

**GAUDENCIO RAYO, BIENVINIDO PASCUAL, TOMAS MANUEL,
MARIANO CRUZ, PEDRO BARTOLOME, BERNARDINO CRUZ, JOSE
PALAD, LUCIO FAJARDO, FRANCISCO RAYOS, ANGEL TORRES,
NORBERTO TORRES, ROD...**

G.R. Nos. L-55273-83. December 19, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The relevant antecedents of this case are narrated in the petition and have not been controverted, namely:

"3. At about midnight on October 26, 1978, during the height of that infamous typhoon "KADING", the respondent corporation, acting through its plant superintendent, Benjamin Chavez, opened or caused to be opened simultaneously all the three floodgates of the Angat Dam. And as a direct and immediate result of the sudden, precipitate and simultaneous opening of said floodgates several towns in Bulacan were inundated. Hardest-hit was Norzagaray. About a hundred of its residents died or were re-reported to have died and properties worth million of pesos destroyed or washed away. This flood was unprecedented in Norzagaray.

"4. Petitioners, who were among the many unfortunate victims of that man-caused flood, filed with the respondent Court eleven complaints for damages against the respondent corporation and the plant superintendent of Angat Dam, Benjamin Chavez, docketed as Civil Cases Nos. SM-950, 951, 953, 958, 959, 964, 965, 966, 981, 982 and 983. These complaints though separately filed have a common/ similar cause of action. x x x.

"5. Respondent corporation filed separate answers to each of these eleven complaints. Apart from traversing the material averments in the complaints and setting forth counterclaims for damages respondent corporation invoked in each answer a special and affirmative defense that 'in the operation of the Angat Dam,' it is 'performing a purely government function', hence it 'can not be sued without the express consent of the State.' x x x.

"6. On motion of the respondent corporation a preliminary hearing was held on its affirmative defense as though a motion to dismiss were filed. Petitioners opposed the prayer for dismissal and contended that respondent corporation is performing not governmental but merely proprietary functions and that under its own organic act,, Section 3 (d) of Republic Act No. 6395, it can 'sue and be sued in any court.' x x x.

"7. On July 29, 1980 petitioners received a copy of the questioned order of the respondent Court dated December 21, 1979 dismissing all their complaints as against the respondent corporation thereby leaving the superintendent of the Angat Dam, Benjamin Chavez, as the sole party-defendant. x x x.

"8. On August 7, 1980 petitioners filed with the respondent Court a motion for reconsideration of the questioned order of dismissal x x x.

"9. The respondent Court denied petitioners' motion for reconsideration in its order dated October 3, 1980. x x x. Hence, the present petition for re-view on certiorari under Republic Act No. 5440. " (Rollo, pp. 3-6.)

The Order of dismissal dated December 12, 1979, reads as follows:

"Under consideration is a motion to dismiss embodied as a special affirmative defense in the answer filed by defendant NPC on the grounds that said defendant performs a purely governmental function in the operation of the Angat Dam and can not therefore be sued for damages in the instant cases in connection therewith.

"Plaintiffs' opposition to said motion to dis-miss, relying on Sec. 3 (d) of Republic Act 6396 which imposes on the NPC the power and liability to sue and be sued in any court, is not tenable since the same refer to such matters only as are within the scope of the other corporate powers of said defendant and not matters of tort as in the instant cases. It being an agency performing a purely governmental function in the operation of the Angat Dam, said defendant was not given any right to commit wrongs upon individuals. To sue said defendant for tort may require the express consent of the State.

"WHEREFORE, the cases against defendant NPC are hereby dismissed." (Rollo, p. 60.)

The Order dated October 3, 1980, denying the motion for reconsideration filed by the plaintiffs is pro forma; the motion was simply denied for lack of merit. (Rollo, p. 74.)

The petition to review the two orders of the public respondent was filed on October 16, 1980, and on October 27, 1980. We required the respondents to comment. It was only on April 13, 1981, after a number of extensions, that the Solicitor General filed the required comment. (Rollo, pp. 107-114.)

On May 27, 1980, We required the parties to file simultaneous memoranda within twenty (20) days from notice. (Rollo, p. 115.) Petitioners filed their memorandum on July 22, 1981. (Rollo, pp. 118-125.) The Solicitor General filed a number of motions for extension of time to file his memorandum. We granted the seventh extension with a warning that there would be no further extension. Despite the warning the Solicitor General moved for an eighth extension which We denied on November 9, 1981. A motion for a ninth extension was similarly denied on November 18, 1981. The decision in this case is, therefore, without the memorandum of the Solicitor General.

The parties are agreed that the Order dated December 21, 1979, raises the following issues:

1. Whether respondent National Power Corporation performs a governmental function with respect to the management and operation of the Angat Dam; and
2. Whether the power of respondent National Power Corporation to sue and be sued under its organic charter includes the power to be sued for tort.

The petition is highly impressed with merit.

It is not necessary to write an extended dissertation on whether or not the NPC performs a governmental function with respect to the management and operation of the Angat Dam. It is sufficient to say that the government has organized a private corporation, put money in it and has allowed it to sue and be sued in any court under its charter. (R. A. No. 6395, Sec. 3 (d).) As a government owned and controlled corporation, it has a personality of its own, distinct and separate from that of the Government. (See *National Shipyards and Steel Corp. vs. CIR, et al.*, L-17874, August 31, 1963, 8 SCRA 781.) Moreover, the charter provision that the NPC can "sue and be sued in any court" is without qualification on the cause of action and accordingly it can include a tort claim such as the one instituted by the petitioners.

WHEREFORE, the petition is hereby granted; the Orders of the respondent court dated December 12, 1979 and October 3, 1980, are set aside; and said court is ordered to reinstate the complaints of the petitioners. Costs against the NPC.

SO ORDERED.

Barredo, (Chairman), Aquino, De Castro, Ericeta, and Escolin, JJ., concur.
Concepcion, Jr., J., on leave.

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