

POLLUTION ADJUDICATION BOARD, PETITIONER, VS. COURT OF APPEALS AND SOLAR TEXTILE FINISHING CORPORATION, RESPONDENTS.

G.R. No. 93891. March 11, 1991

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-93891/>

FELICIANO, J.:

Petitioner Pollution Adjudication Board ("Board") asks us to review the Decision and Resolution promulgated on 7 February 1990 and 10 May 1990, respectively, by the Court of Appeals in C.A.-G.R. No. SP 18821 entitled "Solar Textile Finishing Corporation v. Pollution Adjudication Board." In that Decision and Resolution, the Court of Appeals reversed an order of the Regional Trial Court, Quezon City, Branch 77, in Civil Case No. Q-89-2287 dismissing private respondent Solar Textile Finishing Corporation's ("Solar") petition for certiorari and remanded the case to the trial court for further proceedings.

On 22 September 1988, petitioner Board issued an ex parte Order directing Solar immediately to cease and desist from utilizing its wastewater pollution source installations which were discharging untreated wastewater directly into a canal leading to the adjacent Tullahan-Tinejeros River. The Order signed by Hon. Fulgencio Factoran, Jr., as Board Chairman, reads in full as follows:

"Respondent, Solar Textile Finishing Corporation with plant and place of business at 999 General Pascual Avenue, Malabon, Metro Manila is involved in bleaching, rinsing and dyeing textiles with wastewater of about 30 gpm. being directly discharged untreated into the sewer. Based on findings in the Inspections conducted on 05 November 1986 and 15 November 1986, the volume of untreated wastewater discharged in the final outfall outside of the plant's compound was even greater. The result of inspection conducted on 06 September 1988 showed that respondent's WasteWater Treatment Plant was noted unoperational and the combined wastewater generated from its operation was about 30 gallons per minute and 80% of the wastewater was being directly discharged into a drainage canal leading to the Tullahan-Tinejeros River by means of a by-pass and the remaining 20% was channelled into the plant's existing Wastewater Treatment Plant (WTP). Result of the analyses of the sample taken from the by-pass showed that the wastewater is highly pollutive in terms of Color units, BOD and Suspended Solids, among others. These acts of respondent in spite of directives to comply with the requirements are clearly in violation of Section 8 of Presidential Decree No. 984 and Section 103 of its Implementing Rules and Regulations and the 1982 Effluent Regulations.

WHEREFORE, pursuant to Section 7 of P.D. 984 and Section 38 of its Implementing Rules and Regulations respondent is hereby ordered to cease and desist from utilizing its wastewater pollution source installations and discharging its untreated wastewater directly into the canal leading to the Tullahan-Tinejeros River effective immediately upon receipt hereof and until such time when it has fully complied with all the requirements and until further orders from this Board.

SO ORDERED."[1]

We note that the above Order was based on findings of several inspections of Solar's plant:

- inspections conducted on 5 November 1986 and 12 November 1986 by the National Pollution Control Commission ("NPCC"), the predecessor of the Board;^[2] and
- the inspection conducted on 6 September 1988 by the Department of Environment and Natural Resources ("DENR").

The findings of these two (2) inspections were that Solar's wastewater treatment plant was non-operational and that its plant generated about 30 gallons per minute of wastewater, 80% of which was being directly discharged into a drainage canal leading to the Tullahan-Tinejeros River. The remaining 20% of the wastewater was being channeled through Solar's non-operational wastewater treatment plant. Chemical analysis of samples of Solar's effluents showed the presence of pollutants on a level in excess of what was permissible under P.D. No. 984 and its Implementing Regulations.

A copy of the above Order was received by Solar on 26 September 1988. A Writ of Execution issued by the Board was received by Solar on 31 March 1989.

Meantime, Solar filed a motion for reconsideration/appeal with prayer for stay of execution of the Order dated 22 September 1988. Acting on this motion, the Board issued an Order dated 24 April 1989 allowing Solar to operate temporarily, to enable the Board to conduct another inspection and evaluation of Solar's wastewater treatment facilities. In the same Order, the Board directed the Regional Executive Director of the DENR/NCR to conduct the inspection and evaluation within thirty (30) days.

On 21 April 1989, however, Solar went to the Regional Trial Court of Quezon City, Branch 77, on petition for certiorari with preliminary injunction against the Board, the petition being docketed as Civil Case No. Q-89-2287.

On 21 July 1989, the Regional Trial Court dismissed Solar's petition upon two (2) grounds, i.e., that appeal and not certiorari from the questioned Order of the Board as well as the Writ of Execution was the proper remedy, and that the Board's subsequent Order allowing Solar to operate temporarily had rendered Solar's petition moot and academic.

Dissatisfied, Solar went on appeal to the Court of Appeals which in the Decision here assailed, reversed the Order of dismissal of the trial court and remanded the case to that court for further proceedings. In addition, the Court of Appeals declared the Writ of Execution null and void. At the same time, the Court of Appeals said in the dispositive portion of its Decision that:

"x x x. Still and all, this decision is without prejudice to whatever action the appellee [Board] may take relative to the projected 'inspection and evaluation' of appellant's [Solar's] water treatment facilities."^[3]

The Court of Appeals, in so ruling, held that certiorari was a proper remedy since the Orders of petitioner Board may result in great and irreparable injury to Solar; and that while the case might be moot and academic, "larger issues" demanded that the question of due process be settled. Petitioner Board moved for reconsideration without success.

The Board is now before us on a Petition for Review basically arguing that:

- its ex parte Order dated 22 September 1988 and the Writ of Execution were issued in accordance with law and were not violative of the requirements of due process; and
- the ex parte Order and the Writ of Execution are not the proper subjects of a petition for certiorari.

The only issue before us at this time is whether or not the Court of Appeals erred in reversing the trial court on the ground that Solar had been denied due process by the Board.

Petitioner Board claims that under P.D. No. 984, Section 7(a), it has legal authority to issue ex parte orders to suspend the operations of an establishment when there is prima facie evidence that such establishment is discharging effluents or wastewater, the pollution level of which exceeds the maximum permissible standards set by the NPCC (now, the Board). Petitioner Board contends that the reports before it concerning the effluent discharges of Solar into the Tullahan-Tinejeros River provided prima facie evidence of violation by Solar of Section 5 of the 1982 Effluent Code.

Solar, on the other hand, contends that under the Board's own rules and regulations, an ex parte order may issue only if the effluents discharged pose an "immediate threat to life, public health, safety or welfare, or to animal and plant life." In the instant case, according to Solar, the inspection reports before the Board made no finding that Solar's wastewater discharged posed such a threat.

The Court is not persuaded by Solar's contention. Section 7(a) of P.D. No. 984 authorized petitioner Board to issue ex parte cease and desist orders under the following circumstances:

"P.D. 984, Section 7, paragraph (a), provides:

(a) Public Hearing. x x x Provided, That whenever the Commission finds prima facie evidence that the discharged sewage or wastes are of immediate threat to life, public health, safety or welfare, or to animal or plant life, or exceeds the allowable standards set by the Commission, the Commissioner may issue an ex-parte order directing the discontinuance of the same or the temporary suspension or cessation of operation of the establishment or person generating such sewage or wastes without the necessity of a prior public hearing. The said ex-parte order shall be immediately executory and shall remain in force until said establishment or person prevents or abates the said pollution within the allowable standards, or modified or nullified by a competent court." (Underscoring supplied)

We note that under the above-quoted portion of Section 7(a) of P.D. No. 984, an ex parte cease and desist order may be issued by the Board (a) whenever the wastes discharged by an establishment pose an "immediate threat to life, public health, safety or welfare, or to animal or plant life," or (b) whenever such discharges or wastes exceed "the allowable standards set by the [NPCC]." On the one hand, it is not essential that the Board prove that an "immediate threat to life, public health, safety or welfare, or to animal or plant life" exists before an ex parte cease and desist order may be issued. It is enough if the Board finds that the waste discharged do exceed "the allowable standards set by the [NPCC]." In respect of discharges of wastes as to which allowable standards have been set by the Commission, the Board may issue an ex parte cease and desist order when there is prima facie evidence of an establishment exceeding such allowable standards. Where, however the effluents or discharges have not yet been the subject matter of allowable standards set by the Commission, then the Board may act on an ex parte basis when it finds at least prima facie proof that the wastewater or material involved presents an "immediate threat to life, public health, safety or welfare, or to animal or plant life." Since the applicable standards set by the Commission existing at any given time may well not cover every possible or imaginable kind of effluent or waste discharge, the general standard of an "immediate threat to life, public health, safety or welfare, or to animal and plant life" remains necessary.

Upon the other hand, the Court must assume that the extant allowable standards have been set by the Commission or Board precisely in order to avoid or neutralize an "immediate threat to life, public health, safety or welfare, or to animal or plant life."

Section 5 of the Effluent Regulations of 1982[4] sets out the maximum permissible levels of physical and chemical substances which "effluents from domestic wastewater treatment plants and industrial plants" must not exceed "when discharged into bodies of water classified as Class A, B, C, D, SB and SC in accordance with the 1978 NPCC Rules and Regulations." The waters of Tullahan-Tinejeros River are classified as inland waters Class

D under Section 68 of the 1978 NPCC Rules and Regulations,[5] which in part provides that:

"Section 68. Water Usage and Classification. The quality of Philippine waters shall be maintained in a safe and satisfactory condition according to their best usages. For this purpose, all water shall be classified according to the following beneficial usages:

(a) Fresh Surface Water

Classification Best usage

x x x x x x x x

Class D For agriculture, irrigation, livestock watering and industrial cooling and processing.

x x x x x x x x"

(Emphases supplied)

The reports on the inspections carried on Solar's wastewater treatment facilities on 5 and 12 November 1986 and 6 September 1988 set forth the following identical finding:

"a. For legal action in [view of] violation of Section 103 of the implementing rules and regulations of P.D. No. 984 and Section 5 of the Effluent Regulations of 1982."[6]

Placing the maximum allowable standards set in Section 5 of the Effluent Regulations of 1982 alongside the findings of the November 1986 and September 1988 inspection reports, we get the following results:

"In lands
Waters
(Class C&D[7]

November
1986
Report[8]
Station I

September
1988
Report[9]
Station 1

a) Color in platinum cobalt units

100

a) Color units (Apparent Color)

250

125

b) pH

6-8.5

b) pH

9.3

8.7

c) Temperature in (°C)

40

c) Temperature (°C)

d) Phenols in mg./l.

0.1

d) Phenols in mg./l.

e) Suspended solids in mg./l.

75

e) Suspended solid in mg./l

340

80

f) BOD in mg./l.

80

f) BOD (5-day) mg./l.

1,100

152

g) oil/Grease in mg./l.

10

g) Oil/Grease mg./l.

h) Detergents in mg./l.

5

h) Detergents mg./l. MBAS

2.93

i) Dissolved Oxygen, mg./l.

0

j) Settleable Matter mg./l.

0.4

1.5

k) Total Dissolved Solids mg./l.

800

610

l) Total Solids mg./l.

1,140

690

m). Turbidity NTU/ppm SiO₃

70

The November 1986 inspections report concluded that:

"Records of the Commission show that the plant under its previous owner, Fine Touch Finishing Corporation, was issued a Notice of Violation on 20 December 1985 directing same to cease and desist from conducting dyeing operation until such time the waste treatment plant is already completed and operational. The new owner Solar Textile Corporation informed the Commission of the plant acquisition thru its letter dated March 1986 (sic).

The new owner was summoned to a hearing held on 13 October 1986 based on the adverse findings during the inspection/water sampling test conducted on 08 August 1986. As per instruction of the Legal Division a re-inspection/sampling test should be conducted first before an appropriate legal action is instituted; hence, this inspection.

Based on the above findings, it is clear that the new owner continuously violates the directive of the Commission by undertaking dyeing operation without completing first and operating its existing WTP. The analysis of results on water samples taken showed that the untreated wastewater from the firm pollutes our water resources. In this connection, it is recommended that appropriate legal action be instituted immediately against the firm x x x." [10]

The September 1988 inspection report's conclusions were:

"1.

The plant was undertaking dyeing, bleaching and rinsing operations during the inspection. The combined wastewater generated from the said operations was estimated at about 30 gallons per minute. About 80% of the wastewater was traced directly discharged into a drainage canal leading to the Tullahan-Tinejeros river by means of a bypass. The remaining 20% was channeled into the plant's existing wastewater treatment plant (WTP).

2.

The WTP was noted not yet fully operational - some accessories were not yet installed. Only the sump pit and the holding/collecting tank are functional but appeared seldom used. The wastewater mentioned channeled was noted held indefinitely into the collection tank for primary treatment. There was no effluent discharge [from such collection tank].

3.

A sample from the bypass wastewater was collected for laboratory analyses. Result of the analyses show that the bypass wastewater is polluted in terms of color units, BOD and suspended solids, among others. (Please see attached laboratory result)."[11]

From the foregoing reports, it is clear to this Court that there was at least prima facie evidence before the Board that the effluents emanating from Solar's plant exceeded the maximum allowable levels of physical and chemical substances set by the NPCC and that accordingly there was adequate basis supporting the ex parte cease and desist order issued by the Board. It is also well to note that the previous owner of the plant facility -- Fine Touch Finishing Corporation -- had been issued a Notice of Violation on 20 December 1985 directing it to cease and refrain from carrying out dyeing operations until the water treatment plant was completed and operational. Solar, the new owner, informed the NPCC of the acquisition of the plant on March 1986. Solar was summoned by the NPCC to a hearing on 13 October 1986 based on the results of the sampling test conducted by the NPCC on 8 August 1986. Petitioner Board refrained from issuing an ex parte cease and desist order until after the November 1986 and September 1988 re-inspections were conducted and the violation of applicable standards was confirmed. In other words, petitioner Board appears to have been remarkably forbearing in its efforts to enforce the applicable standards vis-a-vis Solar. Solar, on the other hand, seemed very casual about its continued discharge of untreated, pollutive effluents into the Tullahan-Tinejeros River, presumably loath to spend the money necessary to put its Wastewater Treatment Plant ("WTP") in an operating condition.

In this connection, we note that in *Technology Developers, Inc. v. Court of Appeals, et al.*,[12] the Court very recently upheld the summary closure ordered by the Acting Mayor of Sta. Maria, Bulacan, of a pollution-causing establishment, after finding that the records showed that:

"1. No mayor's permit had been secured. While it is true that the matter of determining whether there is a pollution of the environment that requires control if not prohibition of the operation of a business is essentially addressed to the then National Pollution Control Commission of the Ministry of Human Settlements, now the Environmental Management Bureau of the Department of Environment and Natural Resources, it must be recognized that the mayor of a town has as much responsibility to protect its inhabitants from pollution, and by virtue of his police power, he may deny the application for a permit to operate a business or otherwise close the same unless appropriate measures are taken to control and/or avoid injury to the health of the residents of the community from the emissions in the operation of the business.

2. The Acting Mayor, in a letter of February 16, 1989, called the attention of petitioner to the pollution emitted by the fumes of its plant whose offensive odor "not only pollute the air in the locality but also affect the health of the residents in the area," so that petitioner was ordered to stop its operation until further orders and it was required to bring the following:

x x x x x x x x

(3)

Region III-Department of Environment and Natural Resources Anti-Pollution permit. (Annex A-2, petition)

3. This action of the Acting Mayor was in response to the complaint of the residents of Barangay Guyong, Sta.

Maria, Bulacan, directed to the Provincial Governor through channels (Annex A-B, petition). x x x.

4. The closure order of the Acting Mayor was issued only after an investigation was made by Marivic Guina who in her report of December 8, 1988 observed that, the fumes emitted by the plant of petitioner goes directly to the surrounding houses and that no proper air pollution device has been installed. (Annex A-9, petition)

x x x x x x x x

6. While petitioner was able to present a temporary permit to operate by the then National Pollution Control Commission on December 15, 1987, the permit was good only up to May 25, 1988 (Annex A-12, petition). Petitioner had not exerted any effort to extend or validate its permit much less to install any device to control the pollution and prevent any hazard to the health of the residents of the community."

In the instant case, the ex parte cease and desist Order was issued not by a local government official but by the Pollution Adjudication Board, the very agency of the Government charged with the task of determining whether the effluents of a particular industrial establishment comply with or violate applicable anti-pollution statutory and regulatory provisions.

Ex parte cease and desist orders are permitted by law and regulations in situations like that here presented precisely because stopping the continuous discharge of pollutive and untreated effluents into the rivers and other inland waters of the Philippines cannot be made to wait until protracted litigation over the ultimate correctness or propriety of such orders has run its full course, including multiple and sequential appeals such as those which Solar has taken, which of course may take several years. The relevant pollution control statute and implementing regulations were enacted and promulgated in the exercise of that pervasive, sovereign power to protect the safety, health, and general welfare and comfort of the public, as well as the protection of plant and animal life, commonly designated as the police power. It is a constitutional commonplace that the ordinary requirements of procedural due process yield to the necessities of protecting vital public interests like those here involved, through the exercise of police power. The Board's ex parte Order and Writ of Execution would, of course, have compelled Solar temporarily to stop its plant operations, a state of affairs Solar could in any case have avoided by simply absorbing the bother and burden of putting its WTP on an operational basis. Industrial establishments are not constitutionally entitled to reduce their capital costs and operating expenses and to increase their profits by imposing upon the public threats and risks to its safety, health, general welfare and comfort, by disregarding the requirements of anti-pollution statutes and their implementing regulations.

It should perhaps be made clear the Court is not here saying that the correctness of the ex parte Order and Writ of Execution may not be contested by Solar in a hearing before the Board itself. Where the establishment affected by an ex parte cease and desist order contests the correctness of the prima facie findings of the Board, the Board must hold a public hearing where such establishment would have an opportunity to controvert the basis of such ex parte order. That such an opportunity is subsequently available is really all that is required by the due process clause of the Constitution in situations like that we have here. The Board's decision rendered after the public hearing may then be tested judicially by an appeal to the Court of Appeals in accordance with Section 7(c) of P.D. No. 984 and Section 42 of the Implementing Rules and Regulations. A subsequent public hearing is precisely what Solar should have sought instead of going to court to seek nullification of the Board's Order and Writ of Execution, and instead of appealing to the Court of Appeals. It will be recalled that the Board in fact gave Solar authority temporarily to continue operations until still another inspection of its wastewater treatment facilities and then another analysis of effluent samples could be taken and evaluated.

Solar claims finally that the petition for certiorari was the proper remedy as the questioned Order and Writ of Execution issued by the Board were patent nullities. Since we have concluded that that Order and Writ of

Execution were entirely within the lawful authority of petitioner Board, the trial court did not err when it dismissed Solar's petition for certiorari. It follows that the proper remedy was an appeal from the trial court to the Court of Appeals, as Solar did in fact appeal.

ACCORDINGLY, the Petition for Review is given DUE COURSE and the Decision of the Court of Appeals dated 7 February 1990 and its Resolution dated 10 May 1990 in A.C.-G.R. No. SP 18821 are hereby SET ASIDE. The Order of petitioner Board dated 22 September 1988 and the Writ of Execution, as well as the decision of the trial court dated 21 July 1989, are hereby REINSTATED, without prejudice to the right of Solar to contest the correctness of the basis of the Board's Order and Writ of Execution at a public hearing before the Board.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Rollo, pp. 17-18.

[2] Section 19 of Executive Order No. 192, dated 10 June 1987, abolished the NPCC and transferred its powers and functions relating to the adjudication of pollution cases under R.A. No. 3931 and P.D. No. 984 to the Board.

[3] Rollo, p. 33.

[4] 78 Official Gazette No. 1, p. 52 (4 January 1982).

[5] 74 Official Gazette No. 23, p. 4453 (5 June 1978).

[6] Rollo, pp. 64 and 66.

[7] 78 Official Gazette No. 1, p. 53 (4 January 1982).

[8] Rollo, p. 68

[9] Id., p. 66.

[10] Rollo, p. 67; emphases supplied.

[11] Id., p. 65; emphases supplied.

[12] G.R. No. 94759, promulgated 21 January 1991.

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.