EN BANC

[G.R. No. 212581. March 28, 2023]

WATER FOR ALL REFUND MOVEMENT, INC., *PETITIONER*, *VS.* MANILA WATERWORKS AND SEWERAGE SYSTEM, MAYNILAD WATER SYSTEMS, INC., AND MANILA WATER COMPANY, INC., *RESPONDENTS*.

D E C I S I O N

HERNANDO, J.:

For the Court's adjudication is the instant Petition for Review[1] on *Certiorari* which assails the July 26, 2013[2] and May 12, 2014[3] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 00020 dismissing petitioner Water for All Refund Movement, Inc.'s (WARM's) petition for the issuance of a Writ of *Kalikasan*[4] under the Rules of Procedure for Environmental Cases (RPEC).[5]

The Petition for Writ of *Kalikasan* before the CA

WARM claimed to be an organization composed of consumers of MWSS with corporate purpose to serve as a watchdog for water consumer rights, specifically the enforcement of rights or obligations under environmental laws.[6]

In its petition for a Writ of *Kalikasan* before the CA, WARM'S allegations centered on public respondent Metropolitan Waterworks and Sewerage System's (MWSS)[7] and its concessionaires,'[8] private respondents Manila Water Company, Inc.'s (MANILA WATER) and Maynilad Water Systems, Inc.'s (MAYNILAD),[9] implementation of a "combined drainage-sewerage system" without the necessary permits from the Department of Environment and Natural Resources (DENR) and Department of Health (DOH). According to WARM, this "combined drainage-sewerage system" highlighted respondents' failure to operate an adequate sewerage and sanitation system resulting in environmental damage of such magnitude as to "prejudice x x x the life, health or property of the inhabitants of Metropolitan Manila and the adjacent provinces of Rizal, Cavite, and Bulacan, representing the service areas of respondent MWSS."[10]

Curiously, considering its allegations and the relief prayed for, WARM did not implead the DENR and its officials as respondents.

WARM's chief complaint on the implementation of a combined drainage sewerage system pointed out that:

> 5. At present, Public Respondent **MWSS** is using a combined drainage sewerage system, operated without the necessary permits from the Department of Environment and Natural Resources and/or the Department of Health. With a combined drainage sewerage system, rainwater and raw sewage are collected in a single pipe system. In these systems, when there is more rainwater than the system can handle, a mixture of raw sewage and rainwater goes directly from the sewer system to a body of water without having first been treated. It is the same as dumping highly toxic raw sewage into a natural body of water, an act prohibited by law.
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> x x x x
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> 8. At the heart of this Petition are the following laws on the environment that are being violated by the Respondents' installation of a combined drainage sewerage system and usage of only the antiquated Septic Tank Dislodging System (like the Malabanan Poso Negro Higop System where a third party plumbing service provider is hired to siphon septic waste) for unsewered consumers; this septic tank system is cheaper and proven to be unsound; worse, the costs even for this faulty system passed on (in advance) to all water consumers are larger than what they should be; **all without any approval or permit from the Secretary of Health or the Secretary of the Environment and Natural Resources;** and inaction with regard to the dumping of raw sewage into the waters surrounding Manila: (a) Section 4,[11] Presidential Decree No. 1151, (Philippine Environmental Policy); (b) Sections 72 to 74,[12] Code on Sanitation of the Philippines, Presidential Decree No. 856; (c) Article 75[13] of the Water Code of the Philippines (Presidential Decree No. 1067); (d) Sections 8,[14] 27(a)[15] and 27(e)[16] of the [Philippine] Clean Water Act of 2004, Republic Act No. 9275; and (e) The Writ of Continuing Mandamus as issued by the Supreme Court in *MMDA V. Concerned Citizens of Manila Bay*,[17] x x x, and further delineated by the Supreme Court in its [subsequent] Resolution dated February 15, 2011.[18] (Emphasis in the

original).

WARM asserted that sometime in 2007, from the Business Plans submitted by MANILA WATER and MAYNILAD to the MWSS-Regulatory Office (MWSS-RO),[19] the concessionaires indicated that they would implement a Combined Drainage System for the collection of raw sewage and rainwater.[20] According to WARM, at separate meetings, both MANILA WATER and MAYNILAD manifested to the MWSS-RO that the intended combined drainage sewerage project is compliant with DENR requirements, and that an Environmental Clearance Certificate (ECC) will be secured.[21]

WARM linked its objection to respondents' operation of a "combined drainage-sewerage system"[22] to their imposition of an environmental surcharge to water consumers for both sewered and unsewered lines covered by the existing sewerage system.[23]

The issues raised by WARM before the CA were:

a. The danger to the environment involved in implementing a combined drainage sewerage system, which, when considering the variance in rainfall between peak and minimum conditions, all but guarantees the continued dumping of raw sewage into the waters of Manila and its environs; and
b. The collection of environmental and/or sanitation charges from consumers that does not actually go into actual remediation of the environment, violates the Polluter Pays Principle in Environmental Law.[24]

Ruling of the Court of Appeals

The appellate court dismissed the Petition for its defects and deficiencies, to wit:

> 1. The personal circumstances of the petitioner and its personality to file the suit was not shown. [WARM] claims to be a non-stock non-profit corporation and is thus suing as a juridical person but evidence of its incorporation was not attached to the petition. Even if We consider it as an organization of citizens who are consumers of MWSS, there is no proof of its accreditation or registration with any government agency as required in Section 1, Rule 7 of the Rules of Procedure for Environment Cases;

2. **It is unclear whether the combined sewerage system is already opening or is only among the projected business plan of respondents and the areas where the alleged combined sewerage system would be/has been installed were not sufficiently identified**;

3. Sections 72 to 74 of the Code of Sanitation [do] not prohibit the installation of a combined sewerage system for storm water and sanitary sewage;

4. The main violation contemplated in the petition is the absence of approval from the Department of Health, Environmental Management Bureau of the Department of Environment and Natural Resources and the failure to secure an Environmental Impact Statement in respondents[‘] attempt to install and operate a combined drainage sewerage systems (*sic*). However, **the relation of [these] alleged violations to the purported environmental damages was not established**;

5. **[WARM] neither cited nor appended in their petition any scientific or other expert studies linking the combined sewerage system to the alleged damage to the environment**;

6. The prayer for complete accounting of environmental fees and the cessation of its collection is not within the ambit of the Writ of *Kalikasan;*

7. The violation of the Continuing Writ of Mandamus is better addressed to the Supreme Court which exercises continuing jurisdiction over the agencies involved therein until full compliance with the Supreme Court’s Order has been shown.

x x x x

WHEREFORE, the petition for issuance of a Writ of *Kalikasan* is **DISMISSED** without prejudice to the filing of any appropriate civil, criminal or administrative remedies warranted by the relevant circumstances.[25]

In the main, the appellate court ruled that WARM failed to establish the requisites for the issuance of a Writ of *Kalikasan*.

WARM filed two (2) motions for reconsideration and attached thereto its Certificate of

Incorporation dated November 3, 2011. Respondents MANILA WATER and MAYNILAD separately opposed the motion for reconsideration.[26]

On May 12, 2014, the appellate court denied WARM's motions for lack of merit and ruled that the arguments therein were a mere rehash and there was no cogent reason to reconsider the dismissal of the petition.[27]

Issues

Convinced of its entitlement to a Writ of *Kalikasan*, WARM appeals by *certiorari* to this Court insisting that the appellate court gravely erred in its ruling, *viz*.:

> 1. The Court of Appeals failed to apply acknowledged principles of environmental law in failing to recognize the legal wrong and actual damage being caused by the herein Respondents; the Precautionary Principle requires this Honorable Court to require evidence from the herein Respondents that all environmental laws are complied with and that no environmental harm is visited upon the herein Petitioner.
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> 2. The Court of Appeals failed to recognize the application of the environmental laws, rules, and regulations that the herein Respondents presently violate, namely: (a) Section 4, Presidential Decree No. 1151, Sections 72 to 74 of Presidential Decree No. 856 (Code on Sanitation of the Philippines), and Article 75 of the Water Code of the Philippines, all in relation to Section 8, 27(a) and 27(e) of Republic Act No. 9275 (The Clean Water Act of 2004); and (b) The Writ of Continuing Mandamus as issued by the Supreme Court in *MMDA v. Concerned Citizens of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008, and further delineated by the Supreme Court in its Resolution dated February 15, 2011. The Court of Appeals also disregarded the herein Respondents' operation of a combined sewerage system an Environmental Clearance Certificate (ECC) prior to the commencement of any operation of a combined sewerage system (*sic*).
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> 3. The Court of Appeals failed to recognize the existence of any environmental damage caused by the dumping of raw sewage in times of heavy rain, notwithstanding its pronouncements in its Decision in C.A. G.R. SP No. 112023, as well as a certification from the Philippine Medical Association confirming the

dangers therein, an error made more egregious by coming to such a conclusion without hearing on the same.

4. The Court of Appeals failed to recognize that the herein Respondents' failure to properly operate and maintain a sewerage system over its service contract area in accordance with recognized environmental standards is in and of itself a violation of an environmental law that may be remedied by the issuance of a Writ of *Kalikasan*.

5. The Court of Appeals failed to recognize that the herein Respondents' failure to comply with this Honorable Court's Continuing Writ of Mandamus is in and of itself a violation of an environmental law that may be remedied through the issuance of a Writ of *Kalikasan*; assuming *arguendo* that such is the case, now that this instant dispute is before this Honorable Court, jurisdiction over the same cannot now be denied.

6. The Court of Appeals failed to find the existence of a situation of such extreme urgency, grave injustice, and irreparable injury that justifies the issuance of a Temporary Environmental Protection Order, when the dangers of wading in sewage-contaminated floodwater that threatens the steps of this Honorable Court and the Court of Appeals may be taken by judicial notice.[28]

For the first time, WARM asserts the application of the Precautionary Principle for the issuance of the Writ of *Kalikasan*. WARM propounds that with the threat to human life or health, "the Court of Appeals should not have insisted on a more stringent demonstration of the environmental harm brought about by the herein [r]espondents' failure to install a proper sewerage system as required under law."[29] Essentially, WARM claims that respondents' violations of various environmental laws could veritably result in environmental damage contemplated by the Writ of *Kalikasan*.

The consolidated cases of G.R. Nos. 202897, 206823, and 207969:

To obviate confusion, we clarify that this case was initially consolidated with G.R Nos. 202897,[30] 206823[31] and 207969[32] but was subsequently de-consolidated on February 26, 2019.[33]

Herein respondents are the petitioners in G.R. Nos. 202897, 206823 and 207969 which reached this Court on appeal by *certiorari*[34] from the separate rulings of the CA. The cases before the appellate court were docketed as CA-G.R. SP Nos. 113374,[35] 112023,[36] 112041[37] which all affirmed the DENR's uniform rulings of respondents' (therein petitioners') administrative culpability for violation of its obligation under Section 8 of the Clean Water Act (CWA).

Notably, the appellate's Decision[38] in CA-G.R. SP No. 112023 is invoked by WARM in the present petition[39] as basis for its conclusion that dumping of raw sewage causes environmental damage.

On August 6, 2019, we promulgated our ruling in the three consolidated cases which is pending reconsideration before us.

Our Ruling

Without delving into our ruling in G.R Nos. 202897, 206823 and 297969, we find WARM's appeal to be without merit.

WARM's arguments attempt to parlay the magnitude of the environmental damage supposedly wrought on the consumers of respondents in their respective service areas. It also highlight the resulting pollution of Manila Bay and this Court and neighboring areas brought about by "sewage contaminated floodwater."[40]

The pith of these arguments lies in WARM's objection to the purported implementation by respondents of a combined drainage-sewerage system which, WARM is convinced, would result in environmental damage.

WARM is adamant that the resulting environmental damage is a foregone conclusion. However, the establishment of environmental damage should not be confined to a "stringent demonstration" thereof. Instead, WARM now proffers the application of the Precautionary Principle exhorting courts "to espouse prudence where risk of environmental harm is uncertain, but plausible."[41] For good measure, WARM avers that courts "are required to take precaution against grave risks of environmental harm where there is lack of full scientific evidence available to prove its inevitable occurrence."[42]

The arguments do not persuade. As ruled by the appellate court, WARM ultimately failed to

demonstrate its entitlement to a Writ of *Kalikasan*.

WARM is conflating the requirements for the issuance of a Writ of *Kalikasan* with the application of the Precautionary Principle as an evidentiary rule in environmental law case. There is a difference between insufficient and/or uncertain evidence which allows for the application of the Precautionary Principle in environmental law cases, on one hand, and that of pure allegation and lacking in evidence, on the other hand.

A Writ of *Kalikasan* and the Precautionary Principle *vis-à-vis* the constitutional right to a balanced and healthful ecology

The extraordinary remedy of a Writ of *Kalikasan* is provided under Section 1, Rule 7, Part III of the RPEC:

> Section 1. *Nature of the writ*. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

It is categorized as a special civil action and conceptualized as an extraordinary remedy; it covers environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. It is available against an unlawful act or omission of a public official or employee, or a private individual or entity.[43]

The elements for availment of the remedy are: "(1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an

environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces."[44]

While a Writ of *Kalikasan* is an extraordinary remedy, we reiterate that petitioners therefor must satisfy and demonstrate the requirements for availment of the remedy.

The rule is settled that a party seeking the issuance of the Writ of *Kalikasan*, whether on their own or on others' behalf, carry the burden of substantiating the writ's elements. Before proceeding with the case, the party must be ready with the evidence necessary for the determination of the writ's issuance.[45]

Unarguably, the issuance of the Writ of *Kalikasan* necessitates evidence. Thus, Section 2, Rule 7, Part III of the RPEC specifies:

> Section 2. *Contents of the petition*. — The verified petition shall contain the following:
>
> (c) The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

WARM'S evidence pale against the foregoing requirements. Notably, its evidence consists of bare allegations of a supposed implementation by respondents of a combined drainage-sewerage system without the necessary permits, and the resulting environmental damage therefrom. It glaringly did not present evidence of the following: (1) the existence and specific technical aspect of such a combined drainage-sewerage system; (2) how a combined drainage-sewerage system is objectionable *per se*; (3) the operation thereof without the necessary permits under Presidential Decree (PD) Nos. 1151 and 1586; and (4) the causal link between the operation of the combined drainage-sewerage system to the resulting environmental damage.

WARM simply claims that: (1) the implementation of a combined drainage and sewerage system is infeasible and illegal; (2) the actual operation is without necessary permits; and (3) such would result in environmental damage contemplated in the issuance of a writ of *Kalikasan*.

Significantly, WARM did not implead the DENR or any of its Bureaus relative to environmental management such as the Environmental Management Bureau (EMB).[46]

WARM then sidestepped its obligation to substantiate its allegations by invoking the Precautionary Principle, specifically the stringent requirement to prove environmental damage.

Section 1, Rule 20, Part V of the RPEC, on the Precautionary Principle, provides that "[w]hen there is lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it."

The precautionary principle likewise mandates that the constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

In *West Tower Condominium Corp. v. First Phil. Industrial Corp.*,[47] we ruled that the precautionary principle only applies when the link between the cause, that is the human activity sought to be inhibited, and the effect, that is the damage to the environment, cannot be established with full scientific certainty. Here, however, WARM's petition before the CA not only failed to provide a link, it likewise did not provide the scientific basis for its particular objection to the operation of a combined sewerage-drainage system or submit any evidence of a resulting environmental damage.

The claimed operation of a combined drainage-sewerage system without necessary permits (which likewise has no evidence) is a far stretch from determining whether such a system is irregular and illegal *per se*. WARM only speculates on the environmental damage resulting from the purported discharge of "sewage-contaminated floodwater". It did not even provide specific scenarios with scientific evidence or a survey of references and literature on the subject.

Verily, there is nothing in Republic Act No. 9275 (RA 9275), the CWA, that prohibits the operation of a combined drainage-sewerage system. The various beneficial uses of water are listed in Section 4(c) of the law and should be related to DENR Administrative Order (DAO) No. 2016-08 on Water Quality Guidelines and General Effluent Standards of 2016. Specifically, without the technical description of this much criticized combined drainage-sewerage system, it cannot preclude other provisions of the CWA and its implementing rules and regulations which cover the safe re-use of wastewater for irrigation purposes and operation of water treatment facilities.[48]

To emphasize, RA 9275 aims to preserve, and revive the quality of the country's fresh, brackish, and marine waters by promoting environmental strategies geared towards the protection of water resources. It also formulates an integrated water quality management framework for the utilization and development of the country's water supply and for the prevention of water pollution.

Assessing the meager evidence consisting of sparse research on the subject presented by WARM, we find that none of the elements for the issuance of the Writ of *Kalikasan* are present.

We cannot overemphasize that allegation is different from sufficient and actual evidence thereon.

First. The uncertainty of harm spoken of and alleged by WARM cannot be established by mere allegation since it has not even bothered to obtain a negative certification from the DENR stating the absence of a permit, and/or an Environmental Clearance Certificate (ECC) or a Certificate of Non-Coverage for such a project.

In addition, WARM could also have presented before the appellate court a certification relating to a business permit for this combined drainage-sewerage system operates.

WARM cited various laws which respondents allegedly violated: (1) PD No. 856, Sanitation Code; (2) PD 1067, Water Code; (3) PD 1151, Philippine Environmental Policy of 1977, in relation to; (4) PD 1586, Establishing an Environmental Impact Statement System; and (5) RA 9275, CWA.

Yet, it did not present concrete proof of the violation. Apart from stating general terms of impropriety of the operation of a combined drainage-sewerage system and how such could lead to environmental damage and harm not just to water consumers covered by respondents' services areas, WARM has utterly failed to discharge the burden of proof required on the party making the allegation.[49]

In *LNL Archipelago Minerals, Inc. v. Agham Party List*,[50] we did not deviate from the evidence required by the RPEC:

> The Rules are clear that in a Writ of Kalikasan petitioner has the burden to prove the (1) environmental law, rule or regulation violated or threatened to be violated; (2) act or omission complained of; and (3) the environmental damage of

> such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.
>
> Even the Annotation to the Rules of Procedure for Environmental Cases states that the magnitude of environmental damage is a condition *sine qua non* in a petition for the issuance of a Writ of *Kalikasan* and must be contained in the verified petition.[51]

Under the guise of claiming environmental damage and harm, WARM and other parties praying for the issuance of a Writ of *Kalikasan* must not expect courts of law to ascertain environmental damage where none is alleged, much less proven. The possibility of irreversible and serious harm is not established by obsolete and irrelevant data such as that presented in this case.

Second. From the foregoing discussion, it is palpable that WARM failed to pursue the appropriate remedy. The merits of its petition for a Writ of *Kalikasan* hinge on the existence of a *prima facie* case of a massive environmental disaster which, as has already been found, WARM failed to establish.[52] However, given its claim that the operation of a combined drainage-sewerage system is undertaken without the necessary permits in violation of PD Nos. 1151 and 1586, it behooved WARM to avail of administrative remedies before the DENR, the primary agency of the government mandated to implement environmental policies of the State.[53]

A Writ of *Kalikasan* cannot and should not substitute other remedies that may be available to the parties, whether legal, administrative, or political.

Recently, in *Abogado v. Department of Environment and Natural Resources*,[54] we expounded on the extraordinary remedy of Writ of *Kalikasan* that:

> The function of the extraordinary and equitable remedy of a Writ of *Kalikasan* should not supplant other available remedies and the nature of the forums that they provide. The Writ of *Kalikasan* is a highly prerogative writ that issues only when there is a showing of actual or imminent threat and when there is such inaction on the part of the relevant administrative bodies that will make an environmental catastrophe inevitable. It is not a remedy that is availing when there is no actual threat or when imminence of danger is not demonstrable. The

> Writ of *Kalikasan* thus is not an excuse to invoke judicial remedies when there still remain administrative forums to properly address the common concern to protect and advance ecological rights.
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> Moreover, there are other legal remedies available:
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> The writ of *kalikasan* is not an all-embracing legal remedy to be wielded like a political tool. It is both an extraordinary and equitable remedy which assists to prevent environmental catastrophes. It does not replace other legal remedies similarly motivated by concern for the environment and the community's ecological welfare. Certainly, when the petition itself alleges that remedial and preventive remedies have occurred, the functions of the writ cease to exist. In case of disagreement, parties need to exhaust the political and administrative arena. Only when a concrete cause of action arises out of facts that can be proven with substantial evidence may the proper legal action be entertained.[55]

In *Braga v. Abaya*,[56] the Court denied the petition for a Writ of Continuing *Mandamus* and/or a Writ of *Kalikasan* for prematurity and lack of merit as petitioners therein objected to the concession of the Davao Sasa Wharf *via* a Public Private Partnership (PPP) Scheme. We ruled that:

> Likewise, the Court cannot issue a writ of *kalikasan* based on the petition. The writ is a remedy to anyone whose constitutional right to a balanced and healthful ecology is violated or threatened with violation by an unlawful act or omission. However, the violation must involve environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces in order to warrant the issuance of the writ.
>
> The petitioners allege that the respondents have begun the process of transgressing their right to health and a balanced ecology through the bidding process. They cite The Competitiveness of Global Port-Cities: Synthesis Report to identify the four major negative impacts related to port operations: 1) environmental impacts, 2) land use impacts, 3) traffic impacts, and 4) other impacts. The synthesis report claims that most of these impacts affect the surrounding localities.

They claim that the environmental impacts of port operations "are within the field of air emissions, water quality, soil, waste, biodiversity, noise and other impacts. These environmental impacts can have severe consequences for the health of the population of the port city, especially for the poorer parts of port cities."

The petitioners also cite Managing Impacts of Development in the Coastal Zone, a joint publication of the DENR, the Bureau of Fisheries and Aquatic Resources (BFAR), the Department of the Interior and Local Government (DILG), and the DENR Coastal Resource Management Project (CRMP) that identified the effects of coastal construction and reclamation, including ports and offshore moorings. The petition alleges that:

> 26. According to Managing Impacts, "Coastal construction has been the most widespread of activities affecting coastal resources" since "Any construction that modifies the shoreline will invariably change currents, wave action, tidal fluctuations, and the transport of sediments along the coast" while "Coastal construction that restricts the circulation of coastal water bodies can also degrade water quali[t]y and coastal ecosystems."

However, these allegations are insufficient to warrant a writ of *kalikasan*.

First, the petition failed to identify the particular threats from the Project itself. All it does is cite the negative impacts of operating a port inside a city based on the Synthesis Report. However, these impacts already exist because the Port of Davao has been operating since 1900. The Project is not for the creation of a new port but the modernization of an existing one. **At best, the allegations in support of the application for the writ of *kalikasan* are hazy and speculative.**

x x x x

Moreover, **this Court does not have the technical competence to assess the Project, identify the environmental threats, and weigh the sufficiency or insufficiency of any proposed mitigation measures. This specialized**

> **competence is lodged in the DENR, who acts through the EMB in the EIA process. As we have already established, the application of the EIS System is premature until a proponent is selected.**
>
> Further, we fail to see an environmental risk that threatens to prejudice the inhabitants of two or more cities or municipalities if we do not restrain the conduct of the bidding process. **The bidding process is not equivalent to the implementation of the project. The bidding process itself cannot conceivably cause any environmental damage.**
>
> Finally, it is premature to conclude that the respondents violated the conditions of Resolution No. 118 issued by the Regional Development Council of Region XI. Notably, the Resolution requires compliance before the implementation of the project. Again, the project has not yet reached the implementation stage.[57] (Emphasis supplied)

Third. Based on the principle of exhaustion of administrative remedies and its corollary doctrine of primary jurisdiction, the appellate court correctly dismissed WARM's petition for a Writ of *Kalikasan*.

> The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.
>
> Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.[58] (Citations omitted.)

DENR DAO 2003-30,[59] the implementing rules and regulations of PD 1586 on the

establishment of an Environmental Impact Statement System, provides for fines, penalties and sanctions, to wit:

> SECTION 16. *Fines, Penalties And Sanctions*. —
>
> The EMB Central Office or Regional Office Directors shall impose penalties upon persons or entities found violating provisions of P.D. 1586, and its Implementing Rules and Regulations. Details of the Fines and Penalty Structure shall be covered by a separate order.
>
> The EMB Director or the EMB-RD may issue a Cease and Desist Order (CDO) based on violations under the Philippine EIS System to prevent grave or irreparable damage to the environment. Such CDO shall be effective immediately. An appeal or any motion seeking to lift the CDO shall not stay its effectivity. However, the DENR shall act on such appeal or motion within ten (10) working days from filing.
>
> The EMB may publish the identities of firms that are in violation of the EIA Law and its Implementing Rules and Regulations despite repeated Notices of Violation and/or Cease and Desist Orders.

Plainly, WARM could have availed of this administrative remedy to assail respondents' operation of a combined drainage-sewerage system allegedly without the necessary permits to be issued by the DENR.

Last. Suffice it to state that the other allegations of WARM, such as our ruling in *Metropolitan Manila Development Authority v. Concerned Citizens of Manila Bay*[60] and the ruling of the appellate court in CA-G.R. SP No. 112023[61], are inapplicable and irrelevant.

There is no mention whatsoever in the foregoing cases of the validity of an operation of a combined drainage-sewerage system or of its purported resulting environmental damage as would warrant the issuance of a Writ of *Kalikasan*.

WHEREFORE, the petition is hereby **DENIED.** The July 26, 2013 and May 12, 2014 Resolutions of the Court of Appeals in CA-G.R. SP No 00020 are **AFFIRMED**.

SO ORDERED.

Gesmundo, C.J., Caguioa, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., and *Singh, JJ.,* concur.
Leonen,[*] *SAJ.,* on official leave.

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[*] On official leave.

[1] *Rollo*, Vol. I, pp. 3-33.

[2] *Id*. at 35-39; penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino.

[3] *Id*. at 42-45.

[4] CA *rollo*, pp. 3-36; with Issuance of a Temporary Environmental Protection Order (TEPO).

[5] See Section 4, Rule 7 of A. M. No. 09-6-8-SC.

[6] CA *rollo*, p. 5.

[7] See Republic Act No. 6234 creating the MWSS. Under the law, the MWSS was mandated to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems. It was granted the power to exercise supervision and control over all waterworks and sewerage systems within Metro Manila, Rizal, and a portion of Cavite.

[8] On February 21, 1997, MWSS entered into concession agreements with MAYNILAD and MANILA WATER effective for a 25-year period, or from August 1, 1997 to May 6, 2022, subject to early termination. Under the Concession Agreements, the concessionaires act as contractors to perform certain functions, and as agents to exercise certain rights and powers for the operation of the waterworks and sewerage system. The concessionaires are required to expand the supply of water coverage and sewerage services, provide uninterrupted water supply, and increase water pressure during the concession period. The ownership of the facilities and movable properties existing at the beginning of the concession period remain with respondent MWSS.

[9] See Republic Act No. 8041, National Water Crisis Act of 1995, and Executive Order Nos. 286 and 311 issued on December 6, 1995 and March 20, 1996 respectively.

[10] CA *rollo*, pp. 4-5.

[11] SECTION 4. *Environmental Impact Statements*. — Pursuant to the above enunciated policies and goals, all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations firms and entities shall prepare, file and include in every action, project or undertaking which significantly affects the quality of the environment a detailed statement on —

(a) the environmental impact of the proposed action, project or undertaking;
(b) any adverse environmental effect which cannot be avoided should the proposal be implemented;
(c) alternative to the proposed action;
(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and
(e) whenever a proposal involves the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

Before an environmental impact statement is issued by a lead agency, all agencies having jurisdiction over, or special expertise on, the subject matter involved shall comment on the draft environmental impact statement made by the lead agency within thirty (30) days from receipt of the same.

Philippine Environmental Policy, June 6, 1977

[12] SECTION 72. *Scope of Supervision of the Department.* — The approval of the Secretary or his duly authorized representative is required in the following matters:

> a. Construction of any approved type of toilet for every house including community toilet which may be allowed for a group of small houses of light materials or temporary in nature;
> b. Plans of individual sewage disposal system and the sub-surface absorption system, or other treatment device;
> c. Location of any toilet or sewage disposal system in relation to a source of water supply;
> d. Plans, design data and specifications of a new or existing sewerage system or sewage treatment plant;

e. The discharge of untreated effluent of septic tanks and/or sewage treatment plants to bodies of water;
f. Manufacture of septic tanks; and
g. Method of disposal of sludge from septic tanks or other treatment plants.

SECTION 73. *Operation of Sewage Treatment Works.* — Private or public sewerage systems shall:

a. Provide laboratory facilities for control tests and other examinations needed;
b. Forward to the local health authority operating data, control tests and such other records and information as may be required;
c. Inform the local health authority in case of break-down or improper functioning of the sewage treatment works; and
d. Provide for the treatment of all sewage entering the treatment plant.

SECTION 74. *Requirements in the Operation of Sewerage Works and Sewage Treatment Plants*. — The following are required for sewerage works and sewage treatment plants. cdtai

a. All houses covered by the system shall be connected to the sewer in areas where a sewerage system is available.
b. Outfalls discharging effluent from a treatment plant shall be carried to the channel of the stream or to deep water where the outlet is discharged.
c. Storm water shall be discharged to a storm sewer, sanitary sewage shall be discharged to a sewerage system carrying sanitary sewage only; but this should not prevent the installation of a combined system.
d. Properly designed grease traps shall be provided for sewers from restaurants or other establishments where the sewage carries a large amount of grease.

[13] ARTICLE 75. No person shall, without prior permission from the National Pollution Control Commission, build any works that may produce dangerous or noxious substances or perform any act which may result in the introduction of sewage, industrial waste, or any pollutant into any source of water supply.

Water pollution is the impairment of the quality of water beyond a certain standard. This

standard may vary according to the use of the water and shall be set by the National Pollution Control Commission.

[14] SECTION 8. *Domestic Sewage Collection, Treatment and Disposal.* — Within five (5) years following the effectivity of this Act, the agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities (HUCs) as defined in Republic Act No. 7160, in coordination with LGUs, shall be required to connect the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households to available sewerage system: Provided, That the said connection shall be subject to sewerage services charge/fees in accordance with existing laws, rules or regulations unless the sources had already utilized their own sewerage system: Provided, further, That all sources of sewage and septage shall comply with the requirements herein.

In areas not considered as HUCs, the DPWH in coordination with the Department, DOH and other concerned agencies, shall employ septage or combined sewerage-septage management system.

For the purpose of this section, the DOH, in coordination with other government agencies, shall formulate guidelines and standards for the collection, treatment and disposal of sewage including guidelines for the establishment and operation of centralized sewage treatment system

[15] SECTION 27. *Prohibited Acts.* — The following acts are hereby prohibited:

a) Discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water, where, the same shall be liable to be washed into such surface water, either by tide action or by storm, floods or otherwise, which could cause water pollution or impede natural flow in the water body;

x x x x

[16] e) Unauthorized transport or dumping into sea waters of sewage sludge or solid waste as defined under Republic Act No. 9003;

[17] 595 Phil. 305 (2008).

[18] CA *rollo*, pp. 5-7.

[19] Created in August 1997 by virtue of the Concession Agreements signed between the MWSS and the two concessionaires, [MANILA WATER] for the East Zone and [MAYNILAD] for the West Zone. See https://ro.mwss.gov.ph/mwss-regulatory-Office/#:~:text=The%20MWSS%20Regulatory%20Office20(RO,for%20the%20West%20Zone. Last visited December 8, 2020.

[20] CA *rollo* p. 12.

[21] *Id*. at 14.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 14-15.

[25] *Rollo*, pp. 37-39.

[26] *Id*. at 43.

[27] *Id*. at 46.

[28] *Id*. at 10-11.

[29] *Id*. at 13.

[30] **Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources**.

[31] **Manila Water Company, Inc. v. Secretary of the Department of Environment and Natural Resources**.

[32] **Manila Waterworks and Sewerage System v. Pollution Adjudication Board and Environmental Management Bureau**.

[33] *Rollo*, p. 629.

[34] Under Rule 45 of the Rules of Court.

[35] **Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources**.

[36] **Manila Water Company, Inc. v. Secretary of the Department of Environment and Natural Resources**.

[37] **Manila Waterworks and Sewerage System v. Pollution Adjudication Board and Environmental Management Bureau**.

[38] CA *rollo*, pp. 37-48. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Presiding Justice Andres B. Reyes, Jr. (retired member of this Court) and Associate Justice Rodil V. Zalameda (now a member of this Court).

[39] *Rollo*, Vol. I, p. 10; see paragraph 3 of WARM's Assignment of Errors.

[40] *Id*. at 11; see paragraph 6 of WARM's Assignment of Errors.

[41] *Id*. at. 12.

[42] *Id*.

[43] **LNL Archipelago Minerals, Inc. v. Agham Party List**, 784 Phil. 456, 470 (2016), citing **Paje v. Casiño**, 752 Phil. 498 (2015).

[44] *Id*.

[45] **Abogado v. Department of Environment and Natural Resources, G.R. No. 246209**, September 3, 2019.

[46] See Section 17, Chapter 3, Title XIV of Executive Order No. 292, The 1987 Administrative Code.

[47] 760 Phil. 304 (2015).

[48] See Section 4(c)(3) and National Irrigation Administration Administrative Order No. 26, Series of 2007 entitled Guidelines on the Procedures and Technical Requirements for the Issuance of a Certification Allowing the Safe Re-use of Wastewater for Purposes of Irrigation and other Agricultural Uses.

[49] **Abogado v. Department of Environment and Natural Resources**, *supra* note 45.

[50] *Supra* note 43.

[51] *Id*. at 474.

[52] **West Tower Condominium Corp. v. First Phil. Industrial Corp.**, *supra* note 47.

[53] See Section 2, in relation to Section 1, Chapter I, Title XIV of EO No. 292.

[54] *Supra* note 45.

[55] *Id*.

[56] 794 Phil. 662 (2016).

[57] *Id*. at 679-682.

[58] **Smart Communications, Inc. v. Aldecoa**, 717 Phil. 577, 598-599 (2013).

[59] Issued on June 30, 2003.

[60] 595 Phil. 305 (2008) and 658 Phil. 223 (2011).

[61] Affirmed with Modification by our August 6, 2019 Decision in **Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources, Manila Water Company, Inc. v. Secretary of the Department of Environment and Natural Resources**, and **Manila Waterworks and Sewerage System v. Pollution Adjudication Board and Environmental Management Bureau, G.R. Nos. 202897, 206823 and 207969**.

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