a major daily to the effect that that injunction "again demonstrates that the Philippine legal system can be a major obstacle to doing business here."

Let it be stated for the record once again that while it is no business of the Court to intervene in contracts of the kind referred to or set itself up as the judge of whether they are viable or attainable, it is its bounden duty to make sure that they do not violate the Constitution or the laws, or are not adopted or implemented with grave abuse of discretion amounting to lack or excess of jurisdiction. It will never shirk that duty, no matter how buffeted by winds of unfair and ill-informed criticism.[48]

Privatization of a business asset for purposes of enhancing its business viability and preventing further losses, regardless of the character of the asset, should not take precedence over non-material values. A commercial, nay even a budgetary, objective should not be pursued at the expense of national pride and dignity. For the Constitution enshrines higher and nobler non-material values. Indeed, the Court will always defer to the Constitution in the proper governance of a free society; after all, there is nothing so sacrosanct in any economic policy as to draw itself beyond judicial review when the Constitution is involved.[49]

Nationalism is inherent in the very concept of the Philippines being a democratic and republican state, with sovereignty residing in the Filipino people and from whom all government authority emanates. In nationalism, the happiness and welfare of the people

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[48] Keynote Address at the ASEAN Regional Symposium on Enforcement of Industrial Property Rights held 23 October 1995 at New World Hotel, Makati City.

[49] Speech of Senior Associate Justice Teodoro R. Padilla at the Induction of Officers and Directors of the PHILCONSA for 1996 held 16 January 1996 at the Sky-Top, Hotel Intercontinental, Makati City.

must be the goal. The nation-state can have no higher purpose. Any interpretation of any constitutional provision must adhere to such basic concept. Protection of foreign investments, while laudible, is merely a policy. It cannot override the demands of nationalism.[50]

The Manila Hotel or, for that matter, 51% of the MHC, is not just any commodity to be sold to the highest bidder solely for the sake of privatization. We are not talking about an ordinary piece of property in a commercial district. We are talking about a historic relic that has hosted many of the most important events in the short history of the Philippines as a nation. We are talking about a hotel where heads of states would prefer to be housed as a strong manifestation of their desire to cloak the dignity of the highest state function to their official visits to the Philippines. Thus the Manila Hotel has played and continues to play a significant role as an authentic repository of twentieth century Philippine history and culture. In this sense, it has become truly a reflection of the Filipino soul — *a place with a history of grandeur; a most historical setting that has played a part in the shaping of a country.*[51]

This Court cannot extract rhyme nor reason from the determined efforts of respondents to sell the historical landmark — this *Grand Old Dame* of hotels in Asia — to a total stranger. For, indeed, the conveyance of this epic exponent of the Filipino psyche to alien hands cannot be less than mephistophelian for it is, in whatever manner viewed, a veritable alienation of a nation's soul for some pieces of foreign silver. And so we ask: What advantage, which cannot be equally drawn from a qualified Filipino, can be gained by the Filipinos if Manila Hotel — and all that it stands for — is sold to a non-Filipino? How much of national pride will vanish if the nation's cultural heritage is entrusted to a foreign entity? On the other hand, how much dignity will be preserved and realized if the national patrimony is safekept in the hands of a *qualified*, zealous and well-meaning Filipino? This is the plain and

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[50] Memorandum of Authorities submitted by former Chief Justice Enrique M. Fernando, p. 5.

[51] 8 March 1996 issue of *Philippine Daily Inquirer,* p. B13.

simple meaning of the *Filipino First Policy* provision of the Philippine Constitution. And this Court, heeding the clarion call of the Constitution and accepting the duty of being the elderly watchman of the nation, will continue to respect and protect the sanctity of the Constitution.

WHEREFORE, respondents GOVERNMENT SERVICE INSURANCE SYSTEM, MANILA HOTEL CORPORATION, COMMITTEE ON PRIVATIZATION and OFFICE OF THE GOVERNMENT CORPORATE COUNSEL are directed to CEASE and DESIST from selling 51% of the shares of the Manila Hotel Corporation to RENONG BERHAD, and to ACCEPT the matching bid of petitioner MANILA PRINCE HOTEL CORPORATION to purchase the subject 51% of the shares of the Manila Hotel Corporation at P44.00 per share and thereafter to execute the necessary agreements and documents to effect the sale, to issue the necessary clearances and to do such other acts and deeds as may be necessary for the purpose.

SO ORDERED.

Regalado, Davide, Jr., Romero, Kapunan, Francisco, and *Hermosisima, Jr., JJ.,* concur.

Narvasa, C.J., I joins Justice Puno in his dissent.

Padilla, Vitug, Mendoza, and *Torres, Jr., JJ.,* see concurring opinion.

Puno and *Panganiban, JJ.,,* please see separate (Dissenting) opinion.

PADILLA, ***J., concurring:***

I concur with the *ponencia* of Mr. Justice Bellosillo. At the same time, I would like to expound a bit more on the concept of national patrimony as including within its scope and meaning institutions such as the Manila Hotel.

It is argued by petitioner that the Manila Hotel comes under "national patrimony" over which qualified Filipinos have the preference, in ownership and operation. The Constitutional provision on point states:

"xxx xxx xxx

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos."[1]

Petitioner's argument, I believe, is well taken. Under the 1987 Constitution, "national patrimony" consists of the natural resources provided by Almighty God (Preamble) in our territory (Article 1) consisting of land, sea, and air.[2] A study of the 1935 Constitution, where the concept of "national patrimony" originated, would show that its framers decided to adopt the even more comprehensive expression "Patrimony of the Nation" in the belief that the phrase encircles a concept embracing not only the natural resources of the country but practically everything that belongs to the Filipino people, the tangible and the material as well as the intangible and the spiritual assets and possessions of the people. It is to be noted that the framers did not stop with conservation. They knew that conservation alone does not spell progress; and that this may be achieved only through development as a correlative factor to assure to the people not only the exclusive ownership, but also the exclusive benefits of their national patrimony.[3]

Moreover, the concept of national patrimony has been viewed as referring not only to our rich natural resources but also to the cultural heritage of our race.[4]

There is no doubt in my mind that the Manila Hotel is very much a part of our national patrimony and, as such, deserves constitutional protection as to who shall own it and benefit from its operation. This institution has played an important role in our nation's history, having been the venue of many a historical event, and serving as it did, and as it does, as the Philippine Guest House

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[1] Article XII, Section 10, par. 2, 1987 Constitution.

[2] Padilla, The 1987 Constitution of the Republic of the Philippines, Volume III, p. 89.

[3] Sinco, Philippine Political Law, 11th ed., p. 112.

[4] Nolledo, The New Constitution of the Philippines, Annotated, 1990 ed, p. 72.

for visiting foreign heads of state, dignitaries, celebrities, and others.[5]

It is therefore our duty to protect and preserve it for future generations of Filipinos. As President Manuel L. Quezon once said, we must exploit the natural resources of our country, but we should do so with an eye to the welfare of the future generations. In other words, the leaders of today are the trustees of the patrimony of our race. To preserve our national patrimony and reserve it for Filipinos was the intent of the distinguished gentlemen who first framed our Constitution. Thus, in debating the need for nationalization of our lands and natural resources, one expounded that we should "put more teeth into our laws, and; not make the nationalization of our lands and natural resources a subject of ordinary legislation but of constitutional enactment."[6] To quote further: "Let not our children be mere tenants and trespassers in their own country. Let us preserve and bequeath to them what is rightfully theirs, free from all foreign liens and encumbrances."[7]

Now, a word on preference. In my view "preference to qualified Filipinos," to be meaningful, must refer not only to things that are peripheral, collateral, or tangential. It must touch and affect the very "heart of the existing order." In the field of public bidding in the acquisition of things that pertain to the national patrimony, preference to qualified Filipinos must allow a qualified Filipino to match or equal the higher bid of a non-Filipino; the preference shall not operate only when the bids of the qualified Filipino and the non-Filipino are equal in which case, the award should undisputedly be made to the qualified Filipino. The Constitutional preference should give the qualified Filipino an opportunity to match or equal the higher bid of the non-Filipino bidder if the preference of the qualified Filipino bidder is to be significant at all.

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[5] Memorandum for Petitioner, p. 1.

[6] Laurel, Proceedings of the Philippine Constitutional Convention (1934-1935), p. 507.

[7] *Id.*, p. 562.

It is true that in this present age of globalization of attitude towards foreign investments in our country, stress is on the elimination of barriers to foreign trade and investment in the country. While government agencies, including the courts should re-condition their thinking to such a trend, and make it easy and even attractive for foreign investors to come to our shores, yet we should not preclude ourselves from reserving to us Filipinos certain areas where our national identity, culture and heritage are involved. In the hotel industry, for instance, foreign investors have established themselves creditably, such as in the Shangri-La, the Nikko, the Peninsula, and Mandarin Hotels. This should not stop us from retaining 51% of the capital stock of the Manila Hotel Corporation in the hands of Filipinos. This would be in keeping with the intent of the Filipino people to preserve our national patrimony, including our historical and cultural heritage in the hands of Filipinos.

VITUG, *J., separate opinion:*

I agree with Mr. Justice Josue N. Bellosillo on his clear-cut statements, shared by Mr. Justice Reynato S. Puno in a well written separate (dissenting) opinion, that:

First, the provision in our fundamental law which provides that "(i)n the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos"[1] is self-executory. The provision verily does not need, although it can obviously be amplified or regulated by, an enabling law or a set of rules.

Second, the term "patrimony" does not merely refer to the country's natural resources but also to its cultural heritage. A "historical landmark," to use the words of Mr. Justice Justo P. Torres, Jr., Manila Hotel has now indeed become part of Philippine heritage.

Third, the act of the Government Service Insurance System ("GSIS"), a government entity which derives its authority from

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[1] Second par., Section 10, Art. XII, 1987 Constitution.

the State, in selling 51% of its share in MHC should be considered an act of the State subject to the Constitutional mandate.

On the pivotal issue of the degree of "preference to qualified Filipinos," I find it somewhat difficult to take the same path traversed by the forceful reasoning of Justice Puno. In the particular case before us, the only meaningful preference, it seems, would really be to allow the qualified Filipino to match the foreign bid for, as a practical matter, I cannot see any bid that literally calls for millions of dollars to be at par (to the last cent) with another. The magnitude of the bids is such that it becomes hardly possible for the competing bids to stand exactly "equal" which alone, under the dissenting view, could trigger the right of preference.

It is most unfortunate that Renong Berhad has not been spared this great disappointment, a letdown that it did not deserve, by a simple and timely advise of the proper rules of bidding along with the peculiar constitutional implications of the proposed transaction. It is also regrettable that the Court at times is seen to, instead, be the refuge for bureaucratic inadequacies which create the perception that it even takes on non-justiciable controversies.

All told, I am constrained to vote for granting the petition.

MENDOZA, *J., Separate opinion in the judgment:*

I take the view that in the context of the present controversy the only way to enforce the constitutional mandate that "[i]n the grant of rights, privileges and concessions covering the national patrimony the State shall give preference to qualified Filipinos"[1] is to allow petitioner Philippine corporation to equal the bid of the Malaysian firm Renong Berhad for the purchase of the controlling shares of stocks in the Manila Hotel Corporation. Indeed, it is the only way a qualified Filipino or Philippine corporation can be given *preference* in the enjoyment of a right, privilege or concession given by the State, by favoring it over a foreign national or corporation.

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[1] Art. XII, § 10, second paragraph.

Under the rules on public bidding of the Government Service and Insurance System, if petitioner and the Malaysian firm had offered the same price per share, "priority [would be given] to the bidder seeking the larger ownership interest in MHC,"[2] so that if petitioner bid for more shares, it would be preferred to the Malaysian corporation for that reason and not because it is a Philippine corporation. Consequently, it is only in cases like the present one, where an alien corporation is the highest bidder, that preferential treatment of the Philippine corporation is mandated not by declaring it winner but by allowing it "to match the highest bid in terms of price per share" before it is awarded the shares of stocks.[3] That, to me, is what "preference to qualified Filipinos" means in the context of this case — by favoring Filipinos whenever they are at a disadvantage *vis-a-vis* foreigners.

This was the meaning given in *Co Chiong v. Cuaderno*[4] to a 1947 statute giving "preference to Filipino citizens in the lease of public market stalls."[5] This Court upheld the cancellation of existing leases covering market stalls occupied by persons who were not Filipinos and the award thereafter of the stalls to qualified Filipino vendors as ordered by the Department of Finance. Similarly, in *Vda. de Salgado v. De la Fuente*,[6] this Court sustained the validity of a municipal ordinance passed pursuant to the statute (R.A. No. 37), terminating existing leases of public market stalls and granting preference to Filipino citizens in the issuance of new licenses for the occupancy of the stalls. In *Chua Lao v. Raymundo*,[7] the preference granted under the statute was held to apply to cases in which Filipino vendors sought the same stalls occupied by alien vendors in the public markets even if there were

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[2] GUIDELINES AND PROCEDURES: SECOND PREQUALIFICATION AND PUBLIC BIDDING OF THE MHC PRIVATIZATION (hereafter referred to as GUIDELINES), Part. V, par. H(4).

[3] *Id.*

[4] 83 Phil. 242 (1949).

[5] RA. No. 37, § 1.

[6] 87 Phil. 343 (1950).

[7] 104 Phil. 302 (1958).

available other stalls as good as those occupied by aliens. "The law, apparently, is applicable whenever there is a conflict of interest between Filipino applicants and aliens for lease of stalls in public markets, in which situation the right to preference immediately arises."[8]

Our legislation on the matter thus antedated by a quarter of a century efforts began only in the 1970's in America to realize the promise of equality, through affirmative action and reverse discrimination programs designed to remedy past discrimination against colored people in such areas as employment, contracting and licensing.[9] Indeed, in vital areas of our national economy, there are situations in which the only way to place Filipinos in control of the national economy as contemplated in the Constitution[10] is to give them preferential treatment where they can at least stand on equal footing with aliens.

There need be no fear that thus preferring Filipinos would either invite foreign retaliation or deprive the country of the benefit of foreign capital or know-how. We are dealing here not with common trades or common means of livelihood which are open to aliens in our midst,[11] but with the sale of government property, which is like the grant of government largess or benefits. In the words of Art. XII, § 10, we are dealing here with "rights, privileges and concessions covering the national economy" and therefore no one should begrudge us if we give preferential treatment to our citizens. That at any rate is the command of the Constitution. For the Manila Hotel is a business owned by the Government. It is being privatized. Privatization should result in the relinquishment of the business in favor of private individuals and groups who are Filipino citizens, not in favor of aliens.

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[8] *Id.*, at 309.

[9] For an excellent analysis of American cases on reverse discrimination in these areas, see GERALD GUNTHER, CONSTITUTIONAL LAW 780-819 (1991).

[10] Art 11, § 19: "The State shall develop a *self-reliant and independent* national economy *effectively controlled by Filipinos.*" (Italics added)

[11] *See* Villegas *v.* Hiu Chiung Tsai Pao Ho, 86 SCRA 270 (1978) (invalidating an ordinance imposing a flat fee of P500 on aliens for the privilege of earning a livelihood)

Nor should there be any doubt that by awarding the shares of stocks to petitioner we would be trading competence and capability for nationalism. Both petitioner and the Malaysian firm are qualified, having hurdled the prequalification process.[12] It is only the result of the public bidding that is sought to be modified by enabling petitioner to up its bid to equal the highest bid.

Nor, finally, is there any basis for the suggestion that to allow a Filipino bidder to match the highest bid of an alien could encourage speculation, since all the Filipino entity would then do would be not to make a bid or make only a token one and, after it is known that a foreign bidder has submitted the highest bid, make an offer matching that of the foreign firm. This is not possible under the rules on public bidding of the GSIS. Under these rules there is a minimum bid required (P36.67 per share for a range of 9 to 15 million shares).[13] Bids below the minimum will not be considered. On the other hand, if the Filipino entity, after passing the prequalification process, does not submit a bid, he will not be allowed to match the highest bid of the foreign firm because this is a privilege allowed only to those who have "validly submitted bids."[14] The suggestion is, to say the least, fanciful and has no basis in fact.

For the foregoing reasons, I vote to grant the petition.

TORRES, JR., ***J.,*** *separate opinion:*

Constancy in law is not an attribute of a judicious mind. I say this as we are confronted in the case at bar with legal and constitutional issues — and yet I am driven so to speak on the

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[12] Petitioner passed the criteria set forth in the GUIDELINES, Part IV, par. F(4), of the GSIS relating to the following:

a. Business management expertise, track record, and experience

b. Financial capability

c. Feasibility and acceptability of the proposed strategic plan for The Manila Hotel

[13] GUIDELINES, Part V, par. C (1) (3) in relation to Part I.

[14] *Id.*, Part V, par. V (1).

side of history. The reason perhaps is due to the belief that in the words of Justice Oliver Wendell Holmes, Jr., a "page of history is worth a volume of logic."

I will, however, attempt to share my thoughts on whether the Manila Hotel has a historical and cultural aspect within the meaning of the constitution and thus, forming part of the "patrimony of the nation."

Section 10, Article XII of the 1987 Constitution provides :

xxx xxx xxx

"In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national goals and priorities."

The foregoing provisions should be read in conjunction with Article II of the same Constitution pertaining to "Declaration of Principles and State Policies" which ordain —

"The State shall develop a self-reliant and independent national economy, effectively controlled by Filipinos." (Sec. 19).

Interestingly, the matter of giving preference to "qualified Filipinos" was one of the highlights in the 1987 Constitution Commission proceedings, thus:

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"MR. NOLLEDO. The Amendment will read: "IN THE GRANT OF RIGHTS, PRIVILEGES AND CONCESSIONS COVERING THE NATIONAL ECONOMY AND PATRIMONY, THE STATE SHALL GIVE PREFERENCE TO QUALIFIED FILIPINOS." And the word "Filipinos" here, as intended by the proponents, will include not only individual Filipinos but also Filipino-Controlled entities fully controlled by Filipinos (Vol. III, Records of the Constitutional Commission, p. 608).

MR. MONSOD. We also wanted to add, as Commissioner Villegas said, this committee and this body already approved what is known as the Filipino First policy which was suggested by Commissioner de

Castro. So that it is now in our Constitution (Vol. IV, Records of the Constitutional Commission, p. 225).

Commissioner Jose Nolledo explaining the provision adverted to above, said:

"MR. NOLLEDO. In the grant of rights, privileges and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

MR. FOZ. In connection with that amendment, if a foreign enterprise is qualified and the Filipinos enterprise is also qualified, will the Filipino enterprise still be given a preference?

MR. NOLLEDO. Obviously.

MR. FOZ. If the foreigner is more qualified in some aspects than the Filipino enterprise, will the Filipino still be preferred?

MR. NOLLEDO. The answer is "yes." (Vol. III p. 616, Records of the Constitutional Commission).

The nationalistic provisions of the 1987 Constitution reflect the history and spirit of the Malolos Constitution of 1898, the 1935 Constitution and the 1973 Constitution. That we have not reneged on this nationalist policy is articulated in one of the earliest cases, this Court said —

"The 'nationalistic tendency is manifested in various provisions of the Constitution. x x x It cannot therefore be said that a law imbued with the same purpose and spirit underlying many of the provisions of the Constitution is unreasonable, invalid or unconstitutional (Ichong, et al. *vs.* Hernandez, et al., 101 Phil. 1155).'"

I subscribe to the view that history, culture, heritage, and tradition are not legislated and is the product of events, customs, usages and practices. It is actually a product of growth and acceptance by the collective *mores* of a race. It is the spirit and soul of a people.

The Manila Hotel is part of our history, culture and heritage. Every inch of the Manila Hotel is witness to historic events (too numerous to mention) which shaped our history for almost 84 years.

As I intimated earlier, it is not my position in this opinion, to examine the single instances of the legal largesse which have given rise to the controversy, as I believe that has been exhaustively discussed in the *ponencia.* Suffice it to say at this point that the history of the Manila Hotel should not be placed in the auction block of a purely business transaction, where profit subverts the cherished historical values of our people.

As a historical landmark in this "Pearl of the Orient Seas", it has its enviable tradition which, in the words of philosopher Salvador de Madarriaga, (tradition) is "more of a river than a stone, it keeps flowing, and one must view the flow in both directions. If you look towards the hill from which the river flows, you see tradition in the form of forceful currents that push the river or people towards the future; and if you look the other way, you progress."

Indeed, tradition and progress are the same, for progress depends on the kind of tradition. Let us not jettison the tradition of the Manila Hotel and thereby repeat our colonial history.

I grant, of course, that men of the law can see the same subject in different lights.

I remember, however, a Spanish proverb which says — "He is always right who suspects that he makes mistakes." On this note, I say that if I have to make a mistake, I would rather err upholding the belief that the Filipino be first under his Constitution and in his own land.

I vote to GRANT the petition.

PUNO, *J., dissenting:*

This is a petition for prohibition and *mandamus* filed by the Manila Prince Hotel Corporation, a domestic corporation, to stop the Government Service Insurance System (GSIS) from selling the *controlling shares* of the Manila Hotel Corporation to a *foreign corporation.* Allegedly, the sale violates the second paragraph of Section 10, Article XII of the Constitution.

Respondent GSIS is a government-owned and controlled corporation. It is the sole owner of the Manila Hotel which it operates through its subsidiary, the Manila Hotel Corporation. Manila Hotel was included in the privatization program of the government. In 1995, GSIS proposed to sell to interested buyers 30% to 51% of its shares, ranging from 9,000,000 to 15,300,000 shares, in the Manila Hotel Corporation. After the absence of bids at the first public bidding, the block of shares offered for sale was increased from a maximum of 30% to 51%. Also, the winning bidder, or the eventual "strategic partner" of the GSIS was required to "provide management expertise and/or an international marketing/reservation system, and financial support to strengthen the profitability and performance of the Manila Hotel."[1] The proposal was approved by respondent Committee on Privatization.

In July 1995, a conference was held where prequalification documents and the bidding rules were furnished interested parties. *Petitioner Manila Prince Hotel, a domestic corporation, and Renong Berhad, a Malaysian firm with ITT Sheraton as operator, prequalified.*[2]

The bidding rules and procedures entitled "Guidelines and Procedures: Second Prequalification and Public Bidding of the MHC Privatization" provide:

"I. INTRODUCTION AND HIGHLIGHTS

DETERMINING THE WINNING BIDDER/STRATEGIC PARTNER

The party that accomplishes the steps set forth below will be declared the Winning Bidder/Strategic Partner and will be awarded the Block of Shares:

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[1] Introduction and Highlights, Guidelines and Procedures: Second Pre-qualification and Public Bidding of the MHC Privatization, Annex "A" to Petitioner's Consolidated Reply to Comments of Respondents, *Rollo*, p. 142.

[2] The four bidders who previously prequalified for the first bidding, namely, ITT Sheraton, Marriot International, Inc., Renaissance Hotel International, Inc., and the consortium of RCBC and the Ritz Carlton, were deemed prequalified for the second bidding.

First — Pass the prequalification process;

Second — Submit the highest bid on a price per share basis for the Block of Shares;

Third — Negotiate and execute the necessary contracts with GSIS/MHC not later than October 23, 1995.

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IV. GUIDELINES FOR PREQUALIFICATION

A. *PARTIES WHO MAY APPLY FOR PREQUALIFICATION*

The Winning Bidder/Strategic Partner will be expected to provide management expertise and/or an international marketing reservation system, and financial support to strengthen the profitability and performance of The Manila Hotel. In this context, the GSIS is inviting to the prequalification process any local and/or foreign corporation, consortium/joint venture or juridical entity with at least one of the following qualifications:

a. Proven management expertise in the hotel industry; or

b. Significant equity ownership (i.e. board representation) in another hotel company; or

c. Overall management and marketing expertise to successfully operate the Manila Hotel.

Parties interested in bidding for MHC should be able to provide access to the requisite management expertise and/or international marketing/reservation system for The Manila Hotel.

xxx xxx xxx.

D. PREQUALIFICATION DOCUMENTS

xxx xxx xxx.

E. APPLICATION PROCEDURE

1. *DOCUMENTS AVAILABLE AT THE REGISTRATION OFFICE*

The prequalification documents can be secured at the Registration Office between 9:00 AM to 4:00 PM during working days within the period specified in Section III. Each set of documents consists of the following:

a. Guidelines and Procedures: Second Prequalification and Public Bidding of the MHC Privatization

b. Confidential Information Memorandum: The Manila Hotel Corporation

c. Letter of Invitation to the Prequalification and Bidding Conference

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4. PREQUALIFICATION AND BIDDING CONFERENCE

A prequalification and bidding conference will be held at The Manila Hotel on the date specified in Section III to allow the Applicant to seek clarifications and further information regarding the guidelines and procedures. Only those who purchased the prequalification documents will be allowed in this conference. Attendance to this conference is strongly advised, although the Applicant will not be penalized if it does not attend.

5. *SUBMISSION OF PREQUALIFICATION DOCUMENTS*

The Applicant should submit 5 sets of the prequalification documents (1 original set plus 4 copies) at the Registration Office between 9:00 AM to 4:00 PM during working days within the period specified in Section III.

F. PREQUALIFICATION PROCESS

1. The Applicant will be evaluated by the PBAC with the assistance of the TEC based on the Information Package and other information available to the PBAC.

2. If the Applicant is a Consortium/Joint Venture, the evaluation will consider the overall qualifications of the group, taking into account the contribution of each member to the venture.

3. The decision of the PBAC with respect to the results of the PBAC evaluation will be final.

4. The Applicant shall be evaluated according to the criteria set forth below:

a. Business management expertise, track record, and experience

b. Financial capability

c. *Feasibility and acceptability of the proposed strategic plan for the Manila Hotel*

5. The PBAC will shortlist such number of Applicants as it may deem appropriate.

6. The parties that prequalified in the first MHC public bidding — ITT Sheraton, Marriot International Inc., Renaissance Hotels International Inc., consortium of RCBC Capital/Ritz Carlton — may participate in the Public Bidding without having to undergo the prequalification process again.

G. SHORTLIST OF QUALIFIED BIDDERS

1. A notice of prequalification results containing the shortlist of Qualified Bidders will be posted at the Registration Office at the date specified in Section III.

2. In the case of a Consortium/Joint Venture, the withdrawal by a member whose qualification was a material consideration for being included in the shortlist is a ground for disqualification of the Applicant.

V. GUIDELINES FOR THE PUBLIC BIDDING

A. PARTIES WHO MAY PARTICIPATE IN THE PUBLIC BIDDING

All parties in the shortlist of Qualified Bidders will be eligible to participate in the Public Bidding.

B. BLOCK OF SHARES

A range of Nine Million (9,000,000) to Fifteen Million Three Hundred Thousand (15,300,000) shares of stock, representing Thirty Percent to Fifty-One Percent (30%-51%) of the issued and outstanding shares of MHC, will be offered in the Public Bidding by the GSIS. The Qualified Bidders will have the option of determining the number of shares within the range to bid for. The range is intended to attract bidders with different preferences and objectives for the operation and management of The Manila Hotel.

C. MINIMUM BID REQUIRED ON A PRICE PER SHARE BASIS

1. Bids will be evaluated on a price per share basis. The minimum bid required on a price per share basis for the Block of Shares is Thirty-Six Pesos and Sixty-Seven Centavos (P36.67).

2. *Bids should be in the Philippine currency payable to the GSIS.*

3. Bids submitted with an equivalent price per share below the minimum required will not be considered.

D. TRANSFER COSTS

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E. OFFICIAL BID FORM

1. Bids must be contained in the prescribed Official Bid Form, a copy of which is attached as Annex IV. The Official Bid Form must be properly accomplished in all details; improper accomplishment may be a sufficient basis for disqualification.

2. During the Public Bidding, the Qualified Bidder will submit the Official Bid Form, which will indicate the offered purchase price, in a sealed envelope marked "OFFICIAL BID."

F. SUPPORTING DOCUMENTS

During the Public Bidding, the following documents should be submitted along with the bid in a separate envelop marked "SUPPORTING DOCUMENTS":

1. *WRITTEN AUTHORITY TO BID (UNDER OATH)*

If the Qualified Bidder is a corporation, the representative of the Qualified Bidder should submit a Board resolution which adequately authorizes such representative to bid for and in behalf of the corporation with full authority to perform such acts necessary or requisite to bind the Qualified Bidder.

If the Qualified Bidder is a Consortium/Joint Venture, each member of the Consortium/Joint Venture should submit a Board resolution authorizing one of its members and such member's representative to make the bid on behalf of the group with full authority to perform such acts necessary or requisite to bind the Qualified Bidder.

2. *BID SECURITY*

a. The Qualified Bidder should deposit Thirty-Three Million Pesos (P33,000,000.00), in Philippine currency as Bid Security in the form of:

i. Manager's check or unconditional demand draft payable to the "Government Service Insurance System" and issued by a reputable banking institution duly licensed to do business in the Philippines and acceptable to GSIS; or

ii. Standby-by letter of credit issued by a reputable banking institution acceptable to the GSIS.

b. The GSIS will reject a bid if:

i. The bid does not have a Bid Security; or

ii. The Bid Security accompanying the bid is for less than the required amount.

c. If the Bid Security is in the form of a manager's check or unconditional demand draft, the interest earned on the Bid Security will be for the account of GSIS.

d. If the Qualified Bidder becomes the Winning Bidder/Strategic Partner, the Bid Security will be applied as the downpayment on the Qualified Bidder's offered purchase price.

e. The Bid Security of the Qualified Bidder will be returned immediately after the Public Bidding if the Qualified Bidder is not declared the Highest Bidder.

f. The Bid Security will be returned by October 23, 1995 if the Highest Bidder is unable to negotiate and execute with GSIS/MHC the Management Contract, International Marketing/Reservation System Contract or other types of contract specified by the Highest Bidder in its strategic plan for The Manila Hotel.

g. The Bid Security of the Highest Bidder will be forfeited in favor of GSIS if the Highest Bidder, after negotiating and executing the Management Contract, International Marketing/Reservation System Contract or other types of contract specified by the Highest Bidder in its strategic plan for The Manila Hotel, fails or refuses to:

i. Execute the Stock Purchase and Sale Agreement with GSIS not later than October 23, 1995; or

ii. Pay the full amount of the offered purchase price not later than October 23, 1995; or

iii. Consummate the sale of the Block of Shares for any other reason.

G. SUBMISSION OF BIDS

1. The Public Bidding will be held on September 7, 1995 at the following location:

   New GSIS Headquarters Building
   Financial Center, Reclamation Area
   Roxas Boulevard, Pasay City, Metro Manila

2. The Secretariat of the PBAC will be stationed at the Public Bidding to accept any and all bids and supporting requirements. Representatives from the Commission on Audit and COP will be invited to witness the proceedings.

3. The Qualified Bidder should submit its bid using the Official Bid Form. The accomplished Official Bid Form should be submitted in a sealed envelope marked "OFFICIAL BID."

4. The Qualified Bidder should submit the following documents in *another* sealed envelope marked "SUPPORTING BID DOCUMENTS"

   a. Written Authority Bid

   b. Bid Security

5. The two sealed envelopes marked "OFFICIAL BID" and "SUPPORTING BID DOCUMENTS" must be submitted simultaneously to the Secretariat between 9:00 AM and 2:00 PM, Philippine Standard Time, on the date of the Public Bidding. No bid shall be accepted after the closing time. Opened or tampered bids shall not be accepted.

6. The Secretariat will log and record the actual time of submission of the two sealed envelopes. The actual time of submission will also be indicated by the Secretariat on the face of the two envelopes.

7. After Step No. 6, the two sealed envelopes will be dropped in the corresponding bid boxes provided for the purpose. These boxes will be in full view of the invited public.

H. OPENING AND READING OF BIDS

1. After the closing time of 2:00 PM on the date of the Public Bidding, the PBAC will open all sealed envelopes marked "SUPPORTING BID DOCUMENTS" for screening, evaluation and acceptance. Those who submitted incomplete/insufficient *documents or document/s which is/are not substantially in the form required by PBAC will be disqualified. The envelope containing their Official Bid Form will be immediately returned to the disqualified bidders.*

2. *The sealed envelopes marked "OFFICIAL BID" will be opened at 3:00 PM. The name of the bidder and the amount of its bid price will be read publicly as the envelopes are opened.*

3. *Immediately following the reading of the bids, the PBAC will formally announce the highest bid and the Highest Bidder.*

4. *The highest bid will be determined on a price per share basis. In the event of a tie wherein two or more bids have the same equivalent price per share, priority will be given to the bidder seeking the larger ownership interest in MHC.*

5. *The Public Bidding will be declared a failed bidding in case:*

   a. *No single bid is submitted within the prescribed period; or*

   b. *There is only one (1) bid that is submitted and acceptable to the PBAC.*

I. EXECUTION OF THE NECESSARY CONTRACTS WITH GSIS/MHC

1. *The Highest Bidder must comply with the conditions set forth below by October 23, 1995 or the Highest Bidder will lose the right to purchase the Block of Shares and GSIS will instead offer the Block of Shares to the other Qualified Bidders:*

   a. *The Highest Bidder must negotiate and execute with GSIS/MHC the Management Contract, International Marketing/Reservation System Contract or other type of contract specified by the Highest Bidder in its strategic plan for The Manila Hotel. If the Highest Bidder is intending to provide only financial support to The Manila Hotel, a separate institution may enter into the aforementioned contract/s with GSIS/MHC.*

   b. *The Highest Bidder must execute the Stock Purchase and Sale Agreement with GSIS, a copy of which will be distributed to each of the Qualified Bidder after the prequalification process is completed.*

2. In the event that the Highest Bidder chooses a Management Contract for The Manila Hotel, the maximum levels for the management fee structure that GSIS/MHC are prepared to accept in the Management Contract are as follows :

   a. Basic management fee: Maximum of *2.5%* of gross revenues.[(1)]

   b. Incentive fee: Maximum of 8.0% of gross operating profit [(1)] after deducting undistributed overhead expenses and the basic management fee.

   c. Fixed component of the international marketing/reservation system fee: Maximum of *2.0%* of gross room revenues.[(1)] The Applicant should indicate in its Information Package if it is wishes to charge this fee.

   Note (1): As defined in the uniform system of account for hotels.

   The GSIS/MHC have indicated above the acceptable parameters for the hotel management fees to facilitate the negotiations with the Highest Bidder for the Management Contract after the Public Bidding.

   A Qualified Bidder envisioning a Management Contract for The Manila Hotel should determine whether or not the management fee structure above is acceptable before submitting their prequalification documents to GSIS.

J. BLOCK SALE TO THE OTHER QUALIFIED BIDDERS

1. If for any reason, the Highest Bidder cannot be awarded the Block of Shares, GSIS may offer this to the other Qualified Bidders that have validly submitted bids provided that these Qualified are willing to match the highest bid in terms of price per share.

2. The order of priority among the interested Qualified Bidders will be in accordance with the equivalent price per share of their respective bids in the Public Bidding, i.e. first and second priority will be given to the Qualified Bidders that submitted the second and third highest bids on the price per share basis, respectively, and so on.

K. DECLARATION OF THE WINNING BIDDER/STRATEGIC PARTNER

The Highest Bidder will be declared the Winning Bidder/ Strategic Partner after the following conditions are met:

a. Execution of the necessary contract with GSIS/MHC not later than October 23, 1995; and

b. Requisite approvals from the GSIS/MHC and COP/OGCC are obtained.

I. FULL PAYMENT FOR THE BLOCK OF SHARES

1. Upon execution of the necessary contracts with GSIS/MHC, the Winning Bidder/Strategic Partner must fully pay, not later than October 23, 1995, the offered purchase price for the Block of Shares after deducting the Bid Security applied as downpayment.

2. All payments should be made in the form of a Manager's Check or unconditional Demand Draft, payable to the "Government Service Insurance System," issued by a reputable banking institution licensed to do business in the Philippines and acceptable to GSIS.

M. GENERAL CONDITIONS

1. The GSIS unconditionally reserves the right to reject any or all applications, waive any formality therein, or accept such application as maybe considered most advantageous to the GSIS. The GSIS similarly reserves the right to require the submission of any additional information from the Applicant as the PBAC may deem necessary.

2. The GSIS further reserves the right to call off the Public Bidding prior to acceptance of the bids and call for a new public bidding under amended rules, and without any liability whatsoever to any or all the Qualified Bidders, except the obligation to return the Bid Security.

3. The GSIS reserves the right to reset the date of the prequalification/bidding conference, the deadline for the submission of the prequalification documents, the date of the Public Bidding or other pertinent activities at least three (3) calendar days prior to the respective deadlines/target dates.

4. The GSIS sells only whatever rights, interest and participation it has on the Block of Shares.

5. All documents and materials submitted by the Qualified Bidders, except the Bid Security, may be returned upon request.

6. *The decision of the PBAC/GSIS on the results of the Public Bidding is final. The Qualified Bidders, by participating in the Public Bidding, are deemed to have agreed to accept and abide by these results.*

7. The GSIS will be held free and harmless form any liability, suit or allegation arising out of the Public Bidding by the Qualified Bidders who have participated in the Public Bidding."[3]

The second public bidding was held on September 18, 1995. *Petitioner bidded P41.00 per share for 15,300,000 shares and Renong Berhad bidded P44.00 per share also for 15,300,000 shares. The GSIS declared Renong Berhad the highest bidder and immediately returned petitioner's bid security.*

On September 28, 1995, *ten days after the bidding,* petitioner wrote to GSIS offering *to match the bid price* of Renong Berhad. It requested that the award be made to itself citing the second paragraph of Section 10, Article XII of the Constitution. It sent a manager's check for thirty-three million pesos (P33,000,000.00) as bid security.

Respondent GSIS, then in the process of negotiating with Renong Berhad the terms and conditions of the contract and technical agreements in the operation of the hotel, refused to entertain petitioner's request.

Hence, petitioner filed the present petition. We issued a temporary restraining order on October 18, 1995.

Petitioner anchors its plea on the second paragraph of Article XII, Section 10 of the Constitution[4] on the "National Economy and Patrimony" which provides:

"xxx xxx xxx

In the grant of rights, privileges, and concessions covering the national economy and patrimony, *the State shall give preference to qualified Filipinos.*

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[3] Annex "A" to the Consolidated Reply to Comments of Respondents. *Rollo*, pp. 140-155.

[4] Former Chief Justice Enrique Fernando and Commissioner Joaquin Bernas were invited by the Court as *amicus curiae* to shed light on its meaning.

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The vital issues can be summed up as follows:

(1) Whether section 10, paragraph 2 of Article XII of the Constitution is a *self-executing provision* and does not need implementing legislation to carry it into effect;

(2) Assuming Section 10, paragraph 2 of Article XII is self-executing, whether the controlling shares of the Manila Hotel Corporation form part of our patrimony as a nation;

(3) Whether GSIS is included in the term "State," hence, mandated to implement Section 10, paragraph 2 of Article XII of the Constitution;

(4) Assuming GSIS is part of the State, whether it failed to give preference to petitioner, a qualified Filipino corporation, over and above Renong Berhad, a foreign corporation, in the sale of the controlling shares of the Manila Hotel Corporation;

(5) Whether petitioner is estopped from questioning the sale of the shares to Renong Berhad, a foreign corporation.

Anent the first issue, it is now familiar learning that a Constitution provides the guiding policies and principles upon which is built the substantial foundation and general framework of the law and government.[5] As a rule, its provisions are deemed self-executing and can be enforced without further legislative action.[6] Some of its provisions, however, can be implemented only through appropriate laws enacted by the Legislature, hence not self-executing.

To determine whether a particular provision of a Constitution is self-executing is a hard row to hoe. The key lies on the intent of the framers of the fundamental law oftentimes submerged in its language. A searching inquiry should be made to find out if

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[5] Lopez *v.* de los Reyes, 55 Phil. 170, 190 [1930].

[6] 16 Am Jur 2d, Constitutional Law, Sec. 139 p. 510 [1979 ed.]; 6 R.C.L. Sec. 52, p. 57 [1915]; *see also* Willis *v.* St. Paul Sanitation Co., 48 Minn. 140, 50 N.W. 1110, 31 A.J.R. 626, 16 L.R.A. 281 [1892]; State ex rel. Schneider *v.* Kennedy, 587 P. 2d 844, 225 Kan 13 [1978].

the provision is intended as a *present* enactment, complete in itself as a definitive law, or if it needs *future* legislation for completion and enforcement.[7] The inquiry demands a micro-analysis of the text and the context of the provision in question.[8]

Courts as a rule consider the provisions of the Constitution as self-executing,[9] rather than as requiring future legislation for their enforcement.[10] The reason is not difficult to discern. For if they are not treated as self-executing, the mandate of the fundamental law ratified by the sovereign people can be easily ignored and nullified by Congress.[11] Suffused with wisdom of the ages is the unyielding rule that legislative actions may give breath to constitutional rights but congressional inaction should not suffocate them.[12]

Thus, we have treated as self-executing the provisions in the Bill of Rights on arrests, searches and seizures,[13] the rights of a person under custodial investigation,[14] the rights of an accused,[15]

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[7] Willis *v.* St. Paul Sanitation, *supra*, at 1110-1111; *see also* Cooley, A Treatise on Constitutional Limitations 167, vol. 1 [1927].

[8] 16 C.J.S., Constitutional Law, Sec. 48, p. 100.

[9] Cooley, *supra*, at 171; 6 R.C.L. Sec. 53, pp. 57-58; Brice *v.* McDow, 116 S.C. 324, 108 S.E. 84, 87 [1921]; *see also* Gonzales, Philippine Constitutional Law p. 26 [1969].

[10] 16 C.J.S., Constitutional Law, Sec. 48, p. 101.

[11] Way *v.* Barney, 116 Minn. 285, 133 N.W. 801, 804 38 L.R.A. (N.S.) 648, Ann. Cas. 1913 A, 719 [1911]; Brice *v.* McDow, *supra*, at 87; Morgan *v.* Board of Supervisors, 67 Ariz. 133, 192 P. 2d 236, 241 [1948]; Gonzales, *supra*.

[12] Ninth Decennial Digest Part I, Constitutional Law, (Key No. 28), p. 1638.

[13] Article III, Section 2; see Webb *v.* de Leon, 247 SCRA 652 [1995]; People *v.* Saycon, 236 SCRA 325 [1994]; Allado *v.* Diokno, 232 SCRA 192 [1994]; Burgos *v.* Chief of Staff, 133 SCRA 800 [1984]; Yee Sue Kuy *v.* Almeda, 70 Phil. 141 [1940]; Pasion Vda. de Garcia *v.* Locsin, 65 Phil. 689 [1938]; and a host of other cases.

[14] Article III, Section 12, pars. 1 to 3; People *v.* Alicando, 251 SCRA 293 [1995]; People *v.* Bandula, 232 SCRA 566 [1994]; People *v.* Nito, 228 SCRA 442 [1993]; People *v.* Duero, 104 SCRA 379 [1981]; People *v.* Galit, 135 SCRA 465 [1985]; and a host of other cases.

[15] Article III, Section 14; People *v.* Digno, 250 SCRA 237 [1995]; People *v.* Godoy, 250 SCRA 676 [1995]; People *v.* Colcol, 219 SCRA [1993]; Borja *v.* Mendoza, 77 SCRA 422 [1977]; People *v.* Dramayo, 42 SCRA 59 [1971]; and a host of other cases.

and the privilege against self-incrimination.[16] It is recognized that legislation is unnecessary to enable courts to effectuate constitutional provisions guaranteeing the fundamental rights of life, liberty and the protection of property.[17] The same treatment is accorded to constitutional provisions forbidding the taking or damaging of property for public use without just compensation.[18]

Contrariwise, case law lays down the rule that a constitutional provision is not self-executing where it merely announces a policy and its language empowers the Legislature to prescribe the means by which the policy shall be carried into effect.[19] Accordingly, we have held that the provisions in Article II of our Constitution entitled "Declaration of Principles and State Policies" should generally be construed as mere statements of principles of the State.[20] We have also ruled that some provisions of Article XIII on "Social Justice and Human Rights,"[21] and Article XIV on "Education Science and Technology, Arts, Culture and Sports"[22] cannot be the basis of judicially enforceable rights. Their enforcement is addressed to the discretion of Congress though they

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[16] Galman *v.* Pamaran, 138 SCRA 274 [1985]; Chavez *v.* Court of Appeals, 24 SCRA 663 [1968]; People *v.* Otadura, 86 Phil. 244 [1950]; Bermudez *v.* Castillo, 64 Phil. 485 [1937]; and a host of other cases.

[17] Harley *v.* Schuylkill County, 476 F. Supp. 191, 195-196 [1979]; Erdman *v.* Mitchell, 207 Pa. St. 79, 56 Atl. 327, 99 A.S.R. 783, 63 L.R.A. 534 [1903]; *see* Ninth Decennial Digest Part I, Constitutional Law, (Key No. 28), pp. 1638-1639.

[18] City of Chicago *v.* George F. Harding Collection, 217 N.E. 2d 381, 383, 70 Ill. App. 2d 254 [1966]; People *v.* Buellton Dev. Co., 136 P. 2d 793, 796, 58 Cal. App. 2d 178 [1943]; Bordy *v.* State, 7 N.W. 2d 632, 635, 142 Neb. 714 [1943]; Cohen *v.* City of Chicago, 36 N.E. 2d 220, 224, 377 Ill. 221 [1941].

[19] 16 Am Jur 2d, Constitutional Law, Sec. 143, p. 514; 16 C.J.S. Constitutional Law, Sec. 48, p. 100; 6 R.C.L. Sec. 54, p. 59; *see also* State ex rel. Noe *v.* Knop La. App. 190 So. 135, 142 [1939]; State ex rel. Walker *v.* Board of Comm'rs. for Educational Lands and Funds, 3 N.W. 2d 196, 200, 141 Neb. 172 [1942]; Maddox *v.* Hunt, 83 P. 2d 553, 556, 83 Okl. 465 [1938].

[20] Article II, Sections 11, 12 and 13 (Basco *v.* Phil. Amusements and Gaming Corporation, 197 SCRA 52, 68 [1991]); Sections 5, 12, 13 and 17 (Kilosbayan, Inc. *v.* Morato, 246 SCRA 540, 564 [1995]).

[21] Article XIII, Section 13 (Basco, *supra*).

[22] Article XIV, Section 2 (Basco, *supra*);

provide the framework for legislation[23] to effectuate their policy content.[24]

Guided by this map of settled jurisprudence, we now consider whether Section 10, Article XII of the 1987 Constitution is self-executing or not. It reads:

"*Sec. 10.* The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities."

The *first paragraph* directs *Congress* to reserve certain areas of investments in the country[25] to Filipino citizens or to corporations sixty per cent[26] of whose capital stock is owned by Filipinos. It further commands *Congress* to enact laws that will encourage the formation and operation of one hundred percent Filipino-owned enterprises. In checkered contrast, the *second paragraph* orders the entire *State* to give preference to qualified Filipinos in the grant of rights and privileges covering the national economy and patrimony. The *third paragraph* also directs the *State* to regulate foreign investments in line with our national goals and well-set priorities.

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[23] Kilosbayan *v.* Morato, *supra*, at 564.

[24] Basco *v.* Phil. Amusements and Gaming Corporation, *supra*, at 68.

[25] Congress had previously passed the Retail Trade Act (R.A. 1180); the Private Security Agency Act (R.A. 5487; the law on engaging in the rice and corn industry (R.A. 3018, P.D. 194), etc.

[26] Or such higher percentage as Congress may prescribe.

The first paragraph of Section 10 is not self-executing. By its express text, *there is a categorical command for Congress to enact laws restricting foreign ownership in certain areas of investments in the country and to encourage the formation and operation of wholly-owned Filipino enterprises.* The right granted by the provision is clearly still *in esse.* Congress has to breathe life to the right by means of legislation. Parenthetically, this paragraph was plucked from Section 3, Article XIV of the 1973 Constitution.[27] The provision in the 1973 Constitution affirmed our ruling in the landmark case of *Lao Ichong v. Hernandez,*[28] where we upheld the discretionary authority of Congress to Filipinize certain areas of investments.[29] By reenacting the 1973 provision, the first paragraph of Section 10 affirmed the power of Congress to nationalize certain areas of investments in favor of Filipinos.

The second and third paragraphs of Section 10 are different. They are directed to the *State* and not to Congress alone which is but one of the three great branches of our government. Their coverage is also broader for they cover "the national economy and patrimony" and "foreign investments within [the] national jurisdiction" and not merely "certain areas of investments." Beyond debate, they cannot be read as granting Congress the *exclusive* power to implement by law the policy of giving preference to qualified Filipinos in the conferral of rights and privileges covering our national economy and patrimony. Their language does not suggest that any of the State agency or instrumentality has the privilege to hedge or to refuse its implementation for any reason whatsoever. Their duty to implement is unconditional and it is now.

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[27] Article XIV, Section 3 of the 1973 Constitution reads:

"*Sec. 3.* The Batasang Pambansa shall, upon recommendation of the National Economic and Development Authority, reserve to citizens of the Philippines or to corporations or associations wholly owned by such citizens, certain traditional areas of investments when the national interest so dictates."

[28] 101 Phil. 1155 [1957].

[29] *See* Bernas, The Constitution of the Republic of the Philippines 450, Vol. II [1988]. The *Lao Ichong* case upheld the Filipinization of the retail trade

This submission is strengthened by Article II of the Constitution entitled "Declaration of Principles and State Policies." *Its Section 19 provides that "[T]he State shall develop a self-reliant and independent national economy effectively controlled by Filipinos."* It engrafts the all-important Filipino First policy in our fundamental law and by the use of the mandatory word "shall," directs its enforcement by the whole State without any pause or a half-pause in time.

The second issue is whether the sale of a majority of the stocks of the Manila Hotel Corporation involves the disposition of part of our national patrimony. The records of the Constitutional Commission show that the Commissioners entertained the same view as to its meaning. According to Commissioner Nolledo, "patrimony" refers not only to our rich natural resources but also to the cultural heritage of our race.[30] By this yardstick, the sale of Manila Hotel falls within the coverage of the constitutional provision giving preferential treatment to qualified Filipinos in the grant of rights involving our national patrimony. The unique value of the Manila Hotel to our history and culture cannot be viewed with a myopic eye. The value of the hotel goes beyond pesos and centavos. As chronicled by Beth Day Romulo,[31] the hotel first opened on July 4, 1912 as a first-class hotel built by the American Insular Government for Americans living in, or passing through, Manila while travelling to the Orient. Indigenous materials and Filipino craftsmanship were utilized in its construction. For sometime, it was exclusively used by American and Caucasian travelers and served as the "official guesthouse" of the American

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and implied that particular areas of business may be Filipinized without doing violence to the equal protection clause of the Constitution.

[30] Nolledo, The New Constitution of the Philippines, Annotated, 1990 ed., p. 72. The word "patrimony" first appeared in the preamble of the 1935 Constitution and was understood to cover everything that belongs to the Filipino people, the tangible and the material as well as the intangible and the spiritual assets and possessions of the nation (Sinco, Philippine Political Law, Principles and Concepts [1962 ed.], p. 112; Speech of Delegate Conrado Benitez defending the draft preamble of the 1935 Constitution in Laurel, Proceedings of the Constitutional Convention, Vol. III, p. 325 [1966]).

[31] Commissioned by the Manila Hotel Corporation for the Diamond Jubilee celebration of the Hotel in 1987; *see* The Manila Hotel: The Heart and Memory of a City.

Insular Government for visiting foreign dignitaries. Filipinos began coming to the Hotel as guests during the Commonwealth period. When the Japanese occupied Manila, it served as military headquarters and lodging for the highest-ranking officers from Tokyo. It was at the Hotel and the Intramuros that the Japanese made their last stand during the Liberation of Manila. After the war, the Hotel again served foreign guests and Filipinos alike. Presidents and kings, premiers and potentates, as well as glamorous international film and sports celebrities were housed in the Hotel. It was also the situs of international conventions and conferences. In the local scene, it was the venue of historic meetings, parties and conventions of political parties. The Hotel has reaped and continues reaping numerous recognitions and awards from international hotel and travel award-giving bodies, a fitting acknowledgment of Filipino talent and ingenuity. These are judicially cognizable facts which cannot be bent by a biased mind.

The Hotel may not, as yet, have been declared a national cultural treasure pursuant to Republic Act No. 4846 but that does not exclude it from our national patrimony. Republic Act No. 486, "The Cultural Properties Preservation and Protection Act," merely provides a procedure whereby a particular cultural property may be classified a "national cultural treasure" or an "important cultural property."[32] Approved on June 18, *1966* and amended by P.D. 374 in *1974*, the law is limited in its reach and cannot be read as the exclusive law implementing Section 10, Article XII of the *1987* Constitution. To be sure, the law does not equate cultural treasure and cultural property as synonymous to the phrase "patrimony of the nation."

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[32] Section 7 of R.A. 4846 provides:

Sec. 7. In the designation of a particular cultural property as a "national cultural treasure," the following procedure shall be observed:

(a) Before the actual designation, the owner, if the property is privately owned, shall be notified at least fifteen days prior to the intended designation, and he shall be invited to attend the deliberation and given a chance to be heard. Failure on the part of the owner to attend the deliberation shall not bar the panel to render its decision. Decision shall be given by the panel within a week after its deliberation. In the event that the owner desires to seek reconsideration of the designation

The third issue is whether the constitutional command to the State includes the respondent GSIS. A look at its charter will reveal that GSIS is a government-owned and controlled corporation that administers funds that come from the monthly contributions of government employees and the government.[33] The funds are held in trust for a distinct purpose which cannot be disposed of indifferently.[34] They are to be used to finance the retirement, disability and life insurance benefits of the employees and the administrative and operational expenses of the GSIS.[35] Excess funds, however, are allowed to be invested in business and other ventures for the benefit of the employees.[36] It is thus contended that the GSIS' investment in the Manila Hotel Corporation is a simple business venture, hence, an act beyond the contemplation of Section 10, paragraph 2 of Article XII of the Constitution.

The submission is unimpressive. The GSIS is not a pure private corporation. It is essentially a public corporation created by Congress and granted an original charter to serve a public purpose. It is subject to the jurisdictions of the Civil Service Commission[37]

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made by the panel, he may do so within thirty days from the date that the decision has been rendered. If no request for reconsideration is filed after this period, the designation is then considered final and executory. Any request for reconsideration filed within thirty days and subsequently again denied by the panel, may be further appealed to another panel chairmanned by the Secretary of Education with two experts as members appointed by the Secretary of Education. Their decision shall final and binding.

(b) Within each kind or class of objects, only the rare and unique objects may be designated as "National Cultural Treasures." The remainder, if any, shall be treated as cultural property.

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[33] P.D. 1146, Sec. 5; P.D. 1146, known as "The Revised Government Service Insurance Act of 1977" amended Commonwealth Act No. 186, the "Government Service Insurance Act" of 1936.

[34] Beronilla *v.* Government Service Insurance System, 36 SCRA 44, 53 [1970]; Social Security System Employees Association *v.* Soriano, 7 SCRA 1016, 1023 [1963].

[35] *Id.*, Secs. 28 and 29.

[36] *Id.*, Sec. 30.

[37] Constitution, Article IX (B), Section 2 (1).

and the Commission on Audit.[38] As a state-owned and controlled corporation, it is skin-bound to adhere to the policies spelled out in the Constitution especially those designed to promote the general welfare of the people. One of these policies is the Filipino First policy which the people elevated as a constitutional command.

The fourth issue demands that we look at the content of the phrase "qualified Filipinos" and their "preferential right." The Constitution desisted from defining their contents. This is as it ought to be for a Constitution only lays down flexible policies and principles which can be bent to meet today's manifest needs and tomorrow's unmanifested demands. Only a constitution strung with elasticity can grow as a living constitution.

Thus, during the deliberations in the Constitutional Commission, Commissioner Nolledo brushed aside a suggestion to define the phrase "qualified Filipinos." He explained that present and prospective "laws" will take care of the problem of its interpretation, *viz*:

"xxx xxx xxx

THE PRESIDENT. What is the suggestion of Commissioner Rodrigo? Is it to remove the word "QUALIFIED?"

MR. RODRIGO. No, no, but say definitely "TO QUALIFIED FILIPINOS" as against whom? As against aliens over aliens?

MR. NOLLEDO. *Madam President, I think that is understood. We use the word "QUALIFIED" because the existing laws or the prospective laws will always lay down conditions under which business may be done, for example, qualifications on capital, qualifications on the setting up of other financial structures, et cetera.*

MR. RODRIGO. It is just a matter of style.

MR. NOLLEDO. Yes.

MR. RODRIGO. If we say, "PREFERENCE TO QUALIFIED FILIPINOS," it can be understood as giving preference to qualified Filipinos as against Filipinos who are not qualified.

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[38] Constitution, Article IX (D), Section 2 (1).

MR. NOLLEDO. Madam President, that was the intention of the proponents. The committee has accepted the amendment.

xxx xxx xxx."

As previously discussed, the constitutional command to enforce the Filipino First policy is addressed to the State and not to Congress alone. Hence, the word "laws" should not be understood as limited to legislations but all state actions which include applicable rules and regulations adopted by agencies and instrumentalities of the State in the exercise of their rule-making power. In the case at bar, the bidding rules and regulations set forth the standards to measure the qualifications of bidders, Filipinos and foreigners alike. It is not seriously disputed that petitioner qualified to bid as did Renong Berhad.[39]

Thus, we come to the *critical issue* of the *degree of preference* which GSIS should have accorded petitioner, a qualified Filipino, over Renong Berhad, a foreigner, in the purchase of the controlling shares of the Manila Hotel. Petitioner claims that after losing the bid, this right of preference gives it a second chance to match the highest bid of Renong Berhad.

With due respect, I cannot sustain petitioner's submission. I prescind from the premise that the second paragraph of Section 10, Article XII of the Constitution is *pro-Filipino but not anti-alien*. It is pro-Filipino for it gives preference to Filipinos. It is not, however, anti-alien *per se* for it does not absolutely bar aliens in the grant of rights, privileges and concessions covering the national economy and patrimony. Indeed, in the absence of qualified Filipinos, the State is not prohibited from granting these

[39] It is meet to note that our laws do not debar foreigners from engaging in the hotel business. Republic Act No. 7042, entitled the "Foreign Investments Act of 1991" was enacted by Congress to "attract, promote and welcome x x x foreign investments x x x in activities which significantly contribute to national industrialization and socio-economic development to the extent that foreign investment is allowed by the Constitution and relevant laws." The law contains a list, called the Negative List, specifying areas of economic activity where foreign participation is limited or prohibited. Areas of economic activity not included in the Negative List are open to foreign participation up to one hundred per cent (Secs. 6 and 7). Foreigners now own and run a great number of our five-star hotels.

rights, privileges and concessions to foreigners if the act will promote the weal of the nation.

In implementing the policy articulated in Section 10, Article XII of the Constitution, the stellar task of our State policy-makers is to maintain a *creative tension* between two desiderata — first, the need to develop our economy and patrimony with the help of foreigners if necessary, and, second, the need to keep our economy controlled by Filipinos. *Rightfully, the framers of the Constitution did not define the degree of the right of preference to be given to qualified Filipinos.* They knew that for the right to serve the general welfare, it must have a *malleable content* that can be adjusted by our policy-makers to meet the changing needs of our people. In fine, the right of preference of qualified Filipinos is to be *determined by degree* as time dictates and circumstances warrant. The lesser the need for alien assistance, the greater the degree of the right of preference can be given to Filipinos and vice versa.

Again, it should be stressed that the right and the duty to determine the degree of this privilege at any given time is addressed to the entire State. While under our constitutional scheme, the right primarily belongs to Congress as the lawmaking department of our government, other branches of government, and all their agencies and instrumentalities, share the power to enforce this state policy. Within the limits of their authority, they can act or promulgate rules and regulations defining the degree of this right of preference in cases where they have to make grants involving the national economy and judicial duty. *On the other hand, our duty is to strike down acts of the State that violate the policy.*

To date, Congress has not enacted a law defining the degree of the preferential right. Consequently, we must turn to the rules and regulations of respondents Committee on Privatization and GSIS to determine the degree of preference that petitioner is entitled to as a qualified Filipino in the subject sale. A tearless look at the rules and regulations will show that they are silent on the degree of preferential right to be accorded a qualified Filipino bidder. Despite their silence, however, they cannot be read to mean that they do not grant any degree of preference to petitioner for paragraph 2, Section 10, Article XII of the Constitution is deemed part of said rules and regulations. Pursuant to legal hermeneutics which demand that we interpret rules to save them from unconstitutionality, I submit that *the right of preference of petitioner arises only if it tied the bid of Renong Berhad. In that instance, all things stand equal, and petitioner, as a qualified Filipino bidder, should be preferred.*

It is with deep regret that I cannot subscribe to the view that petitioner has a right to match the bid of Renong Berhad. *Petitioner's submission must be supported by the rules but even if we examine the rules inside-out a thousand times, they can not justify the claimed right.* Under the rules, the right to match the highest bid arises *only* "if for any reason, the highest bidder cannot be awarded the block of shares x x x." *No reason has arisen that will prevent the award to Renong Berhad.* It qualified as a bidder. It complied with the procedure of bidding. It tendered the highest bid. *It was declared as the highest bidder by the GSIS and the rules say this decision is final.* It deserves the award as a matter of right for the rules clearly did not give to the petitioner as a qualified Filipino the privilege to match the higher bid of a foreigner. What the rules did not grant, petitioner cannot demand. Our sympathies may be with petitioner but *the court has no power to extend the latitude and longtitude of the right of preference as defined by the rules.* The parameters of the right of preference depend on a galaxy of facts and factors whose determination belongs to the province of the policy-making branches and agencies of the State. *We are duty-bound to respect that determination even if we differ with the wisdom of their judgment. The right they grant may be little but we must uphold the grant for as long as the right of preference is not denied. It is only when a State action amounts to a denial of the right that the Court can come in and strike down the denial as unconstitutional.*

Finally, I submit that petitioner is *estopped* from assailing the winning bid of Renong Berhad. Petitioner was aware of the rules and regulations of the bidding. It knew that the rules and regulations do not provide that qualified Filipino bidder can match the winning bid after submitting an inferior bid. It knew that the bid was open to foreigners and that foreigners qualified even during the first bidding. *Petitioner cannot be allowed to repudiate the rules which it agreed to respect.* It cannot be allowed to obey the rules when it wins and disregard them when it loses. If sustained, petitioners' stance will wreak havoc on the essence of bidding. *Our laws, rules and regulations require highest bidding to raise as much funds as possible for the government to maximize its capacity to deliver essential services to our people. This is a duty that must be discharged by Filipinos and foreigners participating in a bidding contest and the rules are carefully written to attain this objective.* Among others, bidders are prequalified to insure their financial capability. The bidding is secret and the bids are sealed to prevent collusion among the parties. This objective will be undermined if we grant petitioner the privilege to know the winning bid and a chance to match it. For plainly, a second chance to bid will encourage a bidder not to strive to give the highest bid in the first bidding.

We support the *Filipino First policy* without any reservation. The visionary nationalist Don Claro M. Recto has warned us that the greatest tragedy that can befall a Filipino is to be an alien in his own land. The Constitution has embodied Recto's counsel as a state policy and our decision should be in sync with this policy. *But while the Filipino First policy requires that we incline to a Filipino, it does not demand that we wrong an alien.* Our policy makers can write laws and rules giving favored treatment to the Filipino but we are not free to be unfair to a foreigner after writing the laws and the rules. After the laws are written, they must be obeyed as written, by Filipinos and foreigners alike. The equal protection clause of the Constitution protects all against unfairness. We can be pro-Filipino without unfairness to foreigners.

I vote to dismiss the petition.

PANGANIBAN, *J., dissenting:*

I regret I cannot join the majority. To the incisive Dissenting Opinion of Mr. Justice Reynato S. Puno, may I just add:

1. The majority contends the Constitution should be interpreted to mean that, after a bidding process is concluded, the losing

Filipino bidder should be given the right to equal the highest foreign bid, and thus to win. However, the Constitution [Sec. 10 (2), Art. XII] simply states that "in the grant of rights x x x covering the national economy and patrimony, the State shall give preference to qualified Filipinos." The majority concedes that there is no law *defining the extent or degree* of such preference. *Specifically, no statute empowers a losing Filipino bidder to increase his bid and equal that of the winning foreigner.* In the absence of such empowering law, the majority's strained interpretation, I respectfully submit, constitutes unadulterated *judicial legislation, which makes bidding a ridiculous sham where no Filipino can lose and where no foreigner can win.* Only in the Philippines!

2. Aside from being prohibited by the Constitution, such judicial legislation is short-sighted and, viewed properly, gravely prejudicial to long-term Filipino interests. It encourages other countries — in the guise of reverse comity or worse, unabashed retaliation — to discriminate against us in their own jurisdictions by authorizing their own nationals to similarly equal and defeat the higher bids of Filipino enterprises *solely*, while on the other hand, allowing similar bids of other foreigners to remain unchallenged by their nationals. *The majority's thesis will thus marginalize Filipinos as pariahs in the global marketplace with absolutely no chance of winning any bidding outside our country.* Even authoritarian regimes and hermit kingdoms have long ago found out that unfairness, greed and isolation are self-defeating and in the long-term, self-destructing.

The moral lesson here is simple: Do not do unto others what you do not want others to do unto you.

3. In the absence of a law specifying the degree or extent of the"Filipino First" policy of the Constitution, the constitutional preference for the "qualified Filipinos" may be allowed only where all the bids are equal. In this manner, we put the Filipino ahead without self-destructing him and without being unfair to the foreigner.

In short, the Constitution mandates a victory for the qualified Filipino only when the scores are tied. But not when the ballgame is over and the foreigner clearly posted the highest score.