

NATIONAL POWER CORPORATION, ET AL., PETITIONERS, VS. THE COURT OF APPEALS, GAUDENCIO C. RAYO, ET AL., RESPONDENTS.*G.R. Nos. 103442-45. May 21, 1993*

Ponente: DAVIDE, JR., J.

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This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court urging this Court to set aside the 19 August 1991 consolidated Decision of the Court of Appeals in CA-G.R. CV Nos. 27290-93[1] which reversed the Decision of Branch 5 of the then Court of First Instance (now Regional Trial Court) of Bulacan, and held petitioners National Power Corporation (NPC) and Benjamin Chavez jointly and severally liable to the private respondents for actual and moral damages, litigation expenses and attorney's fees.

This present controversy traces its beginnings to four (4) separate complaints[2] for damages filed against the NPC and Benjamin Chavez before the trial court. The plaintiffs therein, now private respondents, sought to recover actual and other damages for the loss of lives and the destruction to property caused by the inundation of the town of Norzagaray, Bulacan on 26-27 October 1978. The flooding was purportedly caused by the negligent release by the defendants of water through the spillways of the Angat Dam (Hydroelectric Plant). In said complaints, the plaintiffs alleged, inter alia, that: 1) defendant NPC operated and maintained a multi-purpose hydroelectric plant in the Angat River at Hilltop, Norzagaray, Bulacan; 2) defendant Benjamin Chavez was the plant supervisor at the time of the incident in question; 3) despite the defendants' knowledge, as early as 24 October 1978, of the impending entry of typhoon "Kading," they failed to exercise due diligence in monitoring the water level at the dam; 4) when the said water level went beyond the maximum allowable limit at the height of the typhoon, the defendants suddenly, negligently and recklessly opened three (3) of the dam's spillways, thereby releasing a large amount of water which inundated the banks of the Angat River; and 5) as a consequence, members of the household of the plaintiffs, together with their animals, drowned, and their properties were washed away in the evening of 26 October and the early hours of 27 October 1978.[3]

In their Answers, the defendants, now petitioners, alleged that: 1) the NPC exercised due care, diligence and prudence in the operation and maintenance of the hydroelectric plant; 2) the NPC exercised the diligence of a good father in the selection of its employees; 3) written notices were sent to the different municipalities of Bulacan warning the residents therein about the impending release of a large volume of water with the onset of typhoon "Kading" and advising them to take the necessary precautions; 4) the water released during the typhoon was needed to prevent the collapse of the dam and avoid greater damage to people and property; 5) in spite of the precautions undertaken and the diligence exercised, they could still not contain or control the flood that resulted and; 6) the damages incurred by the private respondents were caused by a fortuitous event or force majeure and are in the nature and character of *damnum absque injuria*. By way of a special affirmative defense, the defendants averred that the NPC cannot be sued because it performs a purely governmental function.[4]

Upon motion of the defendants, a preliminary hearing on the special defense was conducted. As a result thereof, the trial court dismissed the complaints as against the NPC on the ground that the provision of its charter allowing

it to sue and be sued does not contemplate actions based on tort. The parties do not, however, dispute the fact that this Court overruled the trial court and ordered the reinstatement of the complaints as against the NPC.[5]

Being closely interrelated, the cases were consolidated and trial thereafter ensued.

The lower court rendered its decision on 30 April 1990 dismissing the complaints "for lack of sufficient and credible evidence." [6] Consequently, the private respondents seasonably appealed therefrom to the respondent Court which then docketed the cases as CA-G.R. CV Nos. 27290-93.

In its joint decision promulgated on 19 August 1991, the Court of Appeals reversed the appealed decision and awarded damages in favor of the private respondents. The dispositive portion of the decision reads:

"CONFORMABLY TO THE FOREGOING, the joint decision appealed from is hereby REVERSED and SET ASIDE, and a new one is hereby rendered:

1. In Civil Case No. SM-950, ordering defendants-appellees to pay, jointly and severally, plaintiffs-appellants, with legal interest from the date when this decision shall become final and executory, the following:

A. Actual damages, to wit:

- 1) Gaudencio C. Rayo, Two Hundred Thirty One Thousand Two Hundred Sixty Pesos (P231,260.00);
- 2) Bienvenido P. Pascual, Two Hundred Four Thousand Five Hundred Pesos (P204,500.00);
- 3) Tomas Manuel, One Hundred Fifty Five Thousand Pesos (P155,000.00);
- 4) Pedro C. Bartolome, One Hundred Forty Seven Thousand Pesos (P147,000.00);
- 5) Bernardino Cruz, One Hundred Forty Three Thousand Five Hundred Fifty Two Pesos and Fifty Centavos (P143,552.50);
- 6) Jose Palad, Fifty Seven Thousand Five Hundred Pesos (P57,500.00);
- 7) Mariano S. Cruz, Forty Thousand Pesos (P40,000.00);
- 8) Lucio Fajardo, Twenty Nine Thousand Eighty Pesos (P29,080.00); and

B. Litigation expenses of Ten Thousand Pesos (P10,000.00);

2. In Civil Case No. SM-951, ordering defendants-appellees to pay jointly and severally, plaintiff-appellant, with legal interest from the date when this decision shall have become final and executory, the following:

A. Actual damages of Five Hundred Twenty Thousand Pesos (P520,000.00);

B. Moral Damages of Five Hundred Thousand Pesos (P500,000.00); and

C. Litigation expenses of Ten Thousand Pesos (P10,000.00);

3. In Civil Case No. SM-953, ordering defendants-appellees to pay, jointly and severally, with legal interest from the date when this decision shall have become final and executory:

A. Plaintiff-appellant Angel C. Torres:

- 1) Actual damages of One Hundred Ninety Nine Thousand One Hundred Twenty Pesos (P199,120.00);
- 2) Moral Damages of One Hundred Fifty Thousand Pesos (P150,000.00);

B. Plaintiff-appellant Norberto Torres:

1) Actual damages of Fifty Thousand Pesos (P50,000.00);

2) Moral damages of Fifty Thousand Pesos (P50,000.00);

C. Plaintiff-appellant Rodelio Joaquin:

1) Actual damages of One Hundred Thousand Pesos (P100,000.00);

2) Moral damages of One Hundred Thousand Pesos (P100,000.00); and

D. Plaintiffs-appellants litigation expenses of Ten Thousand Pesos (P10,000.00);

4. In Civil Case No. SM-1247, ordering defendants-appellees to pay, jointly and severally, with legal interest from the date when this decision shall have become final and executory:

A. Plaintiffs-appellants Presentacion Lorenzo and Clodualdo Lorenzo:

1) Actual damages of Two Hundred Fifty Six Thousand Six Hundred Pesos (P256,600.00);

2) Moral damages of Fifty Thousand Pesos (P50,000.00);

B. Plaintiff-appellant Consolacion Guzman:

1) Actual damages of One Hundred Forty Thousand Pesos (P140,000.00);

2) Moral damages of Fifty Thousand Pesos (P50,000.00);

C. Plaintiff-appellant Virginia Guzman:

1) Actual damages of Two Hundred Five Thousand Five Hundred Twenty Pesos (P205,520.00); and

2) Moral damages of Fifty Thousand Pesos (P50,000.00); and

D. Plaintiffs-appellants litigation expenses of Ten Thousand Pesos (P10,000.00).

In addition, in all the four (4) instant cases, ordering defendants-appellees to pay, jointly and severally, plaintiffs-appellants, attorneys fees in an amount equivalent to 15% of the total amount awarded.

No pronouncement as to costs."[7]

The foregoing judgment is based on the public respondent's conclusion that the petitioners were guilty of:

"x x x a patent gross and evident lack of foresight, imprudence and negligence x x x in the management and operation of Angat Dam. The unholiness of the hour, the extent of the opening of the spillways, and the magnitude of the water released, are all but products of defendants-appellees' headlessness, slovenliness, and carelessness. The resulting flash flood and inundation of even areas (sic) one (1) kilometer away from the Angat River bank would have been avoided had defendants-appellees prepared the Angat Dam by maintaining in the first place, a water elevation which would allow room for the expected torrential rains."[8]

This conclusion, in turn, is anchored on its findings of fact, to wit:

"As early as October 21, 1978, defendants-appellees knew of the impending onslaught of and imminent danger posed by typhoon 'Kading.' For as alleged by defendants-appellees themselves, the coming of said super typhoon was bannered by Bulletin Today, a newspaper of national circulation, on October 25, 1978, as 'Super Howler to hit R.P.' The next day, October 26, 1978, said typhoon once again merited a headline in said newspaper as 'Kading's Big Blow expected this afternoon' (Appellee's Brief, p. 6). Apart from the newspapers, defendants-appellees learned of typhoon 'Kading' through radio announcements (Civil Case No. SM-950, TSN, Benjamin Chavez, December 4, 1984, pp. 7-9).

Defendants-appellees doubly knew that the Angat Dam can safely hold a normal maximum headwater elevation of 217 meters (Appellees' Brief, p. 12; Civil Case No. SM-951, Exhibit "I-6"; Civil Case No. SM-953, Exhibit "J-6"; Civil Case No. SM-1247, Exhibit "G-6").

Yet, despite such knowledge, defendants-appellees maintained a reservoir water elevation even beyond its maximum and safe level, thereby giving no sufficient allowance for the reservoir to contain the rain water that will inevitably be brought by the coming typhoon.

On October 24, 1978, before typhoon 'Kading' entered the Philippine area of responsibility, water elevation ranged from 217.61 to 217.53, with very little opening of the spillways, ranging from ½ to 1 meter. On October 25, 1978, when typhoon 'Kading' entered the Philippine area of responsibility, and public storm signal number one was hoisted over Bulacan at 10:45 a.m., later raised to number two at 4:45 p.m., and then to number three at 10:45 p.m., water elevation ranged from 217.47 to 217.57, with very little opening of the spillways, ranging from ½ to 1 meter. On October 26, 1978, when public storm signal number three remained hoisted over Bulacan, the water elevation still remained at its maximum level of 217.00 to 218.00 with very little opening of the spillways ranging from ½ to 2 meters, until at or about midnight, the spillways were suddenly opened at 5 meters, then increasing swiftly to 8, 10, 12, 12.5, 13, 13.5, 14, 14.5 in the early morning hours of October 27, 1978, releasing water at the rate of 4,500 cubic meters per second, more or less. On October 27, 1978, water elevation remained at a range of 218.30 to 217.05 (Civil Case No. SM-950, Exhibits "D" and series, "L", "M", "N", and "O" and Exhibits "3" and "4"; Civil Case No. SM-951, Exhibits "H" and "H-1"; Civil Case No. SM-953, Exhibits "I" and "I-1"; Civil Case No. SM--1247, Exhibits "F" and "F-1").

x x x

From the mass of evidence extant in the record, We are convinced, and so hold that the flash flood on October 27, 1978, was caused not by rain waters (sic), but by stored waters (sic) suddenly and simultaneously released from the Angat Dam by defendants-appellees, particularly from midnight of October 26, 1978 up to the morning hours of October 27, 1978."[9]

The appellate court rejected the petitioners' defense that they had sent "early warning written notices" to the towns of Norzagaray, Angat, Bustos, Plaridel, Baliwag and Calumpit dated 24 October 1978 and which read:

"TO ALL CONCERN (sic):

'Please be informed that at the 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 (sic) volume of water, if it pass (sic) over our place.

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

'BENJAMIN L. CHAVEZ

'Power Plant Superintendent"[10]

because:

"Said notice was delivered to the 'towns of Bulacan' on October 26, 1978 by defendants-appellees' driver, Leonardo Nepomuceno (Civil Case No. SM-950, TSN, Benjamin Chavez, December 4, 1984, pp. 7-11 and TSN, Leonardo Nepomuceno, March 7, 1985, pp. 10-12).

Said notice is ineffectual, insufficient and inadequate for purposes of the opening of the spillway gates at midnight of October 26, 1978 and on October 27, 1978. It did not prepare or warn the persons so served, for the volume of water to be released, which turned out to be of such magnitude, that residents near or along the

Angat River, even those one (1) kilometer away, should have been advised to evacuate. Said notice, addressed 'TO ALL CONCERN (sic),' was delivered to a policeman (Civil Case No. SM-950, TSN, Leonardo Nepomuceno, March 7, 1985, pp. 10-12 and Exhibit "2-A") for the municipality of Norzagaray. Said notice was not thus addressed and delivered to the proper and responsible municipal officials who could have disseminated the warning to the residents directly affected. As for the municipality of Sta. Maria, where plaintiffs-appellants in Civil Case No. SM-1246 reside, said notice does not appear to have been served." [11]

Relying on *Juan F. Nakpil & Sons vs. Court of Appeals*, [12] public respondent rejected the petitioners' plea that the incident in question was caused by force majeure and that they are, therefore, not liable to the private respondents for any kind of damage -- such damage being in the nature of *damnum absque injuria*.

The motion for reconsideration filed by the petitioners, as well as the motion to modify judgment filed by the private respondents, [13] were denied by the public respondent in its Resolution of 27 December 1991. [14]

Petitioners thus filed the instant petition on 21 February 1992.

After the Comment to the petition was filed by the private respondents and the Reply thereto was filed by the petitioners, We gave due course to the petition on 17 June 1992 and directed the parties to submit their respective Memoranda, [15] which they subsequently complied with.

The petitioners raise the following errors allegedly committed by the respondent Court:

"I. THE COURT OF APPEALS ERRED IN APPLYING THE RULING OF *NAKPIL & SONS V. COURT OF APPEALS* AND HOLDING THAT PETITIONERS WERE GUILTY OF NEGLIGENCE.

II. THE COURT OF APPEALS ERRED IN HOLDING THAT THE WRITTEN NOTICES OF WARNING ISSUED BY PETITIONERS WERE INSUFFICIENT.

III. THE COURT OF APPEALS ERRED IN HOLDING THAT THE DAMAGE SUFFERED BY PRIVATE RESPONDENTS WAS NOT *DAMNUM ABSQUE INJURIA*.

IV. THE COURT OF APPEALS ERRED IN NOT AWARDING THE COUNTERCLAIM OF PETITIONERS FOR ATTORNEY'S FEES AND EXPENSES OF LITIGATION." [16]

These same errors were raised by herein petitioners in G.R. No. 96410, entitled *National Power Corporation, et al. vs. Court of Appeals, et al.*, [17] which this Court decided on 3 July 1992. The said case involved the very same incident subject of the instant petition. In no uncertain terms, We declared therein that the proximate cause of the loss and damage sustained by the plaintiffs therein -- who were similarly situated as the private respondents herein -- was the negligence of the petitioners, and that the 24 October 1978 "early warning notice" supposedly sent to the affected municipalities, the same notice involved in the case at bar, was insufficient. We thus cannot now rule otherwise not only because such a decision binds this Court with respect to the cause of the inundation of the town of Norzagaray, Bulacan on 26-27 October 1978 which resulted in the loss of lives and the destruction to property in both cases, but also because of the fact that on the basis of its meticulous analysis and evaluation of the evidence adduced by the parties in the cases subject of CA-G.R. CV Nos. 27290-93, public respondent found as conclusively established that indeed, the petitioners were guilty of "patent gross and evident lack of foresight, imprudence and negligence in the management and operation of Angat Dam," and that "the extent of the opening of the spillways, and the magnitude of the water released, are all but products of defendants-appellees' headlessness, slovenliness, and carelessness." [18] Its findings and conclusions are binding upon Us, there being no showing of the existence of any of the exceptions to the general rule that findings of fact of the Court of Appeals are conclusive upon this Court. [19] Elsewise stated, the challenged decision can stand on its own merits independently of Our decision in G.R. No. 96410. In any event, We reiterate here Our pronouncement in the latter

case that *Juan F. Nakpil & Sons vs. Court of Appeals*[20] is still good law as far as the concurrent liability of an obligor in the case of force majeure is concerned. In the *Nakpil* case, We held:

"To exempt the obligor from liability under Article 1174 of the Civil Code, for a breach of an obligation due to an 'act of God,' the following must concur: (a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor. (*Vasquez v. Court of Appeals*, 138 SCRA 553; *Estrada v. Consolacion*, 71 SCRA 423; *Austria v. Court of Appeals*, 39 SCRA 527; *Republic of the Phil. v. Luzon Stevedoring Corp.*, 21 SCRA 279; *Lasam v. Smith*, 45 Phil. 657).

Thus, if upon the happening of a fortuitous event or an act of God, there concurs a corresponding fraud, negligence, delay or violation or contravention in any manner of the tenor of the obligation as provided for in Article 1170 of the Civil Code, which results in loss or damage, the obligor cannot escape liability.

The principle embodied in the act of God doctrine strictly requires that the act must be one occasioned exclusively by the violence of nature and all human agencies are to be excluded from creating or entering into the cause of the mischief. When the effect, the cause of which is to be considered, is found to be in part the result of the participation of man, whether it be from active intervention or neglect, or failure to act, the whole occurrence is thereby humanized, as it were, and removed from the rules applicable to the acts of God. (1 *Corpus Juris*, pp. 1174-1175).

Thus it has been held 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 from liability for loss because of an act of God, he must be free from any previous negligence or misconduct by which that loss or damage may have been occasioned. (*Fish & Elective Co. v. Phil. Motors*, 55 Phil. 129; *Tucker v. Milan*, 49 O.G. 4379; *Limpangco & Sons v. Yangco Steamship Co.*, 34 Phil. 594, 604; *Lasam v. Smith*, 45 Phil. 657)."[21]

Accordingly, petitioners cannot be heard to invoke the act of God or force majeure to escape liability for the loss or damage sustained by the private respondents since they, the petitioners, were guilty of negligence. The event then was not occasioned exclusively by an act of God or force majeure; a human factor -- negligence or imprudence -- had intervened. The effect then of the force majeure in question may be deemed to have, even if only partly, resulted from the participation of man. Thus, the whole occurrence was thereby humanized, as it were, and removed from the rules applicable to acts of God.

WHEREFORE, for want of merit, the instant petition is hereby DISMISSED and the Consolidated Decision of the Court of Appeals in CA-G.R. CV Nos. 27290-93 is AFFIRMED, with costs against the petitioners.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Annex "A" of Petition; Rollo, 34-53. Per Associate Justice Venancio D. Aldecoa, Jr., concurred in by Associate Justices Luis L. Victor and Filemon N. Mendoza.

[2] Civil Case No. SM-950 entitled "*GAUDENCIO C. RAYO, BIENVENIDO P. PASCUAL, TOMAS MANUEL, PEDRO C. BARTOLOME, BERNARDO CRUZ, JOSE PALAD, MARIANO CRUZ AND LUCIO FAJARDO versus NATIONAL POWER CORPORATION AND BENJAMIN CHAVEZ*," and filed on 20 December 1978;

Civil Case No. SM-951 entitled "FRANCISCO RAYOS versus NATIONAL POWER CORPORATION AND BENJAMIN CHAVEZ," and filed on 29 December 1978.

Civil Case No. SM-953 entitled "ANGEL C. TORRES, NORBERTO TORRES and RODELIO JOAQUIN versus NATIONAL POWER CORPORATION and BENJAMIN CHAVEZ," and filed on 4 January 1978; and

Civil Case No. SM-1247 entitled "PRESENTACION LORENZO, CLODUALDO LORENZO, CONSOLACION GUZMAN and VIRGINIA GUZMAN in her behalf and as natural guardian of her minor children, RODELIO, MINERVA and EMERSON, all surnamed GUZMAN versus NATIONAL POWER CORPORATION and BENJAMIN CHAVEZ," and filed on 29 January 1982.

[3] CA Decision, 3; Rollo, 37.

[4] Id., 3-4; Id., 37-38.

[5] CA Decision, 4; Rollo, 38.

[6] Id., 2; Id., 36.

[7] Rollo, 51-53.

[8] Rollo, 40.

[9] Rollo, 39-41.

[10] Rollo, 41.

[11] Id., 42.

[12] 144 SCRA 596 [1986], quoted in *National Power Corp. vs. Court of Appeals*, 161 SCRA 334 [1988].

[13] In the matter of when interest on the damages awarded will accrue, the Court of Appeals ruled that interest shall be paid only from the time its decision shall have become final and executory.

[14] Rollo, 56-57.

[15] Id., 166.

[16] Rollo, 16.

[17] 211 SCRA 162 [1992].

[18] *Supra*.

[19] *Remalante vs. Tibe*, 158 SCRA 138 [1988]; *Medina vs. Asistio, Jr.*, 191 SCRA 218 [1990].

[20] *Supra*.

[21] *Supra*, at 606-607.

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