

## FIRST DIVISION

[ G.R. No. 160932, January 14, 2013 ]

**SPECIAL PEOPLE, INC. FOUNDATION, REPRESENTED BY ITS CHAIRMAN, ROBERTO P. CERICOS, PETITIONER, VS. NESTOR M. CANDA, BIENVENIDO LIPAYON, JULIAN D. AMADOR, BOHOL PROVINCIAL CHIEF, REGIONAL DIRECTOR, AND NATIONAL DIRECTOR, RESPECTIVELY, ENVIRONMENTAL MANAGEMENT BUREAU, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ALL SUED IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES, RESPONDENTS.**

### D E C I S I O N

**BERSAMIN, J.:**

The peremptory writ of *mandamus* is an extraordinary remedy that is issued only in extreme necessity, and the ordinary course of procedure is powerless to afford an adequate and speedy relief to one who has a clear legal right to the performance of the act to be compelled.

#### **Antecedents**

The petitioner was a proponent of a water-resource development and utilization project in Barangay Jimilia-an in the Municipality of Loboc, Bohol that would involve the tapping and purifying of water from the Loboc River, and the distribution of the purified water to the residents of Loboc and six other municipalities. The petitioner applied for a Certificate of Non- Coverage (CNC) with the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), Region 7, seeking to be exempt from the requirement of the Environmental Compliance Certificate (ECC) under Section 4 of Presidential Decree No. 1586 on the following justifications, to wit:

- 1) The whole project simply involves tapping of water from the Loboc River, filtering and purifying it, and distributing the same to the consumers in the covered towns;
- 2) From the source to the filtration plant, then to the purifier stations, then finally to the consumers' households, water flows through steel pipes;
- 3) The filtration and purifying process employs the latest technology— "electrocatalytic"—internationally accepted for safety and environment friendliness;
- 4) No waste is generated, as the electrocatalytic process dissolves all impurities in the water;
- 5) The project involves no destruction [n]or harm to the environment. On the other hand, it is environment friendly.<sup>[1]</sup>

Upon evaluating the nature and magnitude of the environmental impact of the project, respondent Nestor M. Canda, then Chief of EMB in Bohol, rendered his findings in a letter dated December 4, 2001, as follows:

- 1) **The project is located within a critical area; hence, Initial Environmental Examination is required.**
- 2) The project is socially and politically sensitive therefore proof of social acceptability should be established. Proper indorsement from the [Protected Area Management Bureau or] PAMB should be secured.<sup>[2]</sup> (Emphasis supplied)

On January 11, 2002, the petitioner appealed Canda's findings to respondent EMB Region 7 Director Bienvenido L. Lipayon (RD Lipayon), claiming that it should also be issued a CNC because the project was no different from the Loboc-Loay waterworks project of the Department of Public Works and Highways (DPWH) that had recently been issued a CNC.<sup>[3]</sup>

On April 3, 2002, RD Lipayon notified the petitioner that its documents substantially complied with the procedural aspects of the EMB's review, and that the application was assigned EMB-DENR-7 Control No. CNC-02-080 for easy reference in case of follow-up and submission of additional requirements.<sup>[4]</sup>

Later on, RD Lipayon informed the petitioner that an Initial Environmental Examination document was required for the project due to its significant impact in the area.<sup>[5]</sup>

On August 26, 2002, RD Lipayon required the petitioner to submit the following documents to enable the EMB to determine whether the project was within an environmentally critical area or not, to wit:

1. Certification from DENR, Provincial Environment and Natural Resources Office (PENRO) that it is not within areas declared by law as national parks, watershed reserves, wildlife preservation area, sanctuaries and not within the purview of Republic Act No. 7586 or the National Integrated Protected Areas System (NIPAS) Act, and other issuances including international commitments and declarations;
2. Certification from the DENR Regional Office/ PENRO [that] the areas within the project do[ ] not constitute [the habitat] for any endangered or threatened species or indigenous wildlife (Flora and Fauna).
3. Certification from the following:
  - 3.1. Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) that the area is not frequently visited or hard-hit by typhoons. This shall

refer to all areas where typhoon signal no. 3 not hoisted for at least twice a year during the last five (5) years prior to the year of reckoning. Years to be considered shall be from January 1995 to December 2001.

- 3.2. Philippine Institute of Volcanology and Seismology (PHIVOLCS) that the area was not subjected to an earthquake of at least intensity VII in the Rossi-Forel scale or its equivalent and hit by tsunamis during the period of 1638 until the year 2001.
  - 3.3. PHIVOLCS that the area was not subjected to earthquakes of at least intensity VII in the Rossi-Forel scale or its equivalent during the period of 1949 until the year 2001.
  - 3.4. PAGASA that the area is not storm surge-prone.
  - 3.5. Mines and Geosciences Bureau Region 7 (MGB 7) that the area is not located along fault lines or within fault zones and not located in critical slope.
  - 3.6. City Mayor and/or City Engineers Office that the area is not flood prone.
  - 3.7. Network of Protected Areas for Agriculture (NPAA) of the Bureau of Soils and Water Management (BSWM) that the area is not classified as Prime Agricultural Land.
4. Certification from the Provincial Tourism Office or its equivalent office that areas in your project are not set-aside as aesthetic potential tourist spot.
  5. Certification from the National Water Resources Board (NWRB) that areas within your project are not recharge[d] areas of aquifer.
  6. Certification from DENR regional Office and/or Environmental Management Bureau 7 (EMB 7) that Loboc River is not characterized by one or any combination of the following conditions:
    - a. Tapped for domestic purposes;
    - b. With controlled and/or protected areas declared by appropriate authorities; and
    - c. Which support wildlife and fishery activities.

**A Certificate of Non-Coverage will duly be issued to your foundation once all the above mentioned required certifications are complied with.**

Projects that are covered by P.D. 1586 or the Environmental Impact System (EIS) Law should not start unless the Project Proponent should secure an Environmental Compliance Certificate (ECC), otherwise penalties shall be imposed.<sup>[6]</sup> (Emphases supplied)

On January 28, 2003, the petitioner submitted eight certifications,<sup>[7]</sup> including the certification issued by the Philippine Institute of Volcanology and Seismology (PHIVOLCS), as follows:

That the project area, Loboc, Bohol was subjected to an earthquake of **Intensity VII** in the adapted Rossi-Forel scale of I-IX last **February 8, 1990**. The magnitude of the earthquake is 6.8 and the highest intensity reported was VIII, based on the Rossi-Forel Intensity Scale. During the said earthquake, the PMI Academy Building collapsed while minor cracks were sustained by the municipal hall, public school, town church and some other houses in the town. There were reports that immediately after the earthquake, the force of the incoming waves from the sea caused Alijuan River in the town of Duero to flow inland. The report also states that the waves affected 10-50 meters of the coastal beach of the towns of Jagna, Duero, Guindulman, Garcia Hernandez and Valencia.<sup>[8]</sup> (Emphases supplied)

The petitioner failed to secure a certification from the Regional Office of the Mines and Geosciences Bureau (RO-MGB) to the effect that the project area was not located along a fault line/fault zone or a critical slope because RO-MGB did not have the data and expertise to render such finding, and thus had to forward the petitioner's request to the MGB Central Office.<sup>[9]</sup>

Upon the MGB's advice, the petitioner sought and obtained the required certification from PHIVOLCS, but the certification did not state whether the project area was within a critical slope. Instead, the certification stated that the project site was approximately 18 kilometers west of the East Bohol Fault.<sup>[10]</sup>

Given the tenor of the certification from PHIVOLCS, RD Lipayon's letter dated February 4, 2003 declared that the project was within an environmentally critical area, and that the petitioner was not entitled to the CNC, viz:

After thorough review of your submitted certifications, it was found out that the area was subjected to an earthquake of Intensity VII in the adapted Rossi-Forel scale wherein the magnitude of the earthquake is 6.8 with the highest intensity reported of VIII and you fail to support certification that the project area is not within critical slope. And based on the Water Usage and Classification per Department Order (DAO) 34 Series of 1990, subject river system was officially classified as Class B intended for swimming and bathing purposes. Moreover, one component of your project involves opening of roadway connected to the barangay road.

Therefore, we reiterate our previous stand that your project is covered by the EIS System pursuant to P.D. 1586, the Environmental Impact Statement Law.<sup>[11]</sup>

On March 27, 2003, the petitioner filed a petition for *mandamus* and damages in the Regional Trial Court (RTC) in Loay, Bohol,<sup>[12]</sup> alleging that it was now entitled to a CNC as a matter of right after having complied with the certification requirements; and that the EMB had earlier issued a CNC to the DPWH for a similar waterworks project in the same area.

In the decision dated November 18, 2003,<sup>[13]</sup> the RTC **dismissed** the petition for *mandamus* upon the following considerations, namely: (1) PHIVOLCS certified that the project site had been subjected to an Intensity VII earthquake in 1990; (2) the CNC issued by the EMB to a similar waterworks project of the DPWH in the same area was only for the construction of a unit spring box intake and pump house, and the DENR issued a cease and desist order relative to the DPWH's additional project to put up a water filtration plant therein; (3) the determination of whether an area was environmentally critical was a task that pertained to the EMB; (4) the assignment of a control number by the EMB to the petitioner's application did not mean that the application was as good as approved; (5) the RTC would not interfere with the primary prerogative of the EMB to review the merits of the petitioner's application for the CNC; and (6) there was already a pending appeal lodged with the DENR Secretary.

Hence, this appeal brought directly to the Court via petition for review on certiorari.

### **Issues**

The petitioner submits the following issues:

- A. WHETHER OR NOT, AFTER PETITIONER'S DUE COMPLIANCE WITH THE REQUIREMENTS MANDATED BY RESPONDENTS FOR THE ISSUANCE OF THE CERTIFICATE OF NON- COVERAGE (CNC) APPLIED FOR BY PETITIONER, IT IS NOW THE RIPENED DUTY OF RESPONDENTS, THROUGH RESPONDENT EMB REGIONAL DIRECTOR, TO ISSUE SAID DOCUMENT IN FAVOR OF PETITIONER;
- B. WHETHER OR NOT PETITIONER HAS EXHAUSTED AVAILABLE ADMINISTRATIVE REMEDIES THROUGH AN APPEAL TO RESPONDENT DENR SECRETARY WHO HAS SAT ON SAID APPEAL UP TO THE PRESENT;
- C. WHETHER OR NOT PETITIONER IS ENTITLED TO RECOVER DAMAGES FROM RESPONDENTS IN THEIR PERSONAL CAPACITY.<sup>[14]</sup>

The petitioner insists that RD Lipayon already exercised his discretion by finding that the application substantially complied with the procedural aspects for review and by assigning Control No. CNC-02-080 to its application; that after the petitioner complied with the requirements enumerated in the August 26, 2002 letter of RD Lipayon, the EMB became duty-bound to issue the CNC to the petitioner; that the EMB issued a CNC to a similar project of the DPWH in the same area; that it filed an appeal with the DENR Secretary, but the appeal remained unresolved; and that it