

## EN BANC

[ G.R. No. 166471, March 22, 2011 ]

### **TAWANG MULTI-PURPOSE COOPERATIVE, PETITIONER, VS. LA TRINIDAD WATER DISTRICT, RESPONDENT.**

## **D E C I S I O N**

**CARPIO, J.:**

### **The Case**

This is a petition for review on certiorari under Rule 45 of the Rules of Court. The petition<sup>[1]</sup> challenges the 1 October 2004 Judgment<sup>[2]</sup> and 6 November 2004 Order<sup>[3]</sup> of the Regional Trial Court (RTC), Judicial Region 1, Branch 62, La Trinidad, Benguet, in Civil Case No. 03-CV-1878.

### **The Facts**

Tawang Multi-Purpose Cooperative (TMPC) is a cooperative, registered with the Cooperative Development Authority, and organized to provide domestic water services in Barangay Tawang, La Trinidad, Benguet.

La Trinidad Water District (LTWD) is a local water utility created under Presidential Decree (PD) No. 198, as amended. It is authorized to supply water for domestic, industrial and commercial purposes within the municipality of La Trinidad, Benguet.

On 9 October 2000, TMPC filed with the National Water Resources Board (NWRB) an application for a certificate of public convenience (CPC) to operate and maintain a waterworks system in Barangay Tawang. LTWD opposed TMPC's application. LTWD claimed that, under Section 47 of PD No. 198, as amended, its franchise is exclusive. Section 47 states that:

*Sec. 47. Exclusive Franchise.* No franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration.

In its Resolution No. 04-0702 dated 23 July 2002, the NWRB approved TMPC's application for a CPC. In its 15 August 2002 Decision,<sup>[4]</sup> the NWRB held that LTWD's franchise cannot be exclusive since exclusive franchises are unconstitutional and found that TMPC is legally and financially qualified to operate and maintain a

waterworks system. NWRB stated that:

With respect to LTWD's opposition, this Board observes that:

1. It is a substantial reproduction of its opposition to the application for water permits previously filed by this same CPC applicant, under WUC No. 98-17 and 98-62 which was decided upon by this Board on April 27, 2000. The issues being raised by Oppositor had been already resolved when this Board said in pertinent portions of its decision:

"The authority granted to LTWD by virtue of P.D. 198 is not Exclusive. While Barangay Tawang is within their territorial jurisdiction, this does not mean that all others are excluded in engaging in such service, especially, if the district is not capable of supplying water within the area. This Board has time and again ruled that the "Exclusive Franchise" provision under P.D. 198 has misled most water districts to believe that it likewise extends to be [sic] the waters within their territorial boundaries. Such ideological adherence collides head on with the constitutional provision that "ALL WATERS AND NATURAL RESOURCES BELONG TO THE STATE". (Sec. 2, Art. XII) and that "No franchise, certificate or authorization for the operation of public [sic] shall be exclusive in character".

x x x x

All the foregoing premises all considered, and finding that Applicant is legally and financially qualified to operate and maintain a waterworks system; that the said operation shall redound to the benefit of the homeowners/residents of the subdivision, thereby, promoting public service in a proper and suitable manner, the instant application for a Certificate of Public Convenience is, hereby, GRANTED.<sup>[5]</sup>

LTWD filed a motion for reconsideration. In its 18 November 2002 Resolution,<sup>[6]</sup> the NWRB denied the motion.

LTWD appealed to the RTC.

### **The RTC's Ruling**

In its 1 October 2004 Judgment, the RTC set aside the NWRB's 23 July 2002 Resolution and 15 August 2002 Decision and cancelled TMPC's CPC. The RTC held that Section 47 is valid. The RTC stated that:

The Constitution uses the term "exclusive in character". To give effect to this provision, a reasonable, practical and logical interpretation should be adopted without disregard to the ultimate purpose of the Constitution. What is this ultimate purpose? It is for the state, through its authorized agencies or instrumentalities, to be able to keep and maintain ultimate control and supervision over the operation of public utilities. Essential

part of this control and supervision is the authority to grant a franchise for the operation of a public utility to any person or entity, and to amend or repeal an existing franchise to serve the requirements of public interest. Thus, what is repugnant to the Constitution is a grant of franchise "exclusive in character" so as to preclude the State itself from granting a franchise to any other person or entity than the present grantee when public interest so requires. In other words, no franchise of whatever nature can preclude the State, through its duly authorized agencies or instrumentalities, from granting franchise to any person or entity, or to repeal or amend a franchise already granted. Consequently, the Constitution does not necessarily prohibit a franchise that is exclusive on its face, meaning, that the grantee shall be allowed to exercise this present right or privilege to the exclusion of all others. Nonetheless, the grantee cannot set up its exclusive franchise against the ultimate authority of the State.<sup>[7]</sup>

TMPC filed a motion for reconsideration. In its 6 November 2004 Order, the RTC denied the motion. Hence, the present petition.

### **Issue**

TMPC raises as issue that the RTC erred in holding that Section 47 of PD No. 198, as amended, is valid.

### **The Court's Ruling**

The petition is meritorious.

What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.

In *Alvarez v. PICOP Resources, Inc.*,<sup>[8]</sup> the Court held that, "What one cannot do directly, he cannot do indirectly."<sup>[9]</sup> In *Akbayan Citizens Action Party v. Aquino*,<sup>[10]</sup> quoting *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,<sup>[11]</sup> the Court held that, "This Court has long and consistently adhered to the legal maxim that those that cannot be done directly cannot be done indirectly."<sup>[12]</sup> In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,<sup>[13]</sup> the Court held that, "No one is allowed to do indirectly what he is prohibited to do directly."<sup>[14]</sup>

The President, Congress and the Court cannot create directly franchises for the operation of a public utility that are exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly prohibit the creation of franchises that are exclusive in character. Section 8, Article XIII of the 1935 Constitution states that:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by

citizens of the Philippines, **nor shall such franchise**, certificate or authorization **be exclusive in character** or for a longer period than fifty years. (Emphasis supplied)

Section 5, Article XIV of the 1973 Constitution states that:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, **nor shall such franchise**, certificate or authorization **be exclusive in character** or for a longer period than fifty years. (Emphasis supplied)

Section 11, Article XII of the 1987 Constitution states that:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens, **nor shall such franchise**, certificate or authorization **be exclusive in character** or for a longer period than fifty years. (Emphasis supplied)

Plain words do not require explanation. The 1935, 1973 and 1987 Constitutions are clear -- franchises for the operation of a public utility cannot be exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly state that, **"nor shall such franchise x x x be exclusive in character."** There is no exception.

When the law is clear, there is nothing for the courts to do but to apply it. The duty of the Court is to apply the law the way it is worded. In *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61*,<sup>[15]</sup> the Court held that:

Basic is the rule of statutory construction that **when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language**. As we have held in the case of *Quijano v. Development Bank of the Philippines*:

"x x x We cannot see any room for interpretation or construction in the clear and unambiguous language of the above-quoted provision of law. **This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms**, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a

provision of law peremptorily calls for application. **Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed."**

[16] (Emphasis supplied)

In *Republic of the Philippines v. Express Telecommunications Co., Inc.*,<sup>[17]</sup> the Court held that, "The Constitution is quite emphatic that the operation of a public utility shall not be exclusive."<sup>[18]</sup> In *Pilipino Telephone Corporation v. National Telecommunications Commission*,<sup>[19]</sup> the Court held that, "Neither Congress nor the NTC can grant an exclusive 'franchise, certificate, or any other form of authorization' to operate a public utility."<sup>[20]</sup> In *National Power Corp. v. Court of Appeals*,<sup>[21]</sup> the Court held that, "Exclusivity of any public franchise has not been favored by this Court such that in most, if not all, grants by the government to private corporations, the interpretation of rights, privileges or franchises is taken against the grantee."<sup>[22]</sup> In *Radio Communications of the Philippines, Inc. v. National Telecommunications Commission*,<sup>[23]</sup> the Court held that, "The Constitution mandates that a franchise cannot be exclusive in nature."<sup>[24]</sup>

Indeed, the President, Congress and the Court cannot create directly franchises that are exclusive in character. What the President, Congress and the Court cannot legally do directly they cannot do indirectly. Thus, the President, Congress and the Court cannot create indirectly franchises that are exclusive in character by allowing the Board of Directors (BOD) of a water district and the Local Water Utilities Administration (LWUA) to create franchises that are exclusive in character.

In PD No. 198, as amended, former President Ferdinand E. Marcos (President Marcos) created indirectly franchises that are exclusive in character by allowing the BOD of LTWD and the LWUA to create directly franchises that are exclusive in character. Section 47 of PD No. 198, as amended, allows the BOD and the LWUA to create directly franchises that are exclusive in character. Section 47 states:

**Sec. 47. Exclusive Franchise. No franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration.** (Emphasis supplied)

In case of conflict between the Constitution and a statute, the Constitution always prevails because the Constitution is the basic law to which all other laws must conform to. The duty of the Court is to uphold the Constitution and to declare void all laws that do not conform to it.

In *Social Justice Society v. Dangerous Drugs Board*,<sup>[25]</sup> the Court held that, "It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to