

**NATIONAL POWER CORPORATION AND BENJAMIN CHAVEZ,
PETITIONERS, VS. THE COURT OF APPEALS, LAURO PALAD, JOSE
PALAD, DOMINGO CRUZ, EMILIA MARIANO, RAYMUNDO PALAD AND
FRANCISCO C. TOR...**

G.R. No. 102206. June 25, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In the previous cases of National Power Corporation vs. Court of Appeals (G.R. No. 96410)[1] and National Power Corporation vs. Court of Appeals (G.R. Nos. 103442-45),[2] this Court ruled that the inundation of the towns neighboring the Angat Dam, particularly Norzagaray, Bulacan, at the height of typhoon "Kading" in the evening of 26 October 1978 up to the early morning of 27 October 1978, was due to the negligence of the petitioners therein. Accordingly, since such negligence was the proximate cause of the losses and damages sustained by the private respondents, the said petitioners were adjudged liable therefor. The issues and defenses raised in those cases by the petitioners are the very same ones set forth in the instant petition. Hence, the outcome of this case and the fate of the petitioners are fairly easy to predict.

The private respondents, owners of different parcels of land in Angat and Norzagaray, Bulacan, suffered extensive damage to and loss of their properties as a result of the inundation abovementioned, to wit:

"Lauro Palad - P42,500.00

Jose Palad - 59,900.00

Domingo Cruz - 25,000.00

Matias Castillo - 5,000.00

Emilia Mariano - 9,500.00

Raymundo Palad - 19,000.00

Francisca Torres - 18,000.00"[3]

Their demands for the payment thereof having been rejected by the petitioners, the private respondents filed on 25 October 1982 with the Regional Trial Court (RTC) of Malolos, Bulacan an action for damages against the petitioners. The case was docketed as Civil Case No. SM-1338 and raffled off to Branch 22 of the said court.

In their Answer, the petitioners allege, inter alia, that they took all the necessary precautions in anticipation of the typhoon, exercised due care in the maintenance and operation of the Angat Hydro-electric plant and sent out early written warnings in the morning of 24 October 1978 to the towns of Norzagaray, Angat, Bustos, Plaridel, Baliwag and Calumpit, Bulacan. They further rely on the defense of force majeure, and aver that there exists no causal relation between the alleged damages and losses suffered by the plaintiffs and the act or omission attributed to

them; that they acted in accordance with law, properly exercised their legal rights and performed their duties, any damage incurred by the plaintiffs being *damnum absque injuria*; and that the plaintiffs had the last clear chance to avoid damage. They also assert that the action is barred by laches.[4]

After trial, the RTC rendered its decision against the petitioners on 18 June 1990; the dispositive portion thereof reads as follows:

"Wherefore, in view of the foregoing, judgement is hereby rendered ordering the defendants to pay the plaintiffs the following:

1. Actual damages to following plaintiffs: Jose Palad -- -P59,900.00 and Emilia Mariano -- P9,500.00. With regards (sic) to the claims of the other plaintiffs; Lauro Palad -? P42,500.00, Domingo Cruz -- -P25,000.00, Raymundo Palad --- P19,000.00 and Francisca C. Torres -- P18,000.00, the defendants are ordered to pay them.
2. Moral damages of P30,000.00 to each of the plaintiffs with legal interest from the promulgation of judgment until the obligation is fully paid.
3. And attorney's fees amounting to 25% of whatever is collected from the defendants.

SO ORDERED."[5]

In due course, the petitioners appealed the said decision to the respondent Court which docketed the appeal as CA-G.R. CV No. 27985.

In its decision promulgated on 16 August 1991,[6] the appellate court affirmed the findings of the trial court on the negligence of the petitioners and, relying on the doctrine enunciated in *National Power Corporation vs. Court of Appeals*[7] "that when the negligence of a person concurs with an act of God in producing a loss, such person is not exempt from liability by showing that the immediate cause of the damage was the act of God," affirmed the award of actual damages in favor of the private respondents. It, however, deleted the award of moral damages because it concluded that there was no malice or bad faith on the part of the petitioners, and reduced the attorney's fees to a fixed sum of P5,000.00.

The Court of Appeals considered as negligent the petitioners' act of opening the spillway gates of the dam abruptly at midnight of 26 October 1978, instead of gradually in the morning of the same day when they had already expected heavy rains. It was this sudden opening of the gates which resulted in the flooding of the nearby towns. As determined by the respondent Court:

"We can understand why no spilling of water from the dam was made by appellants on October 24, 1978 considering that according to the newspapers, the direction of the coming typhoon was towards the Bicol region. But in the morning of October 25, 1978, there was already a weather forecast published in the newspapers that the typhoon was heading towards Metro Manila and Central Luzon, which necessarily included Bulacan province and the area of the Angat dam. Appellants should have then started gradually spilling water from the dam into the Angat River in anticipation of the abnormal rise of the water level in the dam with the coming typhoon which could cause the dam to overflow. We see it then as negligence on the part of defendants to delay the spilling of water from the dam, for as the NBI Report Exh. "2" reveals, appellant Chavez already wanted to start opening the dam's flood gates because of the fast rise in the water level therein at about 10:45 o'clock in the morning of October 26, 1978, but he did not use his discretion on the matter but even sought permission to do so from Armando Plata and Fenoldo Eleazer, managers of the Generation Division and Operation Division, respectively, and it was only at 5:40 o'clock in the afternoon that approval of the request was confirmed. And while appellant Chavez testified that the water level in the dam was rising very fast (p. 29, *tsn*, *id*), he still waited up to 9:00 o'clock in the evening of the same day of October 26, 1978 before he started opening the reservoir's spillway gates which he did from 9:00 p.m. to 12 o'clock midnight, starting

with an opening of 1 meter for each gate, gradually increasing the openings to 5 mts., until the maximum opening of 14 mts. was reached by 12 o'clock midnight x x x. Hence, the uncontradicted testimonies of the witnesses for the plaintiffs that the flood occurred between 1 to 2 o'clock a.m., the water rising so fast within the period of only 10 minutes from knee level to up to the neck, and that the flood was already under control and the water had stopped rising by 3:00 a.m. All these prove that the unusual flood that occurred between 1 and 2 o'clock a.m. on October 26, 1978 and which destroyed plaintiffs' properties, was not brought about by the rain waters that came with typhoon 'Kading' but by appellants' delayed opening of the spillway gates x x x."[8]

In view of the denial of their motion for reconsideration by the public respondent in its Resolution of 2 October 1991,[9] petitioners filed the instant petition which they support with the following assignment of errors:

"I. THE COURT OF APPEALS ERRED IN HOLDING THAT THE RULING IN THE CASE OF NATIONAL POWER CORPORATION v. C.A., ET AL., 161 SCRA 334, IS APPLICABLE IN THE INSTANT CASE UNDER WHICH PETITIONERS ARE LIABLE EVEN THOUGH THE COMING OF THE TYPHOON WAS FORCE MAJEURE.

II. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE GIVING OF WRITTEN NOTICE OF WARNING BY PETITIONERS ABSOLVED THEM FROM LIABILITY.

III. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT ANY DAMAGE SUFFERED BY RESPONDENTS WAS DAMNUM ABSQUE INJURIA.

IV. THE COURT OF APPEALS ERRED IN NOT AWARDING THE COUNTERCLAIM OF THE PETITIONERS FOR ATTORNEY'S FEES AND EXPENSES OF LITIGATION."[10]

On 18 May 1992,[11] in compliance with our Resolution of 10 February 1992,[12] the private respondents filed their Comment to the petition. Thereupon, we gave due course to the petition on 12 August 1992.[13]

As we stated in the exordium of this ponencia, petitioners have raised the same issues and defenses as in the other two decided cases therein mentioned. Predictably therefore, this petition must perforce be dismissed because the losses and damages sustained by the private respondents had been proximately caused by the negligence of the petitioners, although the typhoon which preceded the flooding could be considered as a force majeure. Thus, we simply reiterate our statements in G.R. Nos. 103442-45 (National Power Corporation vs. Court of Appeals):[14]

"Accordingly, petitioners cannot be heard to invoke the act of God or force majeure to escape liability for the loss or damage sustained by the private respondents since they, the petitioners, were guilty of negligence. This event then was not occasioned exclusively by an act of God or force majeure; a human factor -- negligence or imprudence -- had intervened. The effect then of the force majeure in question may be deemed to have, even if only partly, resulted from the participation of man. Thus, the whole occurrence was thereby humanized, as it were, and removed from the rules applicable to acts of God."

In our decision in G.R. No. 96410,[15] we ruled that the doctrine laid down in *Juan F. Nakpil & Sons vs. Court of Appeals*[16] was correctly applied by the appellate court. In the instant case, the respondent Court relied on our 1988 decision in *National Power Corporation vs. Court of Appeals*. [17] It must be emphasized that the latter decision applied and reiterated the ruling in the *Nakpil* case.

One final point. In resisting the findings which underscore their negligence, petitioners would have this Court appreciate in their favor the report of the National Bureau of Investigation (NBI) (Exhibit "2") that petitioner Chavez committed no fault or negligence. This NBI report has no probative value whatsoever. It appears in the decision of the trial court in Civil Case No. 1338[18] that the identity and contents of the same were verified by Jose S. Ramos, Manager of the Trial and Litigation Division, Office of the General Counsel for petitioner

NPC,[19] and not by any officer of the NBI, much less the officer who conducted the investigation or prepared the report. Besides, the said report was not based on evidence of opposing parties. The private respondents do not appear to have been investigated by the NBI. On the other hand, the trial court, before reaching its verdict, received the evidence of the contending parties and evaluated their testimonies on the basis of their story, paying particular attention to their credibility. "It is doctrinally entrenched that the evaluation of the testimony of witnesses by the trial court is received on appeal with the highest respect because it is the trial court that has the direct opportunity to observe them on the stand and detect if they are telling the truth or lying through their teeth. The assessment is accepted as correct by the appellate court -- is indeed binding upon it -- in the absence of a clear showing that it was reached arbitrarily." [20] Thus, the public respondent acted correctly in not giving credit to the NBI report.

WHEREFORE, finding no reversible error in the challenged decision of the public respondent in CA-G.R. CV No. 27985, the instant petition is hereby DENIED, with costs against the petitioners.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] 211 SCRA 162 [1992].

[2] 21 May 1993.

[3] CA Decision, 3; Rollo, 31.

[4] RTC Decision, 3; Rollo, 66.

[5] Id., 83.

[6] Rollo, 29-43. Per Associate Justice Alicia V. Sempio-Diy, concurred in by Associate Justices Vicente V. Mendoza and Oscar M. Herrera.

[7] 161 SCRA 334 [1988].

[8] Rollo, 36-37.

[9] Id., 44.

[10] Rollo, 14.

[11] Id., 94.

[12] Id., 88.

[13] Id., 112.

[14] Supra, footnote no. 2.

[15] Supra, footnote no. 1.

[16] 144 SCRA 596 [1986].

[17] Supra, footnote no. 7.

[18] RTC Decision, 1-21; Rollo, 64-83.

[19] Id., 77.

[20] People vs. Santito, 201 SCRA 87, 94 [1991], citing People vs. Manalansan, 189 SCRA 619 [1990].

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