

**CITIZENS FOR A GREEN AND PEACEFUL CAMIGUIN, SULO, INC.,
SAVE CDO NOW MOVEMENT, INC., TASK FORCE MACAJALAR, FE E.
ULFSTEIN, ANNALIZA E. ULFSTEIN, ARISTEO MARBELLA, SR., MARIA
TE...***G.R. No. 213426. June 29, 2021*

Ponente: ZALAMEDA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-213426/>**ZALAMEDA, J.:**

This Petition for Review (petition) seeks to reverse and set aside the Resolutions dated 26 May 2014[1] and 27 June 2014[2] of the Court of Appeals (CA), Cagayan de Oro City in CA-G.R. SP No. 06187, denying the twin petitions for issuance of a Writ of Kalikasan and Writ of Continuing Mandamus with prayer for the issuance of a Temporary Environmental Protection Order under Rules 7 and 8 of the Rules of Procedure for Environmental Cases (RPEC).[3]

Antecedents

Citizens for A Green and Peaceful Camiguin, Sulog, Inc., Save CDO Now Movement, Inc., Task Force Macajalar, Fe E. Ulfstein, Aristeo Marbella, Sr., Maria Teresa Rami, Magdalena L. Maestrado, Marijone Saab Gapas, Magdalena L. Rodriguiz, Cris T. Magallon, Victor L. Umaman, George L. Bonita, Rand G. Semaña, Floriza A. Bolo, Elpidia L. Taganas, Gerry E. Agbu, Eduardo M. Payca, Maria Teresa E. Estrada, Concepcion G. Ebcas, Jonas E. Ebcas, Eugene C. Abao, Ivy May B. Acebes, Celeste Lupina, Zuendelyn Penalosa, Jocelyn Diana King, Jocelyn Tagupa, Michael Philip L. Kho, Remedio Vicente, Orlando Ebcas, and Joan S. Dagondon, (petitioners) filed twin petitions before the CA seeking the issuance of writs of kalikasan and continuing mandamus against "the establishment and/or construction of a diesel power plant by King Energy Generation, Inc. (KEGI) in Sitio Maubog, Barangay Balbagon, Mambajao, Camiguin." According to them, the construction of said power plant violates their constitutional right to a balanced and healthful ecology and a slew of environmental laws.

Petitioners also fault public respondents Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), and local government units in Balbagon, Mambajao, Camiguin, for allegedly allowing the construction of the power plant in contravention of the Laws they are mandated to enforce. Respondent Camiguin Electric Cooperative (CAMELCO) is also impleaded for having contracted with KEGI for the construction of the power plant allegedly without complying with applicable laws.

Petitioners claim that: (1) following the precautionary principle under both national and international environmental law, the project should not have been approved in view of its "innumerable" health, safety and environmental hazards;[4] (2) respondents failed to secure an Environmental Compliance Certificate (ECC) as required under Presidential Decree (PD) No. 1151[5] and PD No. 1586;[6] (3) the project did not have the approval of the President upon recommendation of the Philippine Tourism Authority as required under Proclamation No. 1801;[7] (4) the construction did not comply with the requirement of public consultation under Sections 26 and 27 of the Local Government Code. (LGC);[8] and (5) respondent Sangguniang Bayan violated

Memorandum Circular No. 54 when it caused the reclassification/conversion of the area where the power plant is to be located from agricultural to industrial land without conducting the necessary public hearings.[9]

The CA, in a Resolution dated 26 May 2014, dismissed the petitions outright. It found that the petition for issuance of a writ of *kalikasan* failed to comply with Section 1, Rule 7 of the RPEC. The "perceived environmental damage arising from the operation of the diesel plant would only affect the island province of Camiguin composed only of municipalities" whereas the extraordinary remedy of a writ of *kalikasan* is only issued whenever the environmental damage is of such magnitude as to affect the life, health or property of inhabitants in two or more cities or provinces.[10]

The CA also dismissed the petition for issuance of a writ of continuing mandamus for failing to "state any reason to justify the immediate filing x x x before [the CA] instead of the Regional Trial Court x x x." [11]

Petitioners filed a Motion for Reconsideration,[12] which was denied in a Resolution[13] dated 27 June 2014. There, the CA reminded petitioners of the existence of "adequate remedies for the protection of the environment before the Regional Trial Courts which are also empowered to issue environmental protection orders." [14] It thereafter advised petitioners to "review the aforesaid Rules so that they may file [the] case before the proper forum." [15]

Issue

We resolve whether the CA erred in dismissing the petitions.

Petitioners essentially reiterate their arguments before the CA. They state that although Camiguin is an isolated island province far from the nearest cities and provinces, it should not be denied of the benefits of a law created to champion the protection and promotion of our natural resources.[16] They allege that the power plant in issue is located only in the municipality of Mambajao, thus "it does not mean that the pollutants it [will produce] will not contribute to the threat that causes the recent natural calamities that took the lives of hundreds of inhabitants in northern Mindanao." Petitioners claim that the precautionary principle creates a bias in favor of the constitutional right of the people to a balanced and healthful ecology.[17]

The EMB similarly with co-respondents Provincial and Local Governments of Camiguin,[18] maintains that the CA correctly dismissed the twin petitions. It counters that the writs of *kalikasan* and continuing mandamus are not general remedies that are readily available whenever there are violations or threatened violations against the environment. Far from being universal solutions in every case involving environmental damage, a writ of *kalikasan* is issued only when certain conditions are met, including the requirement of damage being of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or municipalities.[19] On the other hand, while the Supreme Court exercises concurrent jurisdiction with the Regional Trial Court and the CA to issue writs of continuing mandamus, this should not be taken as granting petitioners the absolute and unrestrained freedom of choice of court with which to direct their application, lest they run afoul of the doctrine of hierarchy of courts.[20]

The EMB also asserts that the precautionary principle does not operate to avoid all human activity that speculatively cause environmental damage.[21] It argues that there are, in fact, operational diesel power plants in the Provinces of Iloilo and Bohol which, if petitioners' allegations regarding the pollution they cause are to be believed, should have been long shut down by the government.[22]

Finally, the EMB insists that the project diesel power plant, intended to produce only 4.4 megawatts of electricity, is not covered by the Philippine Environmental Impact System. It therefore requires only a Certificate of Non-Coverage (CNC), not an ECC. Nevertheless, before they can operate, the project's proponents must still

secure the permits and licenses required under the pertinent environmental laws, such as the Clean Air Act and the Philippine Clean Water Act, as well as submit to the monitoring and inspection powers of the government through the DENR.[23]

Respondent CAMELCO denies petitioners' allegation that it contracted with KEGI for the construction of the diesel power plant. It clarified that it only entered into a Purchase Supply Agreement with KEGI, that is, CAMELCO will buy power only from KEGI.[24]

Respondent KEGI, for its part, disputes petitioners' claim that diesel power plant technology is unsafe. It cites the case of the island of Mindanao which houses several existing diesel power plants without having any reported environmental issues. KEGI also stresses that its project has complied with all licensing and permit requirements[25] including those under the Philippine Clean Water Act[26] and the Philippine Clean Air Act.[27]

Ruling of the Court

We DENY the petition. The CA did not commit any reversible error in dismissing the petitions.

We note at the outset the defect in the verification attached to the petitions filed before the CA. As correctly pointed out by the EMB,[28] the verification signed by alleged authorized representatives of petitioner-organizations/petitioner-corporations was bereft of proof to show that said signatories were indeed so authorized.[29] Even granting substantial compliance with the verification requirement,[30] the petitions must still fail.

Section 1, Rule 7, Part III of the RPEC provides:

Section 1. Nature of the writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. (Emphasis and underscoring supplied.)

It is settled that magnitude of environmental damage is a condition sine qua non in a petition for the issuance of a writ of kalikasan and must be contained in the verified petition.[31] So extraordinary is the nature of the remedy of a writ of kalikasan that this Court, in promulgating the RPEC, has expressly reserved its issuance only for cases which are sufficiently grave in terms of territorial scope.[32]

Here, after listing the allegedly "innumerable" safety, health and environmental hazards posed by the diesel power plant, petitioners failed to allege how its construction would cause damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.[33] They instead rely on the application of the precautionary principle to cure this defect in their petitions.[34] The precautionary principle, however, finds direct application in the evaluation of evidence and bridges the gap in cases where scientific certainty in factual findings cannot be achieved.[35] It does not and should not be made to supply allegations where there are none. The defect in petitioners' pleading becomes even more apparent when they went on to argue that it would be unfair to deny the benefit of the writ of kalikasan to the inhabitants of Camiguin solely on account of the island's "unique" location ("far from the nearest cities or provinces").[36]

Moreover, parties that seek the issuance of the writ of kalikasan, whether on their own or on others' behalf, carry the burden of substantiating the writ's elements. Before they proceed with the case, they must be ready with the evidence necessary for the determination of the writ's issuance.[37] Here, an examination of the petition filed

before the CA readily shows that petitioners were unable to meet the burden of proving their entitlement to the writ of kalikasan prayed for. Apart from citing a purported Press Release issued by the International Agency for Research on Cancer (IARC) on the association between cancer and diesel exposure,[38] as well as a Wikipedia article on the advantages and disadvantages of diesel engines vis-à-vis spark ignition engines,[39] they offered no other evidence to substantiate the alleged safety, health and environmental damage caused (or to be caused) by the construction of the diesel power plant to the residents of Camiguin. Petitioners are also reminded of this Court's ruling in *Paje v. Casiño* that lack of approval of the concerned sanggunians over the subject project (pursuant to Sections 26 and 27 of the LGC) "would not lead to or is not reasonably connected with environmental damage but, rather, it is an affront to the local autonomy of LGUs." [40]

Neither have petitioners made a case sufficient to warrant the issuance of a writ of continuing mandamus. Petitioner's prayer with respect to the issuance of such writ are as follows:

x x x x

(b) Upon the filing hereof, issue a writ of continuing [mandamus] commanding:

- (i) Respondents to submit to and undergo the process of environmental impact statement system under the Environmental Management Bureau;
- (ii) Respondents to submit all its issued certifications on public information, public consultation, public participation, and consent of the community affected by the construction of the diesel power plant; and
- (iii) Respondent Sangguniang Bayan, in coordination with relevant government offices and in consultation with stakeholders, to submit an acceptable amendment of the Order of Reclassification of the subject area, after compliance of the requisite public hearing.[41]

The foregoing, however, are essentially challenges to actions taken by the concerned political and administrative agencies. The EMB, in issuing the CNC in favor of the challenged project,[42] has certified that, based on the submitted project description, the project is not covered by the Environmental Impact Statement System and is not required to secure an ECC.[43] The concerned local government units issued Resolutions approving and endorsing the project, presumably on behalf of their constituents.[44] The DAR has also issued a Conversion Order[45] over land covering the subject property based on a Certificate of Eligibility for Reclassification[46] from the Department of Agriculture. A Discharge Permit and Permit to Operate have likewise been subsequently issued by the EMB in favor of the project.[47]

That petitioners find fault with the findings of these agencies does not justify ignoring the proper procedure for appeals of said findings and/or issuances. Under DENR Administrative Order (AO) No. 03-30, for example, any party aggrieved by the final decision on an ECC/CNC application may, within 15 days from receipt of such decision, file an appeal with the EMB Director or the DENR Secretary, as the case maybe.[48] A Conversion Order issued by the Regional Director, as in this case, may be subject of a motion for reconsideration, appeal or petition for revocation/withdrawal under Administrative Order No. 1, Series of 2002, of the DAR.[49] As this Court held in *Abogado v. Department of Environment and Natural Resources*,[50] the writ of continuing mandamus "should not be used to supplant executive or legislative privileges. Neither should it be used where the remedies required are clearly political or administrative in nature." Petitioners have also not shown a causal link or reasonable connection between the agencies' alleged lapses and the environmental damage of the magnitude contemplated under the RPEC.[51]

In fine, we do not find that the CA committed reversible error in dismissing the petitions for issuance of a writ of kalikasan and writ of continuing mandamus in this case. Lest there be any misunderstanding, the Court shares petitioners' concern for the environment. This concern, however, is not an excuse to invoke this Court's jurisdiction in cases where other remedies are available.

WHEREFORE, the petition is DENIED. The Resolutions of the Court of Appeals, Cagayan de Oro City dated 26 May 2014 and 27 June 2014 in CA-G.R. SP No. 06187 are AFFIRMED.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Leonen, Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, M. Lopez, Delos Santos, Gaerlan, Rosario, and J. Lopez, JJ., concur.

[1] Rollo, pp. 29-31, penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Romulo V. Borja and Edward B. Contreras of the Special Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[2] Id. at 42-45.

[3] A.M. No. 09-6-8-SC.

[4] Rollo, pp. 77-84.

[5] Philippine Environmental Policy.

[6] Rollo, pp. 57-65; Philippine Environmental Impact Statement System.

[7] Id. at 65.

[8] Id. at 70-73.

[9] Id. at 87-89.

[10] Id. at 30.

[11] Id. at 31.

[12] Id. at 32-41.

[13] Supra note 2.

[14] Rollo, p. 44.

[15] Id.

[16] Id. at 23.

[17] Id. at 24.

[18] Id. at 199-201.

[19] Id. at 157.

[20] Id. at 162.

[21] Id. at 164.

[22] Id. at 165.

[23] Id.

[24] Id. at 395-396.

[25] Id. at 232.

[26] Id. at 375.

[27] Id. at 376.

[28] Id. at 165-166.

[29] Id. at 102; Except for petitioner Citizens for Green and Peaceful Camiguin which submitted a Secretary's Certificate authorizing Edilberto Joaquin R. Elio to file the petition on its behalf.

[30] Cordillera Global Network v. Paje, G.R. No. 215988, 10 April 2019.

[31] LNL Archipelago Minerals, Inc. v. Agham Party List, 784 Phil. 456, 474 (2016).

[32] Cf. Paje v. Casiño, 752 Phil. 498, 539 (2015).

[33] Rollo, pp. 73-89.

[34] Id. at 78-79.

[35] International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.), 774 Phil. 508, 665 (2015)

[36] Rollo, p. 23

[37] Abogado v. Department of Environment and Natural Resources, G.R. No. 246209, 03 September 2019 [Per J. Leonen].

[38] Rollo, p. 80.

[39] Id. at 81.

[40] Supra note 37

[41] Rollo, p. 91.

[42] Id. at 265.

[43] Revised Procedural Manual for DAO 2003-30, or the Implementing Rules and Regulations of P.D. No. 1586, establishing the Philippine Environmental Impact Statement System.

[44] Rollo, pp. 271-280.

[45] Id. at 262-263.

[46] Id. at 264.

[47] Id. at 266-267.

[48] See Section 6, DENR Administrative Order No. 03-03 dated 30 June 2003 (otherwise known as the Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System (P.D. No 1586).

[49] 2002 Comprehensive Rules on Land Conversion.

[50] Supra note 37.

[51] See Abogado v. Department of Environment and Natural Resources, id.

[52] Id.

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