

TAWANG MULTI-PURPOSE COOPERATIVE, PETITIONER, VS. LA TRINIDAD WATER DISTRICT, RESPONDENT.

G.R. No. 166471. March 22, 2011

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-166471/>

CARPIO, J.:

The Case

This is a petition for review on certiorari under Rule 45 of the Rules of Court. The petition[1] challenges the 1 October 2004 Judgment[2] and 6 November 2004 Order[3] of the Regional Trial Court (RTC), Judicial Region 1, Branch 62, La Trinidad, Benguet, in Civil Case No. 03-CV-1878.

The Facts

Tawang Multi-Purpose Cooperative (TMPC) is a cooperative, registered with the Cooperative Development Authority, and organized to provide domestic water services in Barangay Tawang, La Trinidad, Benguet.

La Trinidad Water District (LTWD) is a local water utility created under Presidential Decree (PD) No. 198, as amended. It is authorized to supply water for domestic, industrial and commercial purposes within the municipality of La Trinidad, Benguet.

On 9 October 2000, TMPC filed with the National Water Resources Board (NWRB) an application for a certificate of public convenience (CPC) to operate and maintain a waterworks system in Barangay Tawang. LTWD opposed TMPC's application. LTWD claimed that, under Section 47 of PD No. 198, as amended, its franchise is exclusive. Section 47 states that:

Sec. 47. Exclusive Franchise. No franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration.

In its Resolution No. 04-0702 dated 23 July 2002, the NWRB approved TMPC's application for a CPC. In its 15 August 2002 Decision,[4] the NWRB held that LTWD's franchise cannot be exclusive since exclusive franchises are unconstitutional and found that TMPC is legally and financially qualified to operate and maintain a waterworks system. NWRB stated that:

With respect to LTWD's opposition, this Board observes that:

1. It is a substantial reproduction of its opposition to the application for water permits previously filed by this same CPC applicant, under WUC No. 98-17 and 98-62 which was decided upon by this Board on April 27, 2000. The issues being raised by Oppositor had been already resolved when this Board said in pertinent portions of its decision:

"The authority granted to LTWD by virtue of P.D. 198 is not Exclusive. While Barangay Tawang is within their territorial jurisdiction, this does not mean that all others are excluded in engaging in such service,

especially, if the district is not capable of supplying water within the area. This Board has time and again ruled that the "Exclusive Franchise" provision under P.D. 198 has misled most water districts to believe that it likewise extends to be [sic] the waters within their territorial boundaries. Such ideological adherence collides head on with the constitutional provision that "ALL WATERS AND NATURAL RESOURCES BELONG TO THE STATE". (Sec. 2, Art. XII) and that "No franchise, certificate or authorization for the operation of public [sic] shall be exclusive in character".

x x x x

All the foregoing premises all considered, and finding that Applicant is legally and financially qualified to operate and maintain a waterworks system; that the said operation shall redound to the benefit of the homeowners/residents of the subdivision, thereby, promoting public service in a proper and suitable manner, the instant application for a Certificate of Public Convenience is, hereby, GRANTED.[5]

LTWD filed a motion for reconsideration. In its 18 November 2002 Resolution,[6] the NWRB denied the motion.

LTWD appealed to the RTC.

The RTC's Ruling

In its 1 October 2004 Judgment, the RTC set aside the NWRB's 23 July 2002 Resolution and 15 August 2002 Decision and cancelled TMPC's CPC. The RTC held that Section 47 is valid. The RTC stated that:

The Constitution uses the term "exclusive in character". To give effect to this provision, a reasonable, practical and logical interpretation should be adopted without disregard to the ultimate purpose of the Constitution. What is this ultimate purpose? It is for the state, through its authorized agencies or instrumentalities, to be able to keep and maintain ultimate control and supervision over the operation of public utilities. Essential part of this control and supervision is the authority to grant a franchise for the operation of a public utility to any person or entity, and to amend or repeal an existing franchise to serve the requirements of public interest. Thus, what is repugnant to the Constitution is a grant of franchise "exclusive in character" so as to preclude the State itself from granting a franchise to any other person or entity than the present grantee when public interest so requires. In other words, no franchise of whatever nature can preclude the State, through its duly authorized agencies or instrumentalities, from granting franchise to any person or entity, or to repeal or amend a franchise already granted. Consequently, the Constitution does not necessarily prohibit a franchise that is exclusive on its face, meaning, that the grantee shall be allowed to exercise this present right or privilege to the exclusion of all others. Nonetheless, the grantee cannot set up its exclusive franchise against the ultimate authority of the State.[7]

TMPC filed a motion for reconsideration. In its 6 November 2004 Order, the RTC denied the motion. Hence, the present petition.

Issue

TMPC raises as issue that the RTC erred in holding that Section 47 of PD No. 198, as amended, is valid.

The Court's Ruling

The petition is meritorious.

What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.

In *Alvarez v. PICOP Resources, Inc.*,^[8] the Court held that, "What one cannot do directly, he cannot do indirectly."^[9] In *Akbayan Citizens Action Party v. Aquino*,^[10] quoting *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,^[11] the Court held that, "This Court has long and consistently adhered to the legal maxim that those that cannot be done directly cannot be done indirectly."^[12] In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,^[13] the Court held that, "No one is allowed to do indirectly what he is prohibited to do directly."^[14]

The President, Congress and the Court cannot create directly franchises for the operation of a public utility that are exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly prohibit the creation of franchises that are exclusive in character. Section 8, Article XIII of the 1935 Constitution states that:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. (Emphasis supplied)

Section 5, Article XIV of the 1973 Constitution states that:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. (Emphasis supplied)

Section 11, Article XII of the 1987 Constitution states that:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. (Emphasis supplied)

Plain words do not require explanation. The 1935, 1973 and 1987 Constitutions are clear -- franchises for the operation of a public utility cannot be exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly state that, "nor shall such franchise x x x be exclusive in character." There is no exception.

When the law is clear, there is nothing for the courts to do but to apply it. The duty of the Court is to apply the law the way it is worded. In *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61*,^[15] the Court held that:

Basic is the rule of statutory construction that when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language. As we have held in the case of *Quijano v. Development Bank of the Philippines*:

"x x x We cannot see any room for interpretation or construction in the clear and unambiguous language of the above-quoted provision of law. This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed."^[16] (Emphasis supplied)

In *Republic of the Philippines v. Express Telecommunications Co., Inc.*,^[17] the Court held that, "The Constitution is quite emphatic that the operation of a public utility shall not be exclusive."^[18] In *Pilipino*

Telephone Corporation v. National Telecommunications Commission,[19] the Court held that, "Neither Congress nor the NTC can grant an exclusive `franchise, certificate, or any other form of authorization' to operate a public utility." [20] In National Power Corp. v. Court of Appeals,[21] the Court held that, "Exclusivity of any public franchise has not been favored by this Court such that in most, if not all, grants by the government to private corporations, the interpretation of rights, privileges or franchises is taken against the grantee." [22] In Radio Communications of the Philippines, Inc. v. National Telecommunications Commission,[23] the Court held that, "The Constitution mandates that a franchise cannot be exclusive in nature." [24]

Indeed, the President, Congress and the Court cannot create directly franchises that are exclusive in character. What the President, Congress and the Court cannot legally do directly they cannot do indirectly. Thus, the President, Congress and the Court cannot create indirectly franchises that are exclusive in character by allowing the Board of Directors (BOD) of a water district and the Local Water Utilities Administration (LWUA) to create franchises that are exclusive in character.

In PD No. 198, as amended, former President Ferdinand E. Marcos (President Marcos) created indirectly franchises that are exclusive in character by allowing the BOD of LTWD and the LWUA to create directly franchises that are exclusive in character. Section 47 of PD No. 198, as amended, allows the BOD and the LWUA to create directly franchises that are exclusive in character. Section 47 states:

Sec. 47. Exclusive Franchise. No franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration. (Emphasis supplied)

In case of conflict between the Constitution and a statute, the Constitution always prevails because the Constitution is the basic law to which all other laws must conform to. The duty of the Court is to uphold the Constitution and to declare void all laws that do not conform to it.

In Social Justice Society v. Dangerous Drugs Board,[25] the Court held that, "It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution." [26] In Sabio v. Gordon,[27] the Court held that, "the Constitution is the highest law of the land. It is the `basic and paramount law to which all other laws must conform.'" [28] In Atty. Macalintal v. Commission on Elections,[29] the Court held that, "The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. Laws that do not conform to the Constitution shall be stricken down for being unconstitutional." [30] In Manila Prince Hotel v. Government Service Insurance System,[31] the Court held that:

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." [32] (Emphasis supplied)

To reiterate, the 1935, 1973 and 1987 Constitutions expressly prohibit the creation of franchises that are exclusive in character. They uniformly command that "nor shall such franchise x x x be exclusive in character." This constitutional prohibition is absolute and accepts no exception. On the other hand, PD No. 198, as amended, allows the BOD of LTWD and LWUA to create franchises that are exclusive in character. Section 47 states that, "No franchise shall be granted to any other person or agency x x x unless and except to the extent that the board of directors consents thereto x x x subject to review by the Administration." Section 47 creates a glaring exception to

the absolute prohibition in the Constitution. Clearly, it is patently unconstitutional.

Section 47 gives the BOD and the LWUA the authority to make an exception to the absolute prohibition in the Constitution. In short, the BOD and the LWUA are given the discretion to create franchises that are exclusive in character. The BOD and the LWUA are not even legislative bodies. The BOD is not a regulatory body but simply a management board of a water district. Indeed, neither the BOD nor the LWUA can be granted the power to create any exception to the absolute prohibition in the Constitution, a power that Congress itself cannot exercise.

In *Metropolitan Cebu Water District v. Adala*,^[33] the Court categorically declared Section 47 void. The Court held that:

Nonetheless, while the prohibition in Section 47 of P.D. 198 applies to the issuance of CPCs for the reasons discussed above, the same provision must be deemed void ab initio for being irreconcilable with Article XIV, Section 5 of the 1973 Constitution which was ratified on January 17, 1973 -- the constitution in force when P.D. 198 was issued on May 25, 1973. Thus, Section 5 of Art. XIV of the 1973 Constitution reads:

"SECTION 5. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Batasang Pambansa when the public interest so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital thereof."

This provision has been substantially reproduced in Article XII Section 11 of the 1987 Constitution, including the prohibition against exclusive franchises.

x x x x

Since Section 47 of P.D. 198, which vests an "exclusive franchise" upon public utilities, is clearly repugnant to Article XIV, Section 5 of the 1973 Constitution, it is unconstitutional and may not, therefore, be relied upon by petitioner in support of its opposition against respondent's application for CPC and the subsequent grant thereof by the NWRB.

WHEREFORE, Section 47 of P.D. 198 is unconstitutional.^[34] (Emphasis supplied)

The dissenting opinion declares Section 47 valid and constitutional. In effect, the dissenting opinion holds that (1) President Marcos can create indirectly franchises that are exclusive in character; (2) the BOD can create directly franchises that are exclusive in character; (3) the LWUA can create directly franchises that are exclusive in character; and (4) the Court should allow the creation of franchises that are exclusive in character.

Stated differently, the dissenting opinion holds that (1) President Marcos can violate indirectly the Constitution; (2) the BOD can violate directly the Constitution; (3) the LWUA can violate directly the Constitution; and (4) the Court should allow the violation of the Constitution.

The dissenting opinion states that the BOD and the LWUA can create franchises that are exclusive in character "based on reasonable and legitimate grounds," and such creation "should not be construed as a violation of the constitutional mandate on the non-exclusivity of a franchise" because it "merely refers to regulation" which is part of "the government's inherent right to exercise police power in regulating public utilities" and that their violation of the Constitution "would carry with it the legal presumption that public officers regularly perform their official

functions." The dissenting opinion states that:

To begin with, a government agency's refusal to grant a franchise to another entity, based on reasonable and legitimate grounds, should not be construed as a violation of the constitutional mandate on the non-exclusivity of a franchise; this merely refers to regulation, which the Constitution does not prohibit. To say that a legal provision is unconstitutional simply because it enables a government instrumentality to determine the propriety of granting a franchise is contrary to the government's inherent right to exercise police power in regulating public utilities for the protection of the public and the utilities themselves. The refusal of the local water district or the LWUA to consent to the grant of other franchises would carry with it the legal presumption that public officers regularly perform their official functions.

The dissenting opinion states two "reasonable and legitimate grounds" for the creation of exclusive franchise: (1) protection of "the government's investment,"[35] and (2) avoidance of "a situation where ruinous competition could compromise the supply of public utilities in poor and remote areas." [36]

There is no "reasonable and legitimate" ground to violate the Constitution. The Constitution should never be violated by anyone. Right or wrong, the President, Congress, the Court, the BOD and the LWUA have no choice but to follow the Constitution. Any act, however noble its intentions, is void if it violates the Constitution. This rule is basic.

In *Social Justice Society*, [37] the Court held that, "In the discharge of their defined functions, the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed." [38] In *Sabio*, [39] the Court held that, "the Constitution is the highest law of the land. It is the basic and paramount law to which all persons, including the highest officials of the land, must defer. No act shall be valid, however noble its intentions, if it conflicts with the Constitution." [40] In *Bengzon v. Drilon*, [41] the Court held that, "the three branches of government must discharge their respective functions within the limits of authority conferred by the Constitution." [42] In *Mutuc v. Commission on Elections*, [43] the Court held that, "The three departments of government in the discharge of the functions with which it is [sic] entrusted have no choice but to yield obedience to [the Constitution's] commands. Whatever limits it imposes must be observed." [44]

Police power does not include the power to violate the Constitution. Police power is the plenary power vested in Congress to make laws not repugnant to the Constitution. This rule is basic.

In *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, [45] the Court held that, "Police power is the plenary power vested in the legislature to make, ordain, and establish wholesome and reasonable laws, statutes and ordinances, not repugnant to the Constitution." [46] In *Carlos Superdrug Corp. v. Department of Social Welfare and Development*, [47] the Court held that, police power "is the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances not repugnant to the constitution." [48] In *Metropolitan Manila Development Authority v. Garin*, [49] the Court held that, "police power, as an inherent attribute of sovereignty, is the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances not repugnant to the Constitution." [50]

There is no question that the effect of Section 47 is the creation of franchises that are exclusive in character. Section 47 expressly allows the BOD and the LWUA to create franchises that are exclusive in character.

The dissenting opinion explains why the BOD and the LWUA should be allowed to create franchises that are exclusive in character -- to protect "the government's investment" and to avoid "a situation where ruinous competition could compromise the supply of public utilities in poor and remote areas." The dissenting opinion

declares that these are "reasonable and legitimate grounds." The dissenting opinion also states that, "The refusal of the local water district or the LWUA to consent to the grant of other franchises would carry with it the legal presumption that public officers regularly perform their official functions."

When the effect of a law is unconstitutional, it is void. In *Sabio*,^[51] the Court held that, "A statute may be declared unconstitutional because it is not within the legislative power to enact; or it creates or establishes methods or forms that infringe constitutional principles; or its purpose or effect violates the Constitution or its basic principles."^[52] The effect of Section 47 violates the Constitution, thus, it is void.

In *Strategic Alliance Development Corporation v. Radstock Securities Limited*,^[53] the Court held that, "This Court must perform its duty to defend and uphold the Constitution."^[54] In *Bengzon*,^[55] the Court held that, "The Constitution expressly confers on the judiciary the power to maintain inviolate what it decrees."^[56] In *Mutuc*,^[57] the Court held that:

The concept of the Constitution as the fundamental law, setting forth the criterion for the validity of any public act whether proceeding from the highest official or the lowest functionary, is a postulate of our system of government. That is to manifest fealty to the rule of law, with priority accorded to that which occupies the topmost rung in the legal hierarchy. The three departments of government in the discharge of the functions with which it is [sic] entrusted have no choice but to yield obedience to its commands. Whatever limits it imposes must be observed. Congress in the enactment of statutes must ever be on guard lest the restrictions on its authority, whether substantive or formal, be transcended. The Presidency in the execution of the laws cannot ignore or disregard what it ordains. In its task of applying the law to the facts as found in deciding cases, the judiciary is called upon to maintain inviolate what is decreed by the fundamental law. Even its power of judicial review to pass upon the validity of the acts of the coordinate branches in the course of adjudication is a logical corollary of this basic principle that the Constitution is paramount. It overrides any governmental measure that fails to live up to its mandates. Thereby there is a recognition of its being the supreme law.^[58]

Sustaining the RTC's ruling would make a dangerous precedent. It will allow Congress to do indirectly what it cannot do directly. In order to circumvent the constitutional prohibition on franchises that are exclusive in character, all Congress has to do is to create a law allowing the BOD and the LWUA to create franchises that are exclusive in character, as in the present case.

WHEREFORE, we GRANT the petition. We DECLARE Section 47 of Presidential Decree No. 198 UNCONSTITUTIONAL. We SET ASIDE the 1 October 2004 Judgment and 6 November 2004 Order of the Regional Trial Court, Judicial Region 1, Branch 62, La Trinidad, Benguet, in Civil Case No. 03-CV-1878 and REINSTATE the 23 July 2002 Resolution and 15 August 2002 Decision of the National Water Resources Board.

SO ORDERED.

Corona, C.J., Velasco, Jr., Nachura, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and Sereno, JJ., concur.
Carpio Morales, J., consistent with my position in *Metropolitan Cebu. v. Adala*, I concur.

Leonardo-De Castro, J., I join the dissent of J. Brion.

Brion, J., I dissent: see opinion.

Abad, J., see concurring opinion.

Mendoza, J., on official leave.

[1] Rollo, pp. 9-19.

[2] *Id.* at 22-40. Penned by Judge Fernando P. Cabato.

- [3] Id. at 41-44.
- [4] Id. at 45-49.
- [5] Id. at 47-49.
- [6] Id. at 50-52.
- [7] Id. at 35.
- [8] G.R. Nos. 162243, 164516 and 171875, 3 December 2009, 606 SCRA 444.
- [9] Id. at 485.
- [10] G.R. No. 170516, 16 July 2008, 558 SCRA 468.
- [11] 450 Phil. 744 (2003).
- [12] Supra note 10 at 540.
- [13] 487 Phil. 531 (2004).
- [14] Id. at 579.
- [15] G.R. No. 113926, 23 October 1996, 263 SCRA 483.
- [16] Id. at 488.
- [17] 424 Phil. 372 (2002).
- [18] Id. at 400.
- [19] 457 Phil. 101 (2003).
- [20] Id. at 117.
- [21] 345 Phil. 9 (1997).
- [22] Id. at 34.
- [23] 234 Phil. 443 (1987).
- [24] Id. at 451.
- [25] G.R. Nos. 157870, 158633 and 161658, 3 November 2008, 570 SCRA 410.
- [26] Id. at 422-423.
- [27] G.R. No. 174340, 17 October 2006, 504 SCRA 704.
- [28] Id. at 731.
- [29] 453 Phil. 586 (2003).
- [30] Id. at 631.
- [31] 335 Phil. 82 (1997).
- [32] Id. at 101.
- [33] G.R. No. 168914, 4 July 2007, 526 SCRA 465.

- [34] Id. at 479-482.
- [35] Id. at 13.
- [36] Id.
- [37] Supra note 25.
- [38] Id. at 423.
- [39] Supra note 27.
- [40] Id. at 731.
- [41] G.R. No. 103524, 15 April 1992, 208 SCRA 133.
- [42] Id. at 142.
- [43] 146 Phil. 798 (1970).
- [44] Id. at 806.
- [45] G.R. Nos. 170656 and 170657, 15 August 2007, 530 SCRA 341.
- [46] Id. at 362.
- [47] G.R. No. 166494, 29 June 2007, 526 SCRA 130.
- [48] Id. at 144.
- [49] 496 Phil. 83 (2005)
- [50] Id. at 91-92.
- [51] Supra note 27.
- [52] Id. at 730.
- [53] G.R. Nos. 178158 and 180428, 4 December 2009, 607 SCRA 413.
- [54] Id. at 528.
- [55] Supra note 41.
- [56] Id. at 142.
- [57] Supra note 43.
- [58] Id. at 806-807.

DISSENTING OPINION

BRION, J.:

I dissent.

Lest this Dissent be misunderstood, I shall clarify at the outset that I do not dispute the majority position that an exclusive franchise is forbidden by the Constitution. The prohibition is in an express words of the Constitution

and cannot be disputed.

My misgiving arises from the majority's failure to properly resolve the issue of whether or not Section 47 of P.D. No. 198 embodies a prohibited exclusive franchise. I believe that the Court must carefully examine and analyze the application of the constitutional command to Section 47 and explain the exact legal basis for its conclusion. We must determine what an exclusive franchise really means to avoid overextending the prohibition to unintended areas. In the process, we must determine whether government -instead of the grant of an exclusive franchise - can regulate the grant of subsequent franchises. In the present case, I take the view that the law can so allow in order to efficiently and effectively provide its citizens with the most basic utility.

Respondent La Trinidad Water District (LTWD) is a local water utility created under Presidential Decree (P.D.) No. 198.[1] It is a government-owned and controlled corporation[2] authorized by law to supply water for domestic, industrial, and commercial purposes within the Municipality of La Trinidad. On the other hand, the petitioner Tawang Multi-Purpose Cooperative (TMPC) is an applicant for a certificate of public convenience (CPC) to operate and maintain a waterworks system in Barangay Tawang in the Municipality of La Trinidad.

The RTC ruled that a CPC in favor of TMPC cannot be issued without the latter having applied for the consent of the local water district in accordance with Section 47 of P.D. No. 198. In effect, the RTC ruled that Section 47 does not involve the grant of an exclusive franchise. Thus, the TMPC filed the present petition for review on certiorari under Rule 45 of the Rules of Court, questioning the validity of Section 47 of P.D. No. 198, which provides:

Sec. 47. Exclusive Franchise - No franchise shall be granted to any other person or agency for domestic, industrial, or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration.[3] [Emphasis supplied]

The invalidity of exclusive franchises is not in dispute

I reiterate that, contrary to the majority's statements, I do not dispute that both the 1973 and the 1987 Constitutions clearly mandate that no franchise certificate, or any other form of authorization, for the operation of a public utility shall be exclusive in character. I fully support the position that the legislative entity that enacted Section 47 of P.D. 198 (in this case, former President Ferdinand E. Marcos in the exercise of his martial law legislative powers) must comply with Article XIV, Section 5 of the 1973 Constitution[4] (the Constitution in force when P.D. No. 198 was enacted). This constitutional provision has been carried over to the 1987 Constitution as Article XII, Section 11 and states:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

For the majority to characterize the Dissent as an argument for the grant of exclusive franchises by former President Marcos, by the water district's board of directors, by the LWUA, and by this Court would be to misread the Dissent and blur the issues that it raises.[5]

Section 47 of P.D. 198 does not violate Section 5, Article XIV of the 1973 Constitution

The majority insists that Section 47 of P.D. 198 indirectly grants an exclusive franchise in favor of local water districts. In their reading, the law "allows the board of directors of a water district and the Local Water Utilities Administrator (LWUA) to create franchises that are exclusive in character." [6] I disagree, as the majority opinion does not at all specify and is unclear on how any franchise can be indirectly exclusive. What the law allows is merely the regulation of the grant of subsequent franchises so that the government - through government-owned and controlled corporations - can protect itself and the general public it serves in the operation of public utilities.

An exclusive franchise, in its plainest meaning, signifies that no other entity, apart from the grantee, could be given a franchise. Section 47 of P.D. No. 198, by its clear terms, does not provide for an exclusive franchise in stating that:

Sec. 47. Exclusive Franchise - No franchise shall be granted to any other person or agency for domestic, industrial, or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration. [7]

Despite its title, the assailed provision does not absolutely prohibit other franchises for water service from being granted to other persons or agencies. It merely requires the consent of the local water district's Board of Directors before another franchise within the district is granted. Thus, it is a regulation on the grant of any subsequent franchise where the local water district, as original grantee, may grant or refuse its consent. If it consents, the non-exclusive nature of its franchise becomes only too clear. Should it refuse, its action does not remain unchecked as the franchise applicant may ask the LWUA to review the local water district's refusal. It is thus the LWUA (on the Office of the President in case of further appeal) that grants a subsequent franchise if one will be allowed.

Under this arrangement, I submit that the prerogative of the local water district's board of directors or the LWUA to give or refuse its consent to the application for a CPC cannot be considered as a constitutional infringement. A government agency's refusal to consent to the grant of a franchise to another entity, based on reasonable and legitimate grounds, should not be construed as a violation of the constitutional mandate on the non-exclusivity of a franchise where the standards for the grant or refusal are clearly spelled out in the law. Effectively, what the law and the State (acting through its own agency or a government-owned or controlled corporation) thereby undertake is merely an act of regulation that the Constitution does not prohibit. To say that a legal provision is unconstitutional simply because it enables a grantee, a government instrumentality, to determine the soundness of granting a subsequent franchise in its area is contrary to the government's inherent right to exercise police power in regulating public utilities for the protection of the public and the utilities themselves. [8]

It should also be noted that even after the Marcos regime, constitutional experts have taken the view that the government can and should take a strong active part in ensuring public access to basic utilities. The deliberations of the Constitutional Commission for the 1987 Constitution (which contains the same provision found in the 1973 Constitution on the non-exclusivity of public utility franchises) regarding monopolies regulated by the state may guide, though not necessarily bind, us:

MR. DAVIDE: If the idea is really to promote the private sector, may we not provide here that the government can, in no case, practice monopoly except in certain areas?

MR. VILLEGAS. No, because in the economic field, there are definitely areas where the State can intervene and can actually get involved in monopolies for the public good.

MR. DAVIDE. Yes, we have provisions here allowing such a monopoly in times of national emergency.

MR. VILLEGAS. Not even in emergency; for the continuing welfare of consumers.

MR. MONSOD. May we just make a distinction? As we know, there are natural monopolies or what we call "structural monopolies." Structural monopolies are monopolies not by the nature of their activities, like electric power, for example, but by the nature of the market. There may be instances when the market has not developed to such extent that it will only allow, say, one steel company. Structural monopoly is not by the nature of the business itself. It is possible under these circumstances that the State may be the appropriate vehicle for such a monopoly.[9]

If, indeed, the Constitutional Commission in discussing the non-exclusivity clause had accepted the merits of government monopolies, should this Court consider unconstitutional a provision that allows a lesser degree of regulation--i.e., a government agency giving its consent to the application of a CPC with the protection of the viability of the government agency and public good as the standards of its action?

Safeguards against abuse of authority by
the water districts' board of directors
and the LWUA

The refusal of the local water district or the LWUA to consent to other franchises would carry with it the legal presumption that public officers regularly perform their official functions.[10] If, on the other hand, the officers, directors or trustees of the local water districts and the LWUA act arbitrarily and unjustifiably refuse their consent to an applicant of a franchise, they may be held liable for their actions. The local water districts[11] and the LWUA[12] are government-owned and controlled corporations (GOCCs). The directors of the local water districts and the trustees of the LWUA are government employees subject to civil service laws and anti-graft laws.[13] Moreover, the LWUA is attached to the Office of the President[14] which has the authority to review its acts. Should these acts in the Executive Department constitute grave abuse of discretion, the Courts may strike them down under its broad powers of review.[15]

Any abuse of authority that the local water districts may be feared to commit is balanced by the control that the government exerts in their creation and operations. The government creates and organizes local water districts in accordance with a specific law, P.D. No. 198.[16] There is no private party involved as a co-owner in the creation of local water districts. Prior to the local water districts' creation, the national or local government directly owns and controls all their assets. The government's control over them is further asserted through their board of directors, who are appointed by the municipal or city mayor or by the provincial governor. The directors are not co-owners of the local water district but, like other water district personnel, are government employees subject to civil service laws and anti-graft laws.[17] Under this set-up, the control that exists over the grant of franchises, which originally belongs to the State, simply remained and is maintained with the State acting through the local government units and the government-owned and controlled corporations under them.

Because of the government's extensive financial support to these entities, it is part of the law's policy to scrutinize their expenditures and outlays. Section 20 of P.D. No. 198 states that the local water districts are subject to annual audits performed by independent auditors and conducted by the LWUA.[18] Section 41 of P.D. No. 198 even limits the authority of the board of directors of local water districts in the manner in which it can dispose of their income: (1) as payment for obligations and essential current operating expenses; (2) as a reserve for debt service, and for operations and maintenance to be used during periods of calamities, force majeure or unforeseen events; and (3) as a reserve exclusively for the expansion and improvement of their facilities. In this manner, the law ensures that their officers or directors do not profit from local water districts and that the operations thereof would be focused on improving public service. The possibility that the officers would refuse their consent to another franchise applicant for reasons of personal gain is, thus, eliminated.

Public policy behind Section 47 of P.D. No. 198

Without a clear showing that the Constitution was violated by the enactment of Section 47 of P.D. 198, the Court cannot invalidate it without infringing on government policy, especially when Congress had not seen fit to repeal the law and when the law appears to be based on sound public policy. P.D. No. 198 requires an applicant to first obtain the consent of the local water district and the LWUA for important reasons. First, it aims to protect the government's investment. Second, it avoids a situation where ruinous competition could compromise the supply of public utilities in poor and remote areas.

A first reason the government seeks to prioritize local water districts is the protection of its investments - it pours its scarce financial resources into these water districts. The law primarily establishes the LWUA as a specialized lending institution for the promotion, development and financing of water utilities.[19] Section 73 of P.D. No. 198 also authorizes the LWUA to contract loans and credits, and incur indebtedness with foreign governments or international financial institutions for the accomplishment of its objectives. Moreover, the President of the Philippines is empowered not only to negotiate or contract with foreign governments or international financial institutions on behalf of the LWUA; he or she may also absolutely and unconditionally guarantee, in the name of the Republic of the Philippines, the payment of the loans. In addition, the law provides that the General Appropriations Act shall include an outlay to meet the financial requirements of non-viable local water districts or the special projects of local water districts.[20]

The law also adopts a policy to keep the operations of local water districts economically secure and viable. The "whereas" clauses of the law explain the need to establish local water districts: the lack of water utilities in provincial areas and the poor quality of the water found in some areas. The law sought to solve these problems by encouraging the creation of local water districts that the national government would support through technical advisory services and financing.[21] These local water districts are heavily regulated and depend on government support for their subsistence. If a private entity provides stiff competition against a local water district, causes it to close down and, thereafter, chooses to discontinue its business, the problem of finding a replacement water supplier for a poor, remote area will recur. Not only does the re-organization of a local water district drain limited public funds; the residents of these far-flung areas would have to endure the absence of water supply during the considerable time it would take to find an alternative water supply.

Thus, as a matter of foresight, Section 47 of P.D. No. 198 and other provisions within the law aim to avert the negative effects of competition on the financial stability of local water districts. These sections work hand in hand with Section 47 of P.D. No. 198. Section 31 of P.D. No. 198, which is very similar to Section 47 of P.D. No. 198, directly prohibits persons from selling or disposing water for public purposes within the service area of the local water district:

Section 31. Protection of Waters and Facilities of District. - A district shall have the right to:

x x x x

(c) Prohibit any person, firm or corporation from vending selling, or otherwise disposing of water for public purposes within the service area of the district where district facilities are available to provide such service, or fix terms and conditions by permit for such sale or disposition of water.

Thus, Section 47 of P.D. No. 198 provides that before a person or entity is allowed to provide water services where the local water district's facilities are already available, one must ask for the consent of the board of directors of the local water district, whose action on the matter may be reviewed by the LWUA.

Even after a CPC is granted and the entity becomes qualified to provide water services, Section 39 of P.D. No.

198 still allows a local water district to charge other entities producing water for commercial or industrial uses with a production assessment, to compensate for financial reverses brought about by the operations of the water provider; failure to pay this assessment results in liability for damages and/or the issuance of an order of injunction.

Section 39. Production Assessment.--In the event the board of a district finds, after notice and hearing, that production of ground water by other entities within the district for commercial or industrial uses i[s] injuring or reducing the district's financial condition, the board may adopt and levy a ground water production assessment to compensate for such loss. In connection therewith, the district may require necessary reports by the operator of any commercial or industrial well. Failure to pay said assessment shall constitute an invasion of the waters of the district and shall entitle this district to an injunction and damages pursuant to Section [31] of this Title.

From these, it can be seen that Article XIV, Section 5 of the 1973 Constitution and P.D. No. 198 share the same purpose of seeking to ensure regular water supply to the whole country, particularly to the remote areas. By requiring a prospective franchise applicant to obtain the consent of the local water district or the LWUA, the law does not thereby grant it an exclusive franchise; it simply gives the water district the opportunity to have a say on the entry of a competitor whose operations can adversely affect its viability and the service it gives to consumers. This is far from an exclusive franchise that allows no other entity, apart from the only grantee, to have a franchise. Section 47 of P.D. No. 198 does not bar other franchise applicants; it merely regulates the grant of subsequent franchises to ensure that the market is not too saturated to the point of adversely affecting existing government water suppliers, all with the end of ensuring the public the water supply it needs.

Revisiting Metropolitan Cebu Water District (MCWD) v. Margarita A. Adala

Based on the foregoing discussion, I submit that there exists ample justification to reverse our ruling in Metropolitan Cebu Water District (MCWD) v. Margarita A. Adala.[22] As in the present ponencia, there was no discussion in Metro Cebu Water District of what constitutes a grant of an exclusive franchise as opposed to a valid regulation of franchises by the government or how the questioned provision violated the constitutional mandate against exclusive franchises. It was simply presumed that there was a violation. It is worth noting that the Court disposed of the issue in just one paragraph that stated:

Since Section 47 of P.D. 198, which vests an "exclusive franchise" upon public utilities, is clearly repugnant to Article XIV, Section 5 of the 1973 Constitution, it is unconstitutional and may not, therefore, be relied upon by [MCWD] in support of its opposition against [Adala's] application for CPC and the subsequent grant thereof by the NWRB.[23]

In a legal system that rests heavily on precedents, this manner of reasoning would not only be unfair to the parties; it would also confuse and bewilder the legal community and the general public regarding the interpretation of an important constitutional provision. This kind of approach should always be subject to our continuing review and examination.

In reversing a previous ruling issued by the Court, we are not unmindful of the legal maxim *stare decisis et non quieta movere* (literally, to stand by the decision and disturb not what is settled). This maxim is a very convenient practice that the conclusion reached in one case can be applied to subsequent cases where the facts are substantially the same, even though the parties are different. However, the doctrine is not set in stone; the Court may wisely set it aside upon a showing that circumstances attendant in a particular case override the benefits brought about by *stare decisis*. [24]

In our Resolution in *de Castro v. Judicial and Bar Council*, [25] we explained why *stare decisis* is not considered

inflexible with respect to this Court:

The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification. The adherence to precedents is strict and rigid in a common-law setting like the United Kingdom, where judges make law as binding as an Act of Parliament. But ours is not a common law system; hence judicial precedents are not always strictly and rigidly followed. A judicial pronouncement in an earlier decision may be followed as a precedent in subsequent case only when its reasoning and justification are relevant, and the Court in the latter case accepts such reasoning and justification to be applicable in the case. The application of the precedent is for the sake of convenience and stability.

For the intervenors to insist that Valenzuela ought not to be disobeyed, or abandoned, or reversed, and that its wisdom should guide, if not control, the Court in this case is, therefore, devoid of rationality and foundation. They seem to conveniently forget that the Constitution itself recognizes the innate authority of the Court en banc to modify or reverse a doctrine or principle of law laid down in any decision rendered en banc or in division.

Thus, this Court had seen it fit to overturn or abandon the rulings set in its previous decisions. In *Philippine Guardians Brotherhood, Inc. v. Commission on Elections*,^[26] we reversed our earlier ruling in *Philippine Mines Safety Environment Association v. Commission on Elections*.^[27] And in *De Castro*,^[28] we re-examined our decision in *In re appointments of Hon. Valenzuela and Hon. Vallarta*^[29] although the re-examination failed for lack of the necessary supporting votes.

During the deliberations of the present case, a respected colleague hesitated at the idea of overturning a former ruling that has declared a law unconstitutional on the ground that this Court, once it declares a law null, cannot breathe life into its already dead provisions. It raises fears that the people and the other branches of government will not treat the Court's declarations of nullity of laws seriously.^[30]

We cannot hold that the Court is empowered to reverse its established doctrines but is powerless to review laws that have been declared void; no justification simply exists for such distinctions. In reversing its decisions, this Court's primary consideration is to arrive at a just and judicious ruling and avoiding the ill effects of a previous ruling. It is by pursuing such objectives that this Court earns the respect of the people and the other branches of government. Precisely, this Court has taken a contrary view in *Kilosbayan, Inc. v. Morato*,^[31] when it noted that the US Supreme Court declared the Legal Tender Acts void in *Hepburn v. Griswold*,^[32] but subsequently declared these statutes as valid in *Knox v. Lee*.^[33] We lauded the American jurists who voted for the validity of the Legal Tender Acts, which had been formerly declared void, and noted that a change of composition in the Court could prove the means of undoing an erroneous decision.^[34]

In all, Section 47 of P.D. No. 198 does not violate the constitutional proscription against exclusive franchises as other persons and entities may still obtain franchises for water utilities within the district upon the consent of the local water district or upon a favorable finding by the LWUA, which, in turn, is accountable to the Office of the President. By granting this privilege to local water districts, the law does not seek to favor private interests as these districts are GOCCs whose profits are exclusively for public use and whose expenditures the law subjects to the strictest scrutiny. The restrictions applied to other private persons or entities are intended to protect the government's considerable investment in local water districts and to promote its policy of prioritizing local water districts as a means of providing water utilities throughout the country. The protectionist approach that the law has taken towards local water districts is not per se illegal as the Constitution does not promote a total deregulation in the operation of public utilities and is a proper exercise by the government of its police power.

Thus, the TMPC should have first sought the consent of LTWD's Board of Directors, as directed under Section 47

of P.D. No. 198. Had the Board of Directors refused to give its consent, this action may still be reviewed by the LWUA, the entity most able to determine the financial and technical capacity of LTWD in order to decide whether another water service provider is needed in the municipality. Accordingly, it is my view that TMPC's CPC is invalid as it was issued without notice to the LTWD's Board of Directors.

ARTURO D. BRION

Associate Justice

[1] Entitled "Declaring a National Policy Favoring Local Operation and Control of Water Systems; Authorizing the Formation of Local Water Districts and Providing for the Government and Administration of such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting said Administration such Powers as are Necessary to Optimize Public Service from Water Utility Operations, and for other Purposes," promulgated May 25, 1973, as amended by P.D. No. 1479.

[2] *Baguio Water District v. Trajano*, GRN L-65428, February 20, 1984, 127 SCRA 730.

[3] *Supra* note 1, at 28.

[4] Sec. 5, Art. XIV of the 1973 Constitution provides:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration or repeal in by the Batasang Pambansa when the public interest so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital thereof.

[5] *Ponencia*, p. 11.

[6] *Ponencia*, p. 8.

[7] *Supra* note 1.

[8] *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*, G.R. No. 115381, December 23, 1994, 239 SCRA 386, 412.

[9] *Record of the Constitutional Commission*, volume 3, 262-263,

[10] *First United Constructors Corporation v. Poro Point Management Corporation (PPMC)*, G.R. No. 178799, January 19, 2009, 576 SCRA 311, 321; *Gatmaitan v. Gonzales*, G.R. No. 149226, June 26, 2006, 492 SCRA 591, 604; and *PAMECA Wood Treatment Plant, Inc. v. Court of Appeals*, 369 Phil. 544, 555 (1999).

[11] *Davao City Water District v. Civil Service Commission*, G.R. Nos. 95237-38, September 13, 1991, 201 SCRA 593, 602; see also *Feliciano v. Commission on Audit*, 464 Phil. 439, 453-464 (2004).

[12] Section 49 of P.D. No. 198.

[13] *Engr. Feliciano v. Commission on Audit*, *supra* note 10, at 462-463.

[14] Section 49 of P.D. No. 198.

[15] CONSTITUTION, Article VII, Section 1.

[16] Francisco, Pepito, "Provincial Water Utilities Act of 1973, as amended," 2008 ed., pp. 25-26, citing the LWUA-Water District Primer. The steps to be undertaken for the creation of a duly-organized water districts are as follows:

- (1) LWUA conducts preliminary talks and consultation with interested local government entities.
- (2) The local government conducts public hearings to arrive at a consensus on whether to form a water district or not.
- (3) The local legislative body (the Sangguniang Bayan/Lungsod or Sangguniang Panlalawigan, as the case may be) secures nominations for candidates for the water district board of directors from business, civic, professional, education and women sectors of the community concerned.
- (4) The Sanggunian secretary collates all nominations and forwards the same to the appointing authority.
- (5) The Mayor or Governor appoints the directors.
- (6) The local legislative body deliberates and enacts a resolution to form a water district stating therein the names and terms of office of the duly appointed board of directors.
- (7) Mayor or Governor approves the resolution, submits the same to LWUA.
- (8) LWUA reviews the resolution to determine compliance with Presidential Decree No. 198, as amended (Provincial Water Utilities Act of 1973) and LWUA requirements.

[17] Engr. Feliciano v. Commission on Audit, *supra* note 10, at 462-463.

[18] *Ibid.*

[19] Section 50 of P.D. 198.

[20] Sections 76 and 77 of P.D. No. 198.

[21] WHEREAS, domestic water systems and sanitary sewers are two of the most basic and essential elements of local utility system, which, with a few exceptions, do not exist in provincial areas in the Philippines;

WHEREAS, existing domestic water utilities are not meeting the needs of the communities they serve; water quality is unsatisfactory; pressure is inadequate; and reliability of service is poor; in fact, many persons receive no piped water service whatsoever;

x x x x

WHEREAS, local water utilities should be locally-controlled and managed, as well as have support on the national level in the area of technical advisory services and financing[.]

[22] G.R. No. 168914, July 4, 2007, 526 SCRA 465.

[23] *Ibid.*

[24] Philippine Guardians Brotherhood, Inc. v. Commission on Elections, G.R. No. 190529, April 29, 2010.

[25] G.R. Nos. 191002, 191032, 191057, 191149, 191342 and 191420, and A.M. No. 10-2-5-SC, April 20, 2010, citing Limketkai Sons Milling, Inc. v. Court of Appeals, G.R. No. 118509, September 5, 1996, 261 SCRA 464, 467.

[26] *Supra* note 23.

[27] G.R. No. 177548, Resolution dated May 10, 2007.

[28] Supra note 24.

[29] 358 Phil. 896 (1998).

[30] Justice Abad's Dissenting Opinion, p. 2.

[31] 320 Phil. 171, 181-182 (1995).

[32] 8 Wall. 603 (1869).

[33] 12 Wall. 457 (1871).

[34] Supra note 30. The Court declared that:

History has vindicated the overruling of the Hepburn case by the new majority. The Legal Tender Cases proved to be the Court's means of salvation from what Chief Justice Hughes later described as one of the Court's "self-inflicted wounds."

CONCURRING OPINION

ABAD, J.:

On October 9, 2000 petitioner Tawang Multi-Purpose Cooperative (TMPC), a registered cooperative established by Barangay Tawang, La Trinidad residents for the purpose of operating a domestic drinking water service, applied with the National Water Resources Board (the Board) for a Certificate of Public Convenience (CPC) to maintain and operate a waterworks system within its barangay.

But respondent La Trinidad Water District (LTWD), a government-owned corporation^[1] that supplied water within La Trinidad for domestic, industrial, and commercial purposes, opposed the application. LTWD claimed that its franchise was exclusive in that its charter provides that no separate franchise can be granted within its area of operation without its prior written consent. Still, the Board granted TMPC's application on July 23, 2002, resulting in the issuance of a five-year CPC in its favor.

LTWD contested the grant before the Regional Trial Court (RTC) of La Trinidad which, after hearing, rendered judgment setting aside the Board's decision and canceling the CPC it issued to TMPC. The RTC denied TMPC's motion for reconsideration, prompting the latter to come to this Court on petition for review.

The Court has previously held in *Metropolitan Cebu Water District v. Adala*^[2] that Section 47^[3] of P.D. 198,^[4] is unconstitutional for being contrary to Article XIV, Section 5 of the 1973 Constitution and Article XII, Section 11 of the 1987 Constitution. Some in the Court would, however, have its above ruling reexamined based on the view that Section 47 does not actually provide for an exclusive franchise which would violate the Constitution.

The Court's conclusion and ruling in the *Adala* case read:

Since Section 47 of P.D. 198, which vests an "exclusive franchise" upon public utilities, is clearly repugnant to Article XIV, Section 5 of the 1973 Constitution, it is unconstitutional and may not, therefore, be relied upon by petitioner in support of its opposition against respondent's application for CPC and the subsequent grant thereof by the NWRB.

WHEREFORE, Section 47 of P.D. 198 is unconstitutional.

Paragraph 2, Article 7 of the New Civil Code provides that "when the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern."

Since the Court, exercising its Constitutional power of judicial review, has declared Section 47 of P.D. 198 void and unconstitutional, such section ceased to become law from the beginning. The Supreme Court's power of review does not permit it to rewrite P.D. 198 in a subsequent case and breathe life to its dead provisions. Only Congress can.

Besides, such course of action is unwise. The Court will be establishing a doctrine whereby people and the other branches of government will not need to treat the Court's declaration of nullity of law too seriously. They can claim an excuse for continuing to enforce such law since even the Court concedes that it can in another case change its mind regarding its nullity.

I fully subscribe to the majority opinion, penned by Justice Antonio T. Carpio that there exists no justification for abandoning the Court's previous ruling on the matter.

I vote to GRANT TMPC's petition for review and SET ASIDE the decision of the trial court.

ROBERTO A. ABAD

Associate Justice

[1] Created pursuant to Presidential Decree (P.D.) 198, also known as the Provincial Water Utilities Act of 1973.

[2] G.R. No. 168914, July 4, 2007, 526 SCRA 465.

[3] Sec. 47. Exclusive Franchise. No franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration.

[4] "Declaring a National Policy Favoring Local Operation and Control of Water Systems; Authorizing the Formation of Local Water Districts and Providing for the Government and Administration of such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting said Administration such Powers as Are Necessary to Optimize Public Service from Water Utility Operations, and for Other Purposes." This took effect upon its issuance by then President Marcos on May 25, 1973.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.