

EN BANC

[G.R. NO. 168914, July 04, 2007]

**METROPOLITAN CEBU WATER DISTRICT (MCWD), PETITIONER,
VS. MARGARITA A. ADALA, RESPONDENT.**

DECISION

CARPIO MORALES, J.:

The Decision of the Regional Trial Court (RTC) of Cebu dated February 10, 2005, which affirmed *in toto* the Decision of the National Water Resources Board (NWRB) dated September 22, 2003 in favor of Margarita A. Adala, respondent, is being challenged in the present petition for review on certiorari.

Respondent filed on October 24, 2002 an application with the NWRB for the issuance of a Certificate of Public Convenience (CPC) to operate and maintain waterworks system in *sitios* San Vicente, Fatima, and Sambag in Barangay Bulacao, Cebu City.

At the initial hearing of December 16, 2002 during which respondent submitted proof of compliance with jurisdictional requirements of notice and publication, herein petitioner Metropolitan Cebu Water District, a government-owned and controlled corporation created pursuant to P.D. 198^[1] which took effect upon its issuance by then President Marcos on May 25, 1973, as amended, appeared through its lawyers to oppose the application.

While petitioner filed a formal opposition by mail, a copy thereof had not, on December 16, 2002, yet been received by the NWRB, the day of the hearing. Counsel for respondent, who received a copy of petitioner's Opposition dated December 12, 2002 earlier that morning, volunteered to give a copy thereof to the hearing officer.^[2]

In its Opposition, petitioner prayed for the denial of respondent's application on the following grounds: (1) petitioner's Board of Directors had not consented to the issuance of the franchise applied for, such consent being a mandatory condition pursuant to P.D. 198, (2) the proposed waterworks would interfere with petitioner's water supply which it has the right to protect, and (3) the water needs of the residents in the subject area was already being well served by petitioner.

After hearing and an ocular inspection of the area, the NWRB, by Decision dated September 22, 2003, dismissed petitioner's Opposition "for lack of merit and/or failure to state the cause of action"^[3] and ruled in favor of respondent as follows:

PREMISES ALL CONSIDERED, and finding that Applicant is legally and financially qualified to operate and maintain the subject waterworks system, and that said operation shall redound to the benefit of the of the [sic] consumers of Sitio's San Vicente, Fatima and Sambag at Bulacao

Pardo, Cebu City, thereby promoting public service in a proper and suitable manner, the instant application for a Certificate of Public Convenience (CPC) is, hereby, GRANTED for a period of five (5) years with authority to charge the proposed rates herein set effective upon approval as follows:

Consumption Blocks Proposed Rates

0-10 cu. m.	P125.00(min. charge)
11-20 cu. m.	13.50 per cu. m.
21-30 cu. m.	14.50 per cu. m.
31-40 cu. m.	35.00 per cu. m.
41-50 cu. m.	37.00 per cu. m.
51-60 cu. m.	38.00 per cu. m.
61-70 cu. m.	40.00 per cu. m.
71-100 cu. m.	45.00 per cu. m.
Over 100 cu. m.	50.00 per cu. m.

The Rules and Regulations, hereto, attached for the operation of the waterworks system should be strictly complied with.

Since the average production is below average day demand, it is recommended to construct another well or increase the well horsepower from 1.5 - 3.00 Hp to satisfy the water requirement of the consumers.

Moreover, the rates herein approved should be posted by GRANTEE at conspicuous places within the area serviced by it, within seven (7) calendar days from notice of this Decision.

SO ORDERED.^[4]

Its motion for reconsideration having been denied by the NWRB by Resolution of May 17, 2004, petitioner appealed the case to the RTC of Cebu City. As mentioned early on, the RTC denied the appeal and upheld the Decision of the NWRB by Decision dated February 10, 2005. And the RTC denied too petitioner's motion for reconsideration by Order of May 13, 2005.

Hence, the present petition for review raising the following questions of law:

i. WHETHER OR NOT THE CONSENT OF THE BOARD OF DIRECTORS OF THE WATER DISTRICT IS A CONDITION SINE QUA NON TO THE GRANT OF CERTIFICATE OF PUBLIC CONVENIENCE BY THE NATIONAL WATER RESOURCES BOARD UPON OPERATORS OF WATERWORKS WITHIN THE SERVICE AREA OF THE WATER DISTRICT?

ii. WHETHER THE TERM FRANCHISE AS USED IN SECTION 47 OF PRESIDENTIAL DECREE 198, AS AMENDED MEANS A FRANCHISE GRANTED BY CONGRESS THROUGH LEGISLATION ONLY OR DOES IT ALSO INCLUDE IN ITS MEANING A CERTIFICATE OF PUBLIC CONVENIENCE ISSUED BY THE NATIONAL WATER RESOURCES BOARD FOR THE MAINTENANCE OF WATERWORKS SYSTEM OR WATER SUPPLY SERVICE?^[5]

Before discussing these substantive issues, a resolution of the procedural grounds raised by respondent for the outright denial of the petition is in order.

By respondent's claim, petitioner's General Manager, Engineer Armando H. Paredes, who filed the present petition and signed the accompanying verification and certification of non-forum shopping, was not specifically authorized for that purpose. Respondent cites *Premium Marble Resources v. Court of Appeals*^[6] where this Court held that, in the absence of a board resolution authorizing a person to act for and in behalf of a corporation, the action filed in its behalf must fail since "the power of the corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers."

Respondent likewise cites *ABS-CBN Broadcasting Corporation v. Court of Appeals*^[7] where this Court held that "[f]or such officers to be deemed fully clothed by the corporation to exercise a power of the Board, the latter must **specially authorize** them to do so." (Emphasis supplied by respondent)

That there is a board resolution authorizing Engineer Paredes to file cases in behalf of petitioner is not disputed. Attached to the petition is petitioner's Board of Director's Resolution No. 015-2004, the relevant portion of which states:

RESOLVE[D], AS IT IS HEREBY RESOLVED, to authorize the General Manager, ENGR. ARMANDO H. PAREDES, **to file in behalf of the Metropolitan Cebu Water District expropriation and other cases** and to affirm and confirm above-stated authority with respect to previous cases filed by MCWD.

x x x x^[8] (Emphasis and underscoring supplied)

To respondent, however, the board resolution is invalid and ineffective for being a roving authority and not a specific resolution pursuant to the ruling in *ABS-CBN*.

That the subject board resolution does not authorize Engineer Paredes to file the instant petition in particular but "expropriation and other cases" does not, **by itself**, render the authorization invalid or ineffective.

In *BA Savings Bank v. Sia*,^[9] the therein board resolution, couched in words similar to the questioned resolution, authorized persons to represent the corporation, not for a specific case, but for a general class of cases. Significantly, the Court upheld its validity:

In the present case, the corporation's board of directors issued a Resolution specifically authorizing its lawyers "to act as their agents in any action or proceeding before the Supreme Court, the Court of Appeals, or any other tribunal or agency[;] and to sign, execute and deliver in connection therewith the necessary pleadings, motions, verification, affidavit of merit, *certificate of non-forum shopping* and other instruments necessary for such action and proceeding." **The Resolution was sufficient to vest such persons with the authority to bind the corporation and was specific enough as to the acts they were empowered to do.** (Emphasis and underscoring supplied, italics in the original)

Nonetheless, while the questioned resolution sufficiently identifies the kind of cases which Engineer Paredes may file in petitioner's behalf, the same does not authorize him for the specific act of signing verifications and certifications against forum shopping. For it merely authorizes Engineer Paredes to **file** cases in behalf of the corporation. There is no mention of signing verifications and certifications against forum shopping, or, for that matter, any document of whatever nature.

A board resolution purporting to authorize a person to sign documents in behalf of the corporation must explicitly vest such authority. *BPI Leasing Corporation v. Court of Appeals*^[10] so instructs:

Corporations have no powers except those expressly conferred upon them by the Corporation Code and those that are implied by or are incidental to its existence. **These powers are exercised through their board of directors and/or duly authorized officers and agents. Hence, physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by specific act of the board of directors.**

The records are bereft of the authority of BLC's [BPI Leasing Corporation] counsel to institute the present petition and to sign the certification of non-forum shopping. While said counsel may be the counsel of record for BLC, the representation does not vest upon him the authority to execute the certification on behalf of his client. **There must be a resolution issued by the board of directors that specifically authorizes him to institute the petition and execute the certification, for it is only then that his actions can be legally binding upon BLC.** (Emphasis, italics and underscoring supplied)

It bears noting, moreover, that Rule 13 Section 2 of the Rules of Court merely defines *filing* as "the act of presenting the pleading or other paper to the clerk of court." Since the signing of verifications and certifications against forum shopping is not integral to the act of filing, this may not be deemed as necessarily included in an authorization merely to file cases.

Engineer Paredes not having been specifically authorized to sign the verification and certification against forum shopping in petitioner's behalf, the instant petition may be dismissed outright.

Technicality aside, the petition just the same merits dismissal.

In support of its contention that the consent of its Board of Directors is a condition *sine qua non* for the grant of the CPC applied for by respondent, petitioner cites Section 47 of P.D. 198^[11] which 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 and underscoring supplied)

There being no such consent on the part of its board of directors, petitioner concludes that respondent's application for CPC should be denied.

Both parties' arguments center, in the main, on the scope of the word "franchise" as used in the above-quoted provision.

Petitioner contends that "franchise" should be broadly interpreted, such that the prohibition against its grant to other entities without the consent of the district's board of directors extends to the issuance of CPCs. A contrary reading, petitioner adds, would result in absurd consequences, for it would mean that Congress' power to grant franchises for the operation of waterworks systems cannot be exercised without the consent of water districts.

Respondent, on the other hand, proffers that the same prohibition only applies to franchises in the strict sense " those granted by Congress by means of statute " and does not extend to CPCs granted by agencies such as the NWRB.

Respondent quotes the NWRB Resolution dated May 17, 2004 which distinguished a franchise from a CPC, thus:

A CPC is formal written authority issued by quasi-judicial bodies for the operation and maintenance of a public utility for which a franchise is not required by law and a CPC issued by this Board is an authority to operate and maintain a waterworks system or water supply service. On the other hand, a franchise is privilege or authority to operate appropriate private property for public use vested by Congress through legislation. **Clearly, therefore, a CPC is different from a franchise and Section 47 of Presidential Decree 198 refers only to franchise. Accordingly, the possession of franchise by a water district does not bar the issuance of a CPC for an area covered by the water district.**
(Emphasis and underscoring supplied by respondent)

Petitioner's position that an overly strict construction of the term "franchise" as used in Section 47 of P.D. 198 would lead to an absurd result impresses. If franchises, in this context, were strictly understood to mean an authorization issuing directly from the legislature, it would follow that, while Congress cannot issue franchises for operating waterworks systems without the water district's consent, the NWRB may keep on issuing CPCs authorizing the very same act even without such consent. In effect, not only would the NWRB be subject to less constraints than Congress in issuing franchises. The exclusive character of the franchise provided for by Section 47 would be illusory.

Moreover, this Court, in *Philippine Airlines, Inc. v. Civil Aeronautics Board*,^[12] has construed the term "franchise" broadly so as to include, not only authorizations issuing directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchises has been delegated by Congress, to wit:

Congress has granted certain administrative agencies the power to grant licenses for, or to authorize the operation of certain public utilities. With the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the