

**NATIONAL POWER CORPORATION, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS (NINTH DIVISION), HADJI ABDUL
CARIM ABDULLAH, CARIS ABDULLAH, HADJI ALI LANGCO AND
DIAMAEI PANGCATAN, ...**

G.R. NO. 124378. March 08, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this petition for review, petitioner seeks the reversal of the Decision[2] dated 21 December 1995 of the Court of Appeals in CA-G.R. CV No. 44639, which affirmed with modification the Decision[3] dated 29 July 1991 of the Regional Trial Court (RTC), 12th Judicial Region, Branch 9, Marawi City, in Civil Case No. 115-87, for damages. The Resolution[4] dated 27 March 1996 that denied petitioner's motion for reconsideration is likewise assailed.

The factual milieu, as gleaned from the records, follows:

Petitioner National Power Corporation (NPC) is a government-owned and controlled corporation created under Commonwealth Act No. 120, as amended.[5] It is tasked to undertake the development of hydroelectric generations of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis.[6] Concomitant to its mandate, petitioner has, among other things, the power to construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations, and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring, and waterfalls in the Philippines, and supplying such power to the inhabitants.[7]

On 15 November 1973, the Office of the President of the Philippines issued Memorandum Order No. 398 - "Prescribing Measures to Preserve the Lake Lanao Watershed, To Enforce the Reservation of Areas Around the Lake Below Seven Hundred And Two Meters Elevation, and for Other Purposes." Said decree instructed the NPC to build the Agus Regulation Dam at the mouth of Agus River in Lanao del Sur, at a normal maximum water level of Lake Lanao at 702 meters elevation.[8] Pursuant thereto, petitioner built and operated the said dam in 1978.

Private respondents Hadji Abdul Carim Abdullah and Caris Abdullah were owners of fishponds in Barangay Bacong, Municipality of Marantao, Lanao del Sur, while private respondents Hadji Ali Langco and Diamael Pangcatan had their fishponds built in Poona-Marantao, also in the same province. All of these fishponds were sited along the Lake Lanao shore. Private respondents have spent substantial amounts to construct, maintain, and stock their respective fishponds with fish fingerlings, and make plantings along the adjoining foreshore areas between 1984 and 1986.[9]

In October and November of 1986, all the improvements were washed away when the water level of the lake escalated and the subject lakeshore area was flooded. Private respondents blamed the inundation on the Agus

Regulation Dam built and operated by the NPC in 1978. They theorized that NPC failed to increase the outflow of water even as the water level of the lake rose due to the heavy rains.[10]

Thus, in December of 1986, the private respondents, except for Caris Abdullah, wrote separate letters to the NPC's Vice-President, a certain "R.B. Santos," who was based in Ditucalan, Iligan City. They sought assistance and compensation for the damage suffered by each of them.[11] The private respondents' pleas were shorn off by NPC on the ground that it was mandated under Memorandum Order No. 398 dated 15 November 1973 to build the dam and maintain the normal maximum lake level of 702 meters, and that since its operation in 1978, the water level never rose beyond 702 meters. Furthermore, NPC retorted that visible monuments and benchmarks indicating the 702-meter elevation had been established around the lake from 1974 to 1983, which should have served as a warning to the private respondents not to introduce any improvements below the 702-meter level as this was outlawed.[12]

Left with no other recourse, the private respondents filed a complaint for damages before the RTC of Marawi City, Branch 9, on 24 February 1987, docketed as Civil Case No. 115-87. They alleged that the negligence and inexperience of NPC's employees assigned to operate the Agus Regulation Dam were the proximate causes of the damage caused to their properties and livelihood. They prayed for damages corresponding to the cost of their lost fishes plus the value of their destroyed fishpond and the expenses and the fishes thereof. They, too, asked for reimbursement of necessary expenses as may be proved in the trial, moral and exemplary damages, and the costs.[13]

NPC denied the private respondents' allegations, and tossed back the disputations that: (a) the water level of Lake Lanao never went beyond 702 meters, (b) NPC employees were never remiss in the performance of their duties, and (c) the private respondents' alleged fishponds were either located below the 702-meter level, or must have been introduced when the water level was abnormally low and as such, were within the prohibited area as defined in Memorandum Order No. 398. In fine, the NPC posited that the private respondents had no cause of action against it.[14]

The trial court created a committee composed of representatives of both parties to conduct an ocular inspection of the dam and its surrounding areas. On 29 July 1991, the trial court rendered a Decision in favor of the private respondents. Thus, the trial court disposed:

WHEREFORE, for all the foregoing consideration, judgment is hereby rendered in favor of plaintiffs Hadji Abdul Carim Abdullah, Caris Abdullah, Hadji Langco and Diamael Pangcatan and against defendant National Power Corporation directing said defendant National Power Corporation to pay unto Plaintiff Hadji Abdul Carim Abdullah the sum of P410,000.00 in actual or compensatory damages; to pay unto plaintiff Caris Abdullah the sum of P208,000.00 in actual or compensatory damages; to pay unto plaintiff Hadji Ali Langco or his substitutes Said Langco; Jalila Langco; Raga Langco; Namolawan Langco; Alikan Langco; Dibolawan Langco; Binolawan Langco; Ismael Langco; Bokari Langco; and Diamael Pangcatan the total sum of P260,000.00 in actual or compensatory damages; and the further sum of P20,000.00 in litigation expenses and the costs.[15]

Unflinched, the petitioner appealed to the Court of Appeals, which in a Decision dated 21 December 1995, affirmed the decision of the court a quo with modification on the award of damages, to wit:

WHEREFORE, for all the foregoing considerations, judgment is hereby rendered in favor of plaintiffs Hadji Abdul Carim Abdullah, Caris Abdullah, Hadji Langco and Diamael Pangcatan and against defendant National Power Corporation directing said defendant National Power Corporation to pay unto plaintiff Hadji Abdul Carim Abdullah the sum of P350,000.00; unto plaintiff Caris Abdullah the sum of P150,000.00; unto plaintiff Hadji Ali Langco's heirs and Diamael Pangcatan the sum of P210,000.00 as and for temperate or moderate

damages; as well as P20,000.00 as and for litigation expenses and costs.

Costs against appellant.[16]

The subsequent motion for reconsideration having been denied, petitioner interposes this appeal, contending that the Court of Appeals seriously erred when it:

- ...disregarded the mandate of Presidential Memorandum Order No. 398.
- ...concluded that petitioner was negligent in applying Presidential Memorandum Order No. 398, despite the clear absence of evidence of such alleged negligence.
- ...concluded that the adverse result of an ocular inspection conducted by the trial court at a much later date and during the trial could be used, as it did, as proof of the alleged flooding in October/November 1986.
- ...concluded and so held that petitioner allegedly failed to prove that private respondents' fishponds were situated below the 702-meter elevation of the lake.
- ...awarded temperate and moderate damages in lieu of actual and compensatory damages, at unreasonable amounts at that, despite the clear absence OF LEGAL AND FACTUAL BASES FOR SUCH AWARD.[17]

Despite the manifold spin-off subjects raised, the pertinent issue worthy of exploration at the core is whether or not the Court of Appeals erred in affirming the trial court's verdict that petitioner was legally answerable for the damages endured by the private respondents.

From the above-mentioned assignment of errors, petitioner palpably disputes the findings of facts and the appreciation of evidence made by the trial court and later affirmed by respondent court. It is apodictic that in a petition for review, only questions of law may be raised[18] for the reason that the Supreme Court is not a trier of facts and generally does not weigh anew the evidence already passed upon by the Court of Appeals.[19] Corollarily, the factual findings of the Court of Appeals affirming those of the trial court bind this Court when such findings are supported by substantial evidence. In the case at hand, no reversible error could be attributed to the Court of Appeals in espousing conclusions of facts similar to the trial court on petitioner's liability for the damages suffered by private respondents.[20]

Here are the reasons why:

Memorandum Order No. 398, also known as the law "Prescribing Measures to Preserve the Lake Lanao Watershed, To Enforce the Reservation of Areas Around the Lake Below Seven Hundred And Two Meters Elevation, and for Other Purposes," clothes the NPC with the power to build the Agus Regulation Dam and to operate it for the purpose of generating energy. Twin to such power are the duties: (1) to maintain the normal maximum lake elevation at 702 meters, and (2) to build benchmarks to warn the inhabitants in the area that cultivation of land below said elevation is forbidden. The wordings of the said presidential order cannot be any clearer on this point. Thus –

- The National Power Corporation shall render financial assistance to forest protection, tree farming, reforestation and other conservation measures in coordination with private timber concessionaires and the Bureau of Forest Development. With the assistance and cooperation of provincial and municipal officials, as well as the Provincial Commander of the Philippine Constabulary, NPC shall place in every town around the lake, at the normal maximum lake elevation of seven hundred and two meters, benchmarks warning that cultivation of land below said elevation is prohibited. (Emphasis supplied)

By the bulk of evidence, NPC ostensibly reneged on both duties.

With respect to its job to maintain the normal maximum level of the lake at 702 meters, the Court of Appeals,

echoing the trial court, observed with alacrity that when the water level rises due to the rainy season, the NPC ought to release more water to the Agus River to avoid flooding and prevent the water from going over the maximum level. And yet, petitioner failed to do so, resulting in the inundation of the nearby estates.[21] The facts, as unraveled by the trial court from the evidence on record, established that before the construction of the Agus Regulation Dam across the Agus River just beyond the Marawi City Bridge, no report of damages to landowners around the lake was ever heard. After its construction and when it started functioning in 1978, reports and complaints of damages sustained by landowners around the lake due to overflowing became widespread. The factual findings of the trial court rightly support its conclusions on this respect -

...Lake Lanao has only one outlet, the Agus River which in effect is the natural regulator. When the Lake level is high, more water leaves the lakes towards the Agus River. Under such a natural course, overflowing is remote because excess in water level of the lake, there is a corresponding increase in the volume of water drain down towards the Agus River and vice versa.

In order to achieve its goal of generating hydroelectric power, defendant NPC constructed the Intake Regulation Dam, the purpose of which being to control and regulate the amount of water discharged into the Agus River. With this dam, defendant NPC is able to either increase or decrease the volume of water discharged into the Agus River depending on the amount of power to be generated. When the lake level rises, specially during rainy days, it is indispensable to wide open the dam to allow more water to flow to the Agus River to prevent overflowing of the lakeshore and the land around it. But the NPC cannot allow the water to flow freely into its outlet – the Agus River, because it will adversely affect its hydroelectric power plants. It has to hold back the water by its dam in order to maintain the volume of water required to generate the power supply. As a consequence of holding back the water, the lands around the lake are inundated. This is even admitted by defendant's witness Mama Manongguiring. Consequently, in October, November and December of 1986 when the lake level increased, farmlands in the Basak area around Lake Lanao and fishponds were inundated as a result of such holding back of water by defendant NPC.[22] (Emphasis supplied)

Petitioner adduced in evidence its company records to bear out its claim that the water level of the lake was, at no point in time, higher than 702 meters. The trial court and the Court of Appeals, however, did not lend credence to this piece of evidence. Both courts below held that the data contained in petitioner's records collapse in the face of the actual state of the affected areas. During the ocular inspection conducted by the lower court where representatives of both parties were present, it was established that in the subject areas, the benchmarks as pointed out by the NPC representative, could not be seen nor reached because they were totally covered with water.[23] This fact, by itself, constitutes an unyielding proof that the water level did rise above the benchmarks and inundated the properties in the area.

In the absence of any clear explanation on what other factors could have explained the flooding in the neighboring properties of the dam, it is fair to reasonably infer that the incident happened because of want of care on the part of NPC to maintain the water level of the dam within the benchmarks at the maximum normal lake elevation of 702 meters. An application of the doctrine of *res ipsa loquitur*, the thing speaks for itself, comes to fore.[24] Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care. [25]

NPC further attempts to dodge its burden by turning the tables against private respondents. Petitioner would entice this Court to believe that private respondents brought the catastrophe upon themselves by constructing their fishponds below the 702-meter level in defiance of Memorandum Order No. 398. Yet, petitioner failed to demonstrate that the subject fishponds were situated at an area below the 702-meter level yardstick. Allegation is

one thing; proof is another. Save for its bare claim, NPC was unable to indicate the position of the fishponds vis-à-vis its benchmarks. But, how can it do so when it cannot show its own benchmarks as they were submerged in water?

This brings us to the second duty of NPC under Memorandum Order No. 398 - to build and maintain benchmarks to warn the inhabitants in the area that cultivation of land below the 702-meter elevation is forbidden.

Notably, despite the clear mandate of Memorandum Order No. 398, petitioner's own witness, Principal Hydrologist Mama Manongguiring, testified that although the dam was built in 1978, the benchmarks were installed only in July and August of 1984 and that apparently, many had already worn-out, to be replaced only in October of 1986.[26] As adroitly observed by the Court of Appeals, it was only after many years from the time it was built that NPC installed said benchmarks. At that time, many farms and houses were already swamped and many fishponds, including those of the private respondents, damaged. [27]

Consequently, even assuming that the fishponds were erected below the 702-meter level, NPC must, nonetheless, bear the brunt for such damages inasmuch as it has the duty to erect and maintain the benchmarks precisely to warn the owners of the neighboring properties not to build fishponds below these marks. Such benchmarks, likewise, serve the evidentiary purpose of extricating NPC from liability in cases of overflowing in the neighboring estates because all NPC would have to do is point out that such constructions are below the 702-meter allowable elevation. Without such points of reference, the inhabitants in said areas are clueless whether or not their improvements are within the prohibited area. Conversely, without such benchmarks, NPC has no way of telling if the fishponds, subject matter of the present controversy, are indeed below the prescribed maximum level of elevation.

NPC staunchly asserts that the damages, if any, were due to a fortuitous event. Again, we cannot agree with petitioner. We defer instead to the findings and opinions expressed by the Court of Appeals that NPC cannot escape liability on the mere excuse that the rise of water was due to heavy rains that were acts of God. The rainy season is an expected occurrence and the NPC cannot stop doing its duty when the rains fall. In fact, it is during these critical times that the NPC needs to be vigilant to make sure that the lake level does not exceed the maximum level.[28] Indeed, negligence or imprudence is human factor which makes the whole occurrence humanized, as it were, and removed from the rules applicable to acts of God.[29]

NPC further enthuses that the principle of *damnum absque injuria*, or damage without injury, applies in the present case.

Again, we disagree. This principle means that although there was physical damage, there was no legal injury, as there was no violation of a legal right. The negligence of NPC as a result of its inability to maintain the level of water in its dams has been satisfactorily and extensively established.

Article 2176 of the New Civil Code provides that "whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict." In crimes and quasi-delicts, the defendant shall be liable for all damages, which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.[30]

In the case at bar, both the appellate court and the trial court uniformly found that it was such negligence on the part of NPC which directly caused the damage to the fishponds of private respondents. The degree of damages suffered by the latter remains un rebutted and there exists adequate documentary evidence that the private

respondents did have fishponds in their respective locations and that these were inundated and damaged when the water level escalated in October 1986.[31]

However, as observed by the Court of Appeals, while the private respondents claim reimbursement for actual or compensatory damages, they failed to present independent evidence to prove with a reasonable degree of certainty the actual amount of loss. The private respondents could only testify as to the amounts they had spent to build and stock their respective fishponds and as to the amount of earnings they would have made had the fish been sold at current market prices. We find no reason to deflect from the award of temperate or moderate damages by the Court of Appeals in reduced amounts, but are reasonable under the circumstances conformably with Articles 2224 and 2225 of the New Civil Code.[32]

WHEREFORE, the instant petition is DENIED. The Decision dated 21 December 1995 and the Resolution dated 27 March 1996 of the Court of Appeals in CA-G.R. CV No. 44639 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Died after testifying in the trial court; substituted by his heirs, Hadji Jalila Langco, Alikan Langco, and Bokari Langco.

[2] Penned by Justice Jorge S. Imperial with Justices Lourdes Tayao-Jaguros and B.A. Adefuin-Dela Cruz, concurring. Rollo, pp. 79-88.

[3] Penned by Judge Amer R. Ibrahim. Rollo, pp. 68-77.

[4] Rollo, p. 100.

[5] Among the amendments to Comm. Act No. 120 are Republic Act No. 6395 (1971) and Pres. Decree No. 938 (1976).

[6] Republic Act No. 6395, Sec. 2.

[7] Id., Sec. 3.

[8]4.The National Power Corporation shall render financial assistance to forest protection, tree farming, reforestation and other conservation measures in coordination with private timber concessionaires and the Bureau of Forest Development. With the assistance and cooperation of provincial and municipal officials, as well as the Provincial Commander of the Philippine Constabulary, NPC shall place in every town around the lake, at the normal maximum lake elevation of seven hundred and two meters, benchmarks warning that cultivation of land below said elevation is prohibited. (Emphasis supplied)edland

[9] Rollo, p. 80.

[10] Rollo, p. 80.

[11] Rollo, p. 80.

[12] Rollo, p. 80.

[13] Rollo, pp. 80-81.

[14] Rollo, p. 81.

[15] Rollo, pp. 76-77.

[16] Rollo, p. 87.

[17] Rollo, pp. 28, 33, 35, 37, and 41.

[18] Villarico v. Court of Appeals, G.R. No. 132115, 04 January 2002, 373 SCRA 23.

[19] Far East Bank and Trust Company v. Querimit, G.R. No. 148582, 16 January 2002, 373 SCRA 665.

[20] Manila Electric Company v. Court of Appeals, G.R. No. 108301, 11 July 2001, 361 SCRA 35; Bordalba v. Court of Appeals, G.R. No. 112443, 25 January 2002, 374 SCRA 555; BPI v. Leobrera, G.R. No. 137147, 29 January 2002, 375 SCRA 81; Lubos v. Galupo, G.R. No. 139136, 16 January 2002, 373 SCRA 618.

[21] Rollo, p. 82.

[22] Rollo, p. 82.

[23] Rollo, p. 85.

[24] Africa v. Caltex (Phils.), Inc., G.R. No. L-12986, 31 March 1966, 16 SCRA 448.

[25] Batiquin v. Court of Appeals, G.R. No. 118231, 05 July 1996, 258 SCRA 334.

[26] Rollo, p. 73.

[27] Rollo, p. 85.

[28] Rollo, p. 86.

[29] Remman Enterprises v. Court of Appeals, G.R. No. 125018, 06 April 2000, 330 SCRA 145.

[30] Art. 2202, New Civil Code.

[31] Rollo, p. 86.

[32] Art. 2224 - Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

Art. 2225 - temperate damages must be reasonable under the circumstances.

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