

**NATIONAL POWER CORPORATION AND BENJAMIN CHAVEZ,
PETITIONERS, VS. THE COURT OF APPEALS, RICARDO CRUZ,
DOMINGO CRUZ, FERNANDO CRUZ, LEOPOLDO CRUZ, MARIA CRUZ,
MAURA MARCIAL, JUAN ...**

G.R. No. 96410. July 03, 1992

Ponente: NOCON, J.

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NOCON, J.:

Before Us is a petition for review on certiorari instituted by the National Power Corporation (NPC) and Benjamin Chavez, Plant Superintendent of NPC, from the decision of the Court of Appeals promulgated on September 18, 1990.[1] The appellate court affirmed in toto the decision in Civil Case No. SM-1552 of the Regional Trial Court of Malolos, Bulacan, Branch XVI, which awarded damages, interest, attorney's fees and litigation expenses against petitioners in the following amounts with interest at 12% per annum from the date of filing of the complaint until fully paid:

Ricardo Cruz -----

P 22,800.00

Zosimo Palad -----

24,200.00

Isaias T.Santos -----

45,500.00

Felimon Santos -----

42,900.00

Maura T. Marcial -----

49,280.00

Domingo Cruz -----

121,900.00

Leopoldo Cruz -----

21,000.00

Maria R.Cruz -----

34,000.00

Nicanor Palad -----

28,768.00

Nicasio San Pedro-----

16,950.00

Juan Palad -----

27,600.00

Jose T. Santos -----

38,410.00

Jeremias T. Santos -----

11,500.00

Fernando Cruz-----

55,780.00

The petitioners were further ordered to pay the private respondents 30% of the amounts payable by them as attorney's fees and P10,000.00 as litigation expenses, and to pay the costs of suit.[2]

It appears that in the early morning hours of October 27, 1978, at the height of typhoon "Kading", a massive flood covered the towns near Angat Dam, particularly the town of Norzagaray, causing several deaths and the loss and destruction of houses, farms, plants, working animals and other properties of the people residing near the Angat River. Private respondents recalled that on the said day, they were awakened by the sound of rampaging water all around them. The water came swiftly and strongly that before they could do anything to save their belongings, their houses had submerged, some even swept away by the strong current. A number of people were able to save their lives only by climbing trees.

Private respondents blamed the sudden rush of water to the reckless and imprudent opening of all the three (3) floodgates of the Angat Dam spillway, without prior warning to the people living near or within the vicinity of the dam.[3]

Petitioners denied private respondents' allegations and, by way of defense, contended that they have maintained the water in the Angat Dam at a safe level and that the opening of the spillways was done gradually and after all precautionary measures had been taken. Petitioner NPC further contended that it had always exercised the diligence of a good father in the selection of its officials and employees and in their supervision. It also claimed that written warnings were earlier sent to the towns concerned. At the time typhoon "Kading" hit Bulacan with its torrential rain, a great volume of flood water flowed into the dam's reservoir necessitating the release of the water therein in order to prevent the dam from collapsing and causing the loss of lives and tremendous damage to livestock and properties.

Petitioners further contended that there was no direct causal relationship between the alleged damages suffered by the respondents and the acts and omissions attributed to the former. That it was the respondents who assumed the risk of residing near the Angat River, and even assuming that respondents suffered damages, the cause was due to a fortuitous event and such damages are of the nature and character of *damnum absque injuria*, hence, respondents have no cause of action against them.

As assignment of errors of the appellate court, petitioners raised the following:

- (a) IN HOLDING THAT THE RULING IN JUAN F. NAKPIL & SONS VS. COURT OF APPEALS,[4] IS APPLICABLE TO THE INSTANT CASE UNDER WHICH PETITIONERS ARE LIABLE EVEN THOUGH THE COMING OF A TYPHOON WAS FORCE MAJEURE;
- (b) IN NOT HOLDING THAT THE GIVING OF THE WRITTEN NOTICE OF WARNING BY PETITIONERS ABSOLVED THEM FROM LIABILITY;
- (c) IN NOT HOLDING THAT ANY DAMAGE SUFFERED BY PRIVATE RESPONDENTS WAS DAMNUM ABSQUE INJURIA; and
- (d) IN NOT AWARDING THE COUNTERCLAIM OF PETITIONERS FOR ATTORNEY'S FEES AND EXPENSES OF LITIGATION.

We find the petition devoid of merit.

We do not agree with the petitioners that the decision handed down in Juan F. Nakpil & Sons, supra, is not applicable to the present case. The doctrine laid down in the said case is still good law, as far as the concurrent liability of an obligor in case of a force majeure, is concerned.

The case of National Power Corp. v. Court of Appeals,[5] as a matter of fact, reiterated the ruling in Juan F. Nakpil & Sons. In the former case, this Court ruled that the obligor cannot escape liability, if upon the happening of a fortuitous event or an act of God, a corresponding fraud, negligence, delay or violation or contravention in any manner of the tenor of the obligation as provided in Article 1170 of the Civil Code[6] which results in loss or damage.

Petitioners contended that unlike in Juan F. Nakpil & Sons, there was no privity of contract between herein petitioners and private respondents. They further alleged that they owed no specific duty to private respondents in the same way that the architect of a building owed a specific duty to its owner. Petitioners, however, failed to consider that even if there was no contractual relation between themselves and private respondents, they are still liable under the law on quasi-delict. Article 2176 of the Civil Code explicitly provides "whoever by act or omission causes damage to another there being fault or negligence is obliged to pay for the damage done."

Neither can petitioners escape liability by invoking force majeure. Act of God or force majeure, by definition, are extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable. It is there-fore not enough that the event should not have been foreseen or anticipated, as is commonly believed, but it must be one impossible to foresee or to avoid.[7] As a general rule, no person shall be responsible for those events which could not be foreseen or which though foreseen, were inevitable.[8]

However, the principle embodied in the act of God doctrine strictly requires that the act must be occasioned solely by the violence of nature. Human intervention is to be excluded from creating or entering into the cause of the mischief. When the effect is found to be in part the result of the participation of man, whether due to his active intervention or neglect or failure to act, the whole occurrence is then humanized and removed from the rules applicable to the acts of God.[9]

"So generally it cannot be said that damage, injury or loss is due to an act of God where it was caused merely by excessive or heavy rainfall, storms and weather conditions which are not unusual in character, those which could have been reasonably anticipated or where the injury complained of is due rather to the negligence or mismanagement of man than to the disturbance of the elements or where such damage, injury or loss might have been mitigated or prevented by diligence exercised after the occurrence."[10]

In the case at bar, although the typhoon "Kading" was an act of God, petitioners can not escape liability because their negligence was the proximate cause of the loss and damage. The Court of Appeals found that:

"As hereinabove stated, it has been shown that the defendants failed to take the necessary safeguards to prevent the danger that the Angat Dam posed in a situation of such nature as that of typhoon 'Kading'. The representative of the 'PAGASA' who testified in these proceedings, Justo Iglesias, Jr., stated that based on their records the rainfall on October 26 and 27, 1978 is classified only as moderate, and could not have caused flash floods. He testified that flash floods exceeds 50 millimeters per hour and lasts for at least two (2) hours. He stated that typhoon 'Yaning' which occurred on October 7 to 14, 1978 gave a much heavier rainfall than 'Kading', and so did other previous typhoons."[11]

This was corroborated by the testimonies of private respondents, most of whom have lived in the area all their lives, but had never before experienced such flooding as would have placed them on alert, even during previous stronger typhoons such as "Dading" and "Yoling."

What more, when the evidence shows that as early as October 25, 1978 the newspapers had announced the expected occurrence of a powerful typhoon code-named "Kading." [12] On October 26, 1978, Bulletin Today had as its headline the coming of the typhoon. [13] Despite these announcements, the water level in the dam was maintained at its maximum from October 21 until midnight of October 26, 1978. [14]

At 2100 hrs. of October 26, 1978, NPC started to open the three floodgates simultaneously from 1 meter to 8 meters at 0100 hrs. of October 27, 1978, until all floodgates were opened to the maximum of 14 to 14.5 meters by 0600 hrs. of the same day. [15]

This was also the finding of the court a quo, which We quote:

"The defendants contended that the release of water had been 'gradual'. The lower court did not find this true. The exhibit presented by the defendants (Exhs. AA and BB-2) show that on October 26, 1978 there was very little opening of the spillways, ranging from 1 meter to 2 meters. However, from midnight or from the first hours of October 27, 1978 the opening of all the three (3) spillways started at 5 meters and swiftly went as far up as 14 meters. As observed correctly by the trial court had the opening of all the three (3) spillways been made earlier and gradually, there would have been no need to open the same suddenly.

"What made the situation worse was that the opening of the spillways was made at the unholy hours when residents were asleep. The plaintiffs all testified that they were never given any warning that the spillways would be opened to that extent. x x x" [16]

It has been held in several cases that when the negligence of a person concurs with an act of God in producing a loss, such person is not exempt from liability by showing that the immediate cause of the damage was the act of God. To be exempt he must be free from any previous negligence or misconduct by which the loss or damage may have been occasioned. [17]

Thus, We cannot give credence to petitioners' third assignment of error that the damage caused by the opening of the dam was in the nature of *damnum absque injuria*, which presupposes that although there was physical damage, there was no legal injury in view of the fortuitous events. There is no question that petitioners have the right, duty and obligation to operate, maintain and preserve the facilities of Angat Dam, but their negligence cannot be countenanced, however noble their intention may be. The end does not justify the means, particularly because they could have done otherwise than simultaneously opening the spillways to such extent. Needless to say, petitioners are not entitled to counterclaim.

Petitioners insist that their giving of prior written warning should absolve them from liability. Notice of warning was served by them on "a responsible employee in the office of the mayor of the municipality, or in the absence

of such responsible employee, on a member of the municipal police force.”[18] That being the case, they alleged that the presumption that official duty has been performed must be credited in their favor. The presumption was, however, refuted by the evidence and testimonies of respondents who all denied having been given any warning that the spillways would be opened to such extent and at a short period of time.

The letter[19] itself, addressed merely "TO ALL CONCERNED", would not strike one to be of serious importance, sufficient enough to set alarm and cause people to take precautions for their safety's sake. As testified to by driver Leonardo Garcia of the NPC, he was instructed by Chavez to give notice "to any personnel of the municipality [sic] or even the policemen of the municipalities concerned regarding the release of water from the reservoir." [20] His instructions did not specify the municipal officer who should receive the notice, but that priority must be given to the police.[21] Thus, copies of the notices were given to Pat. Carillo of Norzagaray, Cicero Castro, municipal employee of Angat, Pat. Jaime Nicholas of Bustos, Cpl. Josefino Legaspi of Baliwag, Pat. Luzvimin Mariano of Plaridel and Pat. Dantes Manukduk of Calumpit.

As observed by the Court of Appeals:

"Clearly, the notices were not delivered, or even addressed to responsible officials of the municipalities concerned who could have disseminated the warning properly. They were delivered to ordinary employees and policemen. As it happened, the said notices do not appear to have reached the people concerned, which are the residents beside the Angat River. The plaintiffs in this case definitely did not receive any such warning. Indeed, the methods by which the defendants allegedly sent the notice or warning was so ineffectual that they cannot claim, as they do in their second assignment of error, that the sending of said notice has absolved them from liability." [22]

WHEREFORE, finding no reversible error in the Decision appealed from, the same is hereby affirmed in toto, with cost against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] CA-G.R. CV No. 11770, Ricardo Cruz, et al. vs. NPC, et al., promulgated Sept. 18, 1990. Ponente: Justice Salome A. Montoya; Justices Ricardo L. Pronove, Jr. and Alfredo L. Benipayo, concurring.

[2] Trial Court's Decision, p. 6; Rollo, p. 58.

[3] Respondents' Memorandum, p. 2; Complaint, p. 5, item 10.

[4] L-47851, 144 SCRA 596 (1986).

[5] L-47481, 161 SCRA 334 (1988).

[6] Article 1170 - Those who in the performance of their obligation are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof are liable for damages.

[7] *Gacal v. PAL*, G.R. 55300, 183 SCRA 189 (1990).

[8] Art. 1174, Civil Code.

[9] *National Power Corporation vs. Court of Appeals*, supra, citing 1 *Corpus Juris*, pp 1174-1175.

[10] 1 *Corpus Juris Secundum*, p. 1430.

[11] Decision, p. 6.

[12] Exhibit "T".

[13] Exhibit "U".

[14] Exhibits "BB", "BB-1", "BB-2".

[15] Exhibits "BB-1" and "BB-2".

[16] Rollo, p. 27.

[17] National Power Corp. vs. Court of Appeals, *supra*; Fish & Elective Co. vs. Phil. Motors, 55 Phil 129; Tucker vs. Milan, 49 O.G. 4379; Limpangco & Sons vs. Yangco Steamship Co., 34 Phil 594; Lasam vs. Smith, 45 Phil 657.

[18] Petition, p. 17.

[19] Exhibit "1". Said letter reads:

"October 24, 1978

TO ALL CONCERNED

Please be informed that at present our reservoir (dam) is full and that we have been releasing water intermittently for the past several days.

With the coming of typhoon Rita (Kading) we expect to release greater volume of water, if it pass over our place (sic).

In view of this kindly advise people residing along the Angat River to keep alert and stay in safe places.

(Sgd.) BENJAMIN L. CHAVEZ

Power Plant Superintendent"

[20] TSN, January 25, 1984, pp. 10-11.

[21] *Id.*, pp. 18-20.

[22] Decision, p. 5.

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