

ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN (AGHAM), REPRESENTED BY ITS PRESIDENT, ANGELO B. PALMONES, PETITIONER, VS. JAPAN TOBACCO INTERNATIONAL (P...

G.R. No. 235771. June 15, 2021

Ponente: INTING, J.

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INTING, J.:

This resolves the Petition (For Writ of Kalikasan with prayer for Production Order and Temporary Protection Order)[3] filed by Alyansa ng mga Grupong Haligi ng Agham at Teknolohiya para sa Mamamayan (AGHAM), through its President, Angelo B. Palmones.

The Antecedents

The Petition

In its petition, AGHAM averred the following:

In a joint operation on March 6, 2017, the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR) successfully seized 4.7 Million packs of cigarettes with counterfeit tax stamps from Mighty Corporation (MC). The cigarettes were under the brand names "Mighty Mentol 100s," "Marvels FK," and "Marvels King Full" (Mighty/subject cigarettes). Eventually, the government filed a case against the officers of MC for tax law violations. It nonetheless withdrew the complaint after MC offered to settle its tax liabilities in the amount of P25 Billion and shut down its operations.[4]

Japan Tobacco International (Philippines), Inc. (JTI-Phil.), which is part of Japan Tobacco International, acquired MC. In November 2017, the Department of Finance (DOF) and the BIR officials caused the burning and destruction of batches of Mighty cigarettes to prevent pilferage. The procedure was undertaken inside the compound of respondent Holcim Philippines, Inc. (Holcim) in Bunawan, Davao City.[5]

The DOF and BIR were also set to destroy additional batches of Mighty cigarettes including those confiscated in San Simon, Pampanga consisting of 66,245 cases; in San Ildefonso, Bulacan consisting of 163,183 cases; and other stockpiles in Tacloban and Cebu. Purportedly, at the time of the filing of the petition, the DOF and BIR had ordered the destruction of Mighty cigarettes in the Holcim's Plant in Norzagaray, Bulacan which is within the watershed area of the Angat and La Mesa Dams.[6]

DOF, BIR, and Holcim officials had claimed that the Mighty cigarettes were being destroyed through co-processing or the process of using waste as raw material or source of energy, or both, to replace mineral resources and fossil fuels in industrial processes. However, there was no evidence that co-processing was indeed undertaken considering that no media were allowed during the destruction of the cigarettes.[7]

JTI-Phil., Holcim, the Department of Environment and Natural Resources (DENR), DOF and BIR (collectively,

respondents) violated the right of the people to a balanced and healthy ecology.[8] While respondents claimed that co-processing was a safe method, the use of cigarettes in co-processing was in violation of the DENR Administrative Order No. (DAO) 2010-06,[9] in relation to Republic Act No. (RA) 6969,[10] RA 8749[11] and 9003.[12]

Comments of Respondents

For its part, JTI-Phil countered as follows:

JTI-Phil. was improperly impleaded in this case on the erroneous claim that it owned Mighty cigarettes. It acquired various assets of MC, including its trademarks, only after the seizure of the subject cigarettes.[13]

On November 3, 2017, the BIR authorized and approved the destruction of the seized Mighty cigarettes subject to certain conditions. Holcim coordinated with a team from BIR which shall supervise the destruction of the cigarettes in the presence of representatives from the Office of the President (OP), DOF, Department of Health (DOH), DENR, Commission on Audit (COA), representatives from Anti-Smoking Non-Government Organizations (NGOs), and the media.[14]

During the actual destruction of the cigarettes on November 26, 2017 at the Holcim Geocycle compound in Bunawan, Davao City, and on December 12, 2017 at the Holcim Geocycle compound in Norzagarav, Bulacan—BIR and BOC officials, including those from NGOs and the media were present.[15]

The petition must be dismissed outright as it failed to show that the environmental damage caused by the destruction of the cigarettes which is of such magnitude as to prejudice the life, health or property of inhabitants of two or more cities or provinces.[16] AGHAM merely relied on the possibility that air, water, and land resources will be contaminated even if there is no body of water connecting the Holcim plant and the La Mesa Dam.[17] AGHAM failed to prove that there was any law violated due to the co-processing method conducted in the Holcim plant[18] and that co-processing is not an acceptable and safe method of disposing waste materials globally.[19]

AGHAM did not submit any evidence that residents of Davao and Bulacan were affected adversely by the actions of respondents. The media widely covered the co-processing conducted by Holcim in Davao and Bulacan and the news outlets published articles on the events.[20]

Like JTI-Phil., Holcim contended the following:

Co-processing of waste materials, such as cigarettes, is authorized by law. During the co-processing of cigarettes on November 26, 2017 (in Davao) and December 12, 2017 (in Bulacan), representatives from the OP, DOF, DOH, DENR, and COA were present; members of the media also attended the events. Thus, the co-processing of the subject cigarettes was an open and transparent endeavor aimed at ensuring the destruction of the seized goods.[21]

Holcim's plants in Davao and Bulacan have the necessary permits for co-processing which were respectively issued on July 18, 2017 and May 8, 2017. AGHAM's claim that the co-processing of cigarettes will result in environmental damage is without basis because co-processing results in zero solid or liquid waste. On this, the resulting ash of co--processing method chemically binds with the precursor product which eventually becomes the cement. This means that the ashes which form as a result of co-processing becomes part of the cement itself.[22]

Its Davao and Bulacan plants have continuous emission monitoring systems (CEMS) which observe and record the emission level of carbon dioxide, dust, hydrogen chloride, and the like on an hourly and daily basis. The data

derived from the CEMS is submitted quarterly to the DENR Environmental Management Bureau (EMB) as part of Holcim's self-monitoring report. Per its latest self-monitoring reports, the emission, which included the times during which the subject cigarettes were co-processed, was within the limits prescribed by the National Emission Standards for Source Specific Air Pollutants under the DAO 2010-06. Its quality, environmental and health and safety management systems have been certified as meeting the International Organization for Standardization (ISO) standards.[23]

Meanwhile, the DOF, DENR and BIR (collectively, public respondents), through the Office of the Solicitor General, asserted that AGHAM made a misleading claim that their officials conducted the destruction of the subject cigarettes when the truth is, MC and Holcim were the ones which conducted the co-processing of the seized cigarettes. The BIR only approved the application of MC for the co--processing of the cigarettes and representatives from the DOF and DENR witnessed its destruction.[24]

Public respondents emphasized that the DENR had issued an Environmental Compliance Certificate (ECC) to Holcim. The DENR is deemed to have aptly assessed the environmental impact of using waste materials as alternative fuel resources in Holcim's facilities before it issued the ECC to Holcim.[25] They also elucidated that co-processing method differs from mere burning or incineration of wastes as co--processing entails thermal destruction wherein waste materials are subject to such temperature and as a result, almost no residue remains after the process except for just some mineral contents of the destructed waste.[26]

In sum, public respondents insisted that AGHAM did not establish any reasonable connection between the complained act and the supposed violation to the people's right to a balanced and healthful ecology.[27]

In response, AGHAM, in its reply, essentially reiterated the contentions it raised in the petition.

Issue

Whether a writ of a kalikasan must be issued in the case.

Our Ruling

The petition lacks merit.

Section 1, Rule 7, Part III of the Rules of Procedure for Environmental Cases[28] (the Rules) provides for the nature and extent of a writ of kalikasan, to wit:

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.

A writ of kalikasan is aimed to provide a stronger protection of environmental rights in order to accord an effective and speedy remedy where the constitutional right to a healthful and balanced ecology is violated, and address any possible large-scale ecological threats.[29] Necessarily, the party seeking the issuance of a writ of kalikasan must demonstrate that a particular law, rule or regulation was or would be violated by the respondent.[30] It has the burden to prove: (1) the environmental law, rule or regulation violated or threatened to be transgressed; (2) respondent's act or omission complained of; and (3) the environmental damage of such magnitude as would impair the life, property, or health of the inhabitants of two or more provinces or cities.[31]

In this case, other than stating in general terms that respondents violated RA 6969, 8749, and 9003, AGHAM did

not propound on the specific acts or omission committed by respondents that would amount to a violation of the cited laws and as required under the Rules. AGHAM did not also adduce evidence that respondents are indeed guilty of any illegal act or omission violative of the rights of the people to a balanced and healthful ecology.

To recall, AGHAM contended that there was no showing that respondents indeed conducted co-processing for the destruction of the Mighty cigarettes underscoring that the media was not allowed when the destruction took place. However, evidence reveals that representatives from different, government agencies and the media witnessed the destruction of the subject cigarettes through co-processing. In fact, media outlets released various articles[32] regarding the matter and the articles indicated that co-processing was undertaken. Moreover, the BIR authorized the co-processing of the cigarettes. Taken together, the circumstances bolster the absence of any unlawful act or omission committed by Holcim, among other respondents, in destroying the Mighty cigarettes.

Interestingly, in *LNL Archipelago Minerals Inc. v. Agham Party List*,[33] AGHAM applied for the issuance of writ of kalikasan, but the Court dismissed the petition in that case for AGHAM's failure to clearly allege and prove the violation of an environmental law committed by LNL Archipelago Minerals, Inc. (LNL) as well as environmental damage the latter committed. The situation in LNL is similar in the present case because AGHAM did not submit proof to substantiate its allegations against respondents.

In *Abogado v. Department of Environment and Natural Resources*,[34] the Court elucidated that the Rules do not specify the exact extent of environmental damage required for the issuance of a writ of kalikasan, but "it must be sufficiently grave, in terms of the territorial scope of such damage." [35] The Court likewise highlighted the contents of the petition which must include all the material and relevant evidence—the witnesses' affidavits as well as documentary of object evidence. Definitely, any party that seeks for issuance of a writ of kalikasan must be ready with the essential evidence for the determination of the issuance of the writ.[36] However, AGHAM failed to comply with this requirement; thus, the present petition must fail.

Let it be underscored, that as confirmed by public respondents, the EMB issued Environmental Compliance Certificates (ECC)[37] to Holcim in connection with putting up an "environmentally-sound industrial waste management infrastructure."

In *Braga, et al. v. DOTC Secretary Abaya, et al.*,[38] the Court explained the significance of an ECC. It stressed that the EMB is tasked to issue an ECC relative to environmentally critical projects that have adequate safeguards to preserve the environment. The ECC indicates that the proposed undertaking will not result in any notable negative environmental impact based on the representation of the project proponent. It certifies that the proponent complied with the Environmental Impact Statement (EIS) which, in turn, indicates a detailed description of the nature, configuration, and all other related activities of the planned project. The EIS also contains an Environmental Management Plan which specifies the preventive, compensatory, as well as the mitigating and contingent measures to improve the positive impact of the project and minimize its environmental risks.

Because the EMB had issued ECCs to Holcim, it is beyond cavil that the latter is armed with the proper authority to conduct co--processing and make use of alternative fuels and raw materials for its cement production.

Moreover, Holcim adhered with the requirement under Section 7[39] of the DAO 2010-06 that cement plants that intend to engage in co--processing of waste materials should, among others, be ISO (or its equivalent) compliant.[40] In fact, Holcim's ISO certification specifically pertains to its "provision of waste management services through cement kiln co-processing." This fact further supports the legitimacy of its conduct of co-processing in its plants in Davao and Bulacan.

Considering all the foregoing, the petition is not sufficient in form and substance as AGHAM failed to discharge

the burden to prove the requirements for the issuance of a writ of kalikasan. In sum, there is no clear showing that respondents committed an act or omission violative of any environmental law which resulted or will result in an environmental damage of such magnitude that would infringe the right of the people to a balanced and healthful ecology.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Leonen, Hernando, Carandang, Lazaro-Javier, Zalameda, M. Lopez, Delos Santos, Gaerlan, Rosario, and J. Lopez, JJ., concur.
Caguioa J., no part.

[1] Alyansya in some parts of the rollo.

[2] Teknolohya in some parts of the rollo.

[3] Rollo, pp. 3-21.

[4] Id. at 5.

[5] Id.

[6] Id. at 5-6.

[7] Id. at 6.

[8] Id. at 12.

[9] Guidelines on the Use of Alternative Fuels and Raw Materials in Cement Kilns, approved on March 17, 2010.

[10] Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990, approved on October 26, 1990.

[11] Philippine Clean Air Act of 1999, approved on June 23, 1999.

[12] Ecological Solid Waste Management Act of 2000, approved on January 26, 2001.

[13] Rollo, pp. 36, 54.

[14] Id. at 37.

[15] Id. at 39.

[16] Id. at 46.

[17] Id. at 47.

[18] Id. at 59.

[19] Id. at 65.

[20] Id. at 49.

[21] Id. at 131, 136.

[22] Id. at 142.

[23] Id. at 143-144.

[24] Id. at 326.

[25] Id. at 330.

[26] Id. at 333.

[27] Id. at 334-335.

[28] A.M. No. 09-6-8-SC, April 13, 2010.

[29] Segovia, et al. v. The Climate Change Commission, et al., 806 Phil. 1019, 1033 (2017), citing Hon. Paje v. Hon. Casiño et al., 752 Phil. 498, 538 (2015).

[30] Id. at 1034, citing LNL Archipelago Minerals, Inc. v. Agham Party List, 784 Phil. 456, 480 (2016).

[31] LNL Archipelago Minerals, Inc. v. Agham Party List, id. at 474.

[32] Rollo, pp. 105-122.

[33] 784 Phil. 456 (2016).

[34] G.R. No. 246209, September 3, 2019.

[35] Id.

[36] Id.

[37] Rollo, pp. 289-293, 294-302.

[38] 794 Phil. 662 (2016).

[39] Section 7, Department of Environment and Natural Resources Administrative Order No. 2010-06 provides: Section 7. Minimum Qualifications of Co-Processing Facilities. All existing and operational cement plants that intend to engage in co-processing of waste materials shall:

- Have existing personnel, processes and systems that demonstrate its strong commitment to the protection of the environment, health and safety. The facility's quality, environmental and health and safety management system should be ISO (or its equivalent) compliant;
- Be compliant with the provisions of the following laws and regulations:
 - Philippine Clean Air Act (RA 8749)
 - Philippine Environmental Impact Statement (EIS) System (PD 1586)
 - Philippine Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 (RA 6969)
 - Philippine Mining Act of 1995 (RA 7942) and their corresponding rules and regulations and
 - DOLE Department Order No. 16, series of 2001 (Amendments to Rule 1030 of the Occupational Safety and Health Standards)
- Be capable of controlling inputs and process parameters required for the effective co-processing of waste materials.
- Have an approved protocol/procedure for each type of waster material to be co-processed.

[40] Rollo, pp. 303-307.

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