METROPOLITAN CEBU WATER DISTRICT (MCWD), PETITIONER, VS. MARGARITA A. ADALA, RESPONDENT.

G.R. No. 168914. July 04, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Decision of the Regional Trial Court (RTC) of Cebu dated February 10, 2005, which affirmed in toto the Decision of the National Water Resources Board (NWRB) dated September 22, 2003 in favor of Margarita A. Adala, respondent, is being challenged in the present petition for review on certiorari.

Respondent filed on October 24, 2002 an application with the NWRB for the issuance of a Certificate of Public Convenience (CPC) to operate and maintain waterworks system in sitios San Vicente, Fatima, and Sambag in Barangay Bulacao, Cebu City.

At the initial hearing of December 16, 2002 during which respondent submitted proof of compliance with jurisdictional requirements of notice and publication, herein petitioner Metropolitan Cebu Water District, a government-owned and controlled corporation created pursuant to P.D. 198[1] which took effect upon its issuance by then President Marcos on May 25, 1973, as amended, appeared through its lawyers to oppose the application.

While petitioner filed a formal opposition by mail, a copy thereof had not, on December 16, 2002, yet been received by the NWRB, the day of the hearing. Counsel for respondent, who received a copy of petitioner's Opposition dated December 12, 2002 earlier that morning, volunteered to give a copy thereof to the hearing officer.[2]

In its Opposition, petitioner prayed for the denial of respondent's application on the following grounds: (1) petitioner's Board of Directors had not consented to the issuance of the franchise applied for, such consent being a mandatory condition pursuant to P.D. 198, (2) the proposed waterworks would interfere with petitioner's water supply which it has the right to protect, and (3) the water needs of the residents in the subject area was already being well served by petitioner.

After hearing and an ocular inspection of the area, the NWRB, by Decision dated September 22, 2003, dismissed petitioner's Opposition "for lack of merit and/or failure to state the cause of action"[3] and ruled in favor of respondent as follows:

> PREMISES ALL CONSIDERED, and finding that Applicant is legally and financially qualified to operate and maintain the subject waterworks system, and that said operation shall redound to the benefit of the of the [sic] consumers of Sitio's San Vicente, Fatima and Sambag at Bulacao Pardo, Cebu City, thereby promoting public service in a proper and suitable manner, the instant application for a Certificate of Public Convenience (CPC) is, hereby, GRANTED for a period of five (5) years with authority to charge the proposed rates herein set effective upon approval as follows:
>
> Consumption Blocks Proposed Rates

0-10 cu. m. P125.00(min. charge)
11-20 cu. m. 13.50 per cu. m.
21-30 cu. m. 14.50 per cu. m.
31-40 cu. m. 35.00 per cu. m.
41-50 cu. m. 37.00 per cu. m.
51-60 cu. m. 38.00 per cu. m.
61-70 cu. m. 40.00 per cu. m.
71-100 cu. m. 45.00 per cu. m.
Over 100 cu. m. 50.00 per cu. m.

The Rules and Regulations, hereto, attached for the operation of the waterworks system should be strictly complied with.

Since the average production is below average day demand, it is recommended to construct another well or increase the well horsepower from 1.5 - 3.00 Hp to satisfy the water requirement of the consumers.

Moreover, the rates herein approved should be posted by GRANTEE at conspicuous places within the area serviced by it, within seven (7) calendar days from notice of this Decision.

SO ORDERED.[4]

Its motion for reconsideration having been denied by the NWRB by Resolution of May 17, 2004, petitioner appealed the case to the RTC of Cebu City. As mentioned early on, the RTC denied the appeal and upheld the Decision of the NWRB by Decision dated February 10, 2005. And the RTC denied too petitioner's motion for reconsideration by Order of May 13, 2005.

Hence, the present petition for review raising the following questions of law:

i. WHETHER OR NOT THE CONSENT OF THE BOARD OF DIRECTORS OF THE WATER DISTRICT IS A CONDITION SINE QUA NON TO THE GRANT OF CERTIFICATE OF PUBLIC CONVENIENCE BY THE NATIONAL WATER RESOURCES BOARD UPON OPERATORS OF WATERWORKS WITHIN THE SERVICE AREA OF THE WATER DISTRICT?

ii. WHETHER THE TERM FRANCHISE AS USED IN SECTION 47 OF PRESIDENTIAL DECREE 198, AS AMENDED MEANS A FRANCHISE GRANTED BY CONGRESS THROUGH LEGISLATION ONLY OR DOES IT ALSO INCLUDE IN ITS MEANING A CERTIFICATE OF PUBLIC CONVENIENCE ISSUED BY THE NATIONAL WATER RESOURCES BOARD FOR THE MAINTENANCE OF WATERWORKS SYSTEM OR WATER SUPPLY SERVICE?[5]

Before discussing these substantive issues, a resolution of the procedural grounds raised by respondent for the outright denial of the petition is in order.

By respondent's claim, petitioner's General Manager, Engineer Armando H. Paredes, who filed the present petition and signed the accompanying verification and certification of non-forum shopping, was not specifically authorized for that purpose. Respondent cites Premium Marble Resources v. Court of Appeals[6] where this Court held that, in the absence of a board resolution authorizing a person to act for and in behalf of a corporation, the action filed in its behalf must fail since "the power of the corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers."

Respondent likewise cites ABS-CBN Broadcasting Corporation v. Court of Appeals[7] where this Court held that "[f]or such officers to be deemed fully clothed by the corporation to exercise a power of the Board, the latter must specially authorize them to do so." (Emphasis supplied by respondent)

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That there is a board resolution authorizing Engineer Paredes to file cases in behalf of petitioner is not disputed. Attached to the petition is petitioner's Board of Director's Resolution No. 015-2004, the relevant portion of which states:

> RESOLVE[D], AS IT IS HEREBY RESOLVED, to authorize the General Manager, ENGR. ARMANDO H. PAREDES, to file in behalf of the Metropolitan Cebu Water District expropriation and other cases and to affirm and confirm above-stated authority with respect to previous cases filed by MCWD.
>
> x x x x[8] (Emphasis and underscoring supplied)

To respondent, however, the board resolution is invalid and ineffective for being a roving authority and not a specific resolution pursuant to the ruling in ABS-CBN.

That the subject board resolution does not authorize Engineer Paredes to file the instant petition in particular but "expropriation and other cases" does not, by itself, render the authorization invalid or ineffective.

In BA Savings Bank v. Sia,[9] the therein board resolution, couched in words similar to the questioned resolution, authorized persons to represent the corporation, not for a specific case, but for a general class of cases. Significantly, the Court upheld its validity:

> In the present case, the corporation's board of directors issued a Resolution specifically authorizing its lawyers "to act as their agents in any action or proceeding before the Supreme Court, the Court of Appeals, or any other tribunal or agency[;] and to sign, execute and deliver in connection therewith the necessary pleadings, motions, verification, affidavit of merit, certificate of non-forum shopping and other instruments necessary for such action and proceeding." The Resolution was sufficient to vest such persons with the authority to bind the corporation and was specific enough as to the acts they were empowered to do. (Emphasis and underscoring supplied, italics in the original)

Nonetheless, while the questioned resolution sufficiently identifies the kind of cases which Engineer Paredes may file in petitioner's behalf, the same does not authorize him for the specific act of signing verifications and certifications against forum shopping. For it merely authorizes Engineer Paredes to file cases in behalf of the corporation. There is no mention of signing verifications and certifications against forum shopping, or, for that matter, any document of whatever nature.

A board resolution purporting to authorize a person to sign documents in behalf of the corporation must explicitly vest such authority. BPI Leasing Corporation v. Court of Appeals[10] so instructs:

> Corporations have no powers except those expressly conferred upon them by the Corporation Code and those that are implied by or are incidental to its existence. These powers are exercised through their board of directors and/or duly authorized officers and agents. Hence, physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by specific act of the board of directors.The records are bereft of the authority of BLC's [BPI Leasing Corporation] counsel to institute the present petition and to sign the certification of non-forum shopping. While said counsel may be the counsel of record for BLC, the representation does not vest upon him the authority to execute the certification on behalf of his client. There must be a resolution issued by the board of directors that specifically authorizes him to institute the petition and execute the certification, for it is only then that his actions can be legally binding upon BLC. (Emphasis, italics and underscoring supplied)

It bears noting, moreover, that Rule 13 Section 2 of the Rules of Court merely defines filing as "the act of presenting the pleading or other paper to the clerk of court." Since the signing of verifications and certifications against forum shopping is not integral to the act of filing, this may not be deemed as necessarily included in an authorization merely to file cases.

Engineer Paredes not having been specifically authorized to sign the verification and certification against forum shopping in petitioner's behalf, the instant petition may be dismissed outright.

Technicality aside, the petition just the same merits dismissal.

In support of its contention that the consent of its Board of Directors is a condition sine qua non for the grant of the CPC applied for by respondent, petitioner cites Section 47 of P.D. 198[11] which 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 and underscoring supplied)

There being no such consent on the part of its board of directors, petitioner concludes that respondent's application for CPC should be denied.

Both parties' arguments center, in the main, on the scope of the word "franchise" as used in the above-quoted provision.

Petitioner contends that "franchise" should be broadly interpreted, such that the prohibition against its grant to other entities without the consent of the district's board of directors extends to the issuance of CPCs. A contrary reading, petitioner adds, would result in absurd consequences, for it would mean that Congress' power to grant franchises for the operation of waterworks systems cannot be exercised without the consent of water districts.

Respondent, on the other hand, proffers that the same prohibition only applies to franchises in the strict sense " those granted by Congress by means of statute " and does not extend to CPCs granted by agencies such as the NWRB.

Respondent quotes the NWRB Resolution dated May 17, 2004 which distinguished a franchise from a CPC, thus:

> A CPC is formal written authority issued by quasi-judicial bodies for the operation and maintenance of a public utility for which a franchise is not required by law and a CPC issued by this Board is an authority to operate and maintain a waterworks system or water supply service. On the other hand, a franchise is privilege or authority to operate appropriate private property for public use vested by Congress through legislation. Clearly, therefore, a CPC is different from a franchise and Section 47 of Presidential Decree 198 refers only to franchise. Accordingly, the possession of franchise by a water district does not bar the issuance of a CPC for an area covered by the water district. (Emphasis and underscoring supplied by respondent)

Petitioner's position that an overly strict construction of the term "franchise" as used in Section 47 of P.D. 198 would lead to an absurd result impresses. If franchises, in this context, were strictly understood to mean an authorization issuing directly from the legislature, it would follow that, while Congress cannot issue franchises for operating waterworks systems without the water district's consent, the NWRB may keep on issuing CPCs authorizing the very same act even without such consent. In effect, not only would the NWRB be subject to less constraints than Congress in issuing franchises. The exclusive character of the franchise provided for by Section 47 would be illusory.

Moreover, this Court, in Philippine Airlines, Inc. v. Civil Aeronautics Board,[12] has construed the term "franchise" broadly so as to include, not only authorizations issuing directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchises has been delegated by Congress, to wit:

> Congress has granted certain administrative agencies the power to grant licenses for, or to authorize the operation of certain public utilities. With the growing complexity of modern life, the multiplication of the

> subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency towards the delegation of greater powers by the legislature, and towards the approval of the practice by the courts. It is generally recognized that a franchise may be derived indirectly from the state through a duly designated agency, and to this extent, the power to grant franchises has frequently been delegated, even to agencies other than those of a legislative nature. In pursuance of this, it has been held that privileges conferred by grant by local authorities as agents for the state constitute as much a legislative franchise as though the grant had been made by an act of the Legislature.[13]

That the legislative authority - in this instance, then President Marcos[14] - intended to delegate its power to issue franchises in the case of water districts is clear from the fact that, pursuant to the procedure outlined in P.D. 198, it no longer plays a direct role in authorizing the formation and maintenance of water districts, it having vested the same to local legislative bodies and the Local Water Utilities Administration (LWUA).

Sections 6 and 7 of P.D. 198, as amended, state:

> SECTION 6. Formation of District. - This Act is the source of authorization and power to form and maintain a district. Once formed, a district is subject to the provisions of this Act and not under the jurisdiction of any political subdivision. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act. To form a district, the legislative body of any city, municipality or province shall enact a resolution containing the following:
> (a) The name of the local water district, which shall include the name of the city, municipality, or province, or region thereof, served by said system, followed by the words "Water District".
>
> (b) A description of the boundary of the district. In the case of a city or municipality, such boundary may include all lands within the city or municipality. A district may include one or more municipalities, cities or provinces, or portions thereof: Provided, That such municipalities, cities or provinces, or portions thereof, cover a contiguous area.
>
> (c) A statement completely transferring any and all waterworks and/or sewerage facilities managed, operated by or under the control of such city, municipality or province to such district upon the filing of resolution forming the district.
>
> (d) A statement identifying the purpose for which the district is formed, which shall include those purposes outlined in Section 5 above.
>
> (e) The names of the initial directors of the district with the date of expiration of the term of office for each which shall be on the 31st of December of first, second, or third even-numbered year after assuming office, as set forth in Section 11 hereof.
>
> (f) A statement that the district may only be dissolved on the grounds and under the conditions set forth in Section 45 of this Title.
>
> (g) A statement acknowledging the powers, rights and obligations as set forth in Section 25 of this Title.
>
> Nothing in the resolution of formation shall state or infer that the local legislative body has the power to dissolve, alter or affect the district beyond that specifically provided for in this Act.
>
> If two or more cities, municipalities or provinces, or any combination thereof, desire to form a single district, a similar resolution shall be adopted in each city, municipality and province; or the city, municipality or province in which 75% of the total active service connections are situated shall pass an initial resolution to be concurred in by the other cities, municipalities or provinces.

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> SECTION 7. Filing of Resolution. - A certified copy of the resolution or resolutions forming a district shall be forwarded to the office of the Secretary of Administration. If found by the Administration to conform to the requirements of Section 6 and the policy objectives in Section 2, the resolution shall be duly filed. The district shall be deemed duly formed and existing upon the date of such filing. A certified copy of said resolution showing the stamp of the Administration shall be maintained in the office of the district. Upon such filing, the local government or governments concerned shall lose ownership, supervision and control or any right whatsoever over the district except as provided herein. (Emphasis and underscoring supplied)

It bears noting that once a district is "duly formed and existing" after following the above procedure, it acquires the "exclusive franchise" referred to in Section 47. Thus, P.D. 198 itself, in harmony with Philippine Airlines, Inc. v. Civil Aeronautics Board,[15] gives the name "franchise" to an authorization that does not proceed directly from the legislature.

It would thus be incongruous to adopt in this instance the strict interpretation proffered by respondent and exclude from the scope of the term "franchise" the CPCs issued by the NWRB.[16]

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. (Emphasis and underscoring supplied)

This provision has been substantially reproduced in Article XII Section 11 of the 1987 Constitution, including the prohibition against exclusive franchises.[17]

In view of the purposes for which they are established,[18] water districts fall under the term "public utility" as defined in the case of National Power Corporation v. Court of Appeals:[19]

> A "public utility" is a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service. x x x (Emphasis and underscoring supplied)

It bears noting, moreover, that as early as 1933, the Court held that a particular water district - the Metropolitan Water District - is a public utility.[20]

The ruling in National Waterworks and Sewerage Authority v. NWSA Consolidated Unions[21] is also instructive:

> We agree with petitioner that the NAWASA is a public utility because its primary function is to construct, maintain and operate water reservoirs and waterworks for the purpose of supplying water to the inhabitants, as well as consolidate and centralize all water supplies and drainage systems in the Philippines. x x x (Emphasis supplied)

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,[22] 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. The Petition is thus, in light of the foregoing discussions, DISMISSED.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr. and Nachura, JJ., concur.
Quisumbing, J., on official leave.
Sandoval-Gutierrez, on leave.

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[1]"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 OPERATION, AND FOR OTHER PURPOSES."

[2] TSN, December 16, 2002, p. 3.

[3] Rollo, p. 24.

[4]Id. at 25.

[5]Id. at 7.

[6]G.R. No. 96551, November 4, 1996, 264 SCRA 11, 17.

[7]G.R. No. 128690, January 21, 1999, 301 SCRA 572, 594.

[8] Rollo, p. 15.

[9]391 Phil. 370, 377 (2000).

[10] G.R. No. 127624, November 18, 2003, 416 SCRA 4, 10-11.

[11] As amended by P.D. 768 and P.D. 1479.

[12] G.R. No. 119528, March 26, 1997, 270 SCRA 538.

[13] Supra at 549-550.

[14] P.D. 198, which was issued on May 25, 1973 - a few months after the ratification of the 1973 Constitution on January 17, 1973 - states that it was issued "by virtue of the powers vested in [President Marcos] by the Constitution, as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972 and General Order No. 1 dated September 22, 1972, as amended". The legislative power of the President was recognized by the Court in Aquino, Jr. v. COMELEC (G.R. No. L-40004. January 31, 1975) as flowing from his martial law powers and from Article XVII, Section 3(2) of the 1973 Constitution. The same power was only brought to clearer relief in 1976 by Amendment No. 6 to the same Constitution. (Bernas, The 1987 Constitution of the Republic of the Philippines 607 [1996].)

[15] Supra.

[16] The authority of the NWRB to issue CPCs proceeds from P.D. 1067, issued on December 31, 1976 and entitled "A DECREE INSTITUTING A WATER CODE, THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIATION, UTILIZATION, EXPLOITATION, DEVELOPMENT, CONSERVATION AND PROTECTION OF WATER RESOURCES." Article 3 of this Decree charges the National Water Resources Council, later renamed the National Water Resources Board pursuant to E.O. No. 124-A dated July 22, 1987, with the function of regulating the "utilization, exploitation, development, conservation and protection of water resources." Article 16 of the same law provides:

> Any person who desires to obtain a water permit shall file an application with the [National Water Resources Council] who shall make known said application to the public for any protests.
>
> In determining whether to grant or deny an application, the Council shall consider the following: protests filed, if any; prior permits granted; the availability of water; the water supply needed for beneficial use; possible adverse effects; land-use economics; and other relevant factors
>
> Upon approval of an application, a water permit shall be issued and recorded.

[17] SECTION 11. 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. (Underscoring supplied)

[18] Sec. 5 of P.D. 198 states: "Purpose. - Local water districts may be formed pursuant to this Title for the purposes of (a) acquiring, installing, improving, maintaining and operating water supply and distribution systems for domestic, industrial, municipal and agricultural uses for residents and lands within the boundaries of such districts, (b) providing, maintaining and operating water collection, treatment and disposal facilities, and (c) conducting such other functions and operations incidental to water resource development, utilization and disposal within such districts, as are necessary or incidental to said purpose."

[19] G.R. No. 112702, September 26, 1997; 279 SCRA 506, 523

[20] Metropolitan Water District v. Public Service Commission, 58 Phil. 397, 399 (1933).

[21] 120 Phil. 736, 745 (1964).

[22] Parenthetically, Article XIV Section 8 of the 1935 Constitution already contained the same prohibition against exclusive franchises found in Article XIV Section 5 of the 1973 Constitution. Thus, Article XIV Section 8 of the 1935 Constitution states:

> SEC. 8. 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. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires.

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(Emphasis and underscoring supplied)

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