

EN BANC

[G.R. No. 147402, January 14, 2004]

ENGR. RANULFO C. FELICIANO, IN HIS CAPACITY AS GENERAL MANAGER OF THE LEYTE METROPOLITAN WATER DISTRICT (LMWD), TACLOBAN CITY, PETITIONER, VS. COMMISSION ON AUDIT, CHAIRMAN CELSO D. GANGAN, COMMISSIONERS RAUL C. FLORES AND EMMANUEL M. DALMAN, AND REGIONAL DIRECTOR OF COA REGION VIII, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

This is a petition for certiorari^[1] to annul the Commission on Audit's ("COA") Resolution dated 3 January 2000 and the Decision dated 30 January 2001 denying the Motion for Reconsideration. The COA denied petitioner Ranulfo C. Feliciano's request for COA to cease all audit services, and to stop charging auditing fees, to Leyte Metropolitan Water District ("LMWD"). The COA also denied petitioner's request for COA to refund all auditing fees previously paid by LMWD.

Antecedent Facts

A Special Audit Team from COA Regional Office No. VIII audited the accounts of LMWD. Subsequently, LMWD received a letter from COA dated 19 July 1999 requesting payment of auditing fees. As General Manager of LMWD, petitioner sent a reply dated 12 October 1999 informing COA's Regional Director that the water district could not pay the auditing fees. Petitioner cited as basis for his action Sections 6 and 20 of Presidential Decree 198 ("PD 198")^[2], as well as Section 18 of Republic Act No. 6758 ("RA 6758"). The Regional Director referred petitioner's reply to the COA Chairman on 18 October 1999.

On 19 October 1999, petitioner wrote COA through the Regional Director asking for refund of all auditing fees LMWD previously paid to COA.

On 16 March 2000, petitioner received COA Chairman Celso D. Gangan's Resolution dated 3 January 2000 denying his requests. Petitioner filed a motion for reconsideration on 31 March 2000, which COA denied on 30 January 2001.

On 13 March 2001, petitioner filed this instant petition. Attached to the petition were resolutions of the Visayas Association of Water Districts (VAWD) and the Philippine Association of Water Districts (PAWD) supporting the petition.

The Ruling of the Commission on Audit

The COA ruled that this Court has already settled COA's audit jurisdiction over local water districts in ***Davao City Water District v. Civil Service Commission and Commission on Audit***,^[3] as follows:

The above-quoted provision [referring to Section 3(b) PD 198] definitely sets to naught petitioner's contention that they are private corporations. It is clear therefrom that the power to appoint the members who will comprise the members of the Board of Directors belong to the local executives of the local subdivision unit where such districts are located. In contrast, the members of the Board of Directors or the trustees of a private corporation are elected from among members or stockholders thereof. It would not be amiss at this point to emphasize that a private corporation is created for the private purpose, benefit, aim and end of its members or stockholders. Necessarily, said members or stockholders should be given a free hand to choose who will compose the governing body of their corporation. But this is not the case here and this clearly indicates that petitioners are not private corporations.

The COA also denied petitioner's request for COA to stop charging auditing fees as well as petitioner's request for COA to refund all auditing fees already paid.

The Issues

Petitioner contends that COA committed grave abuse of discretion amounting to lack or excess of jurisdiction by auditing LMWD and requiring it to pay auditing fees. Petitioner raises the following issues for resolution:

1. Whether a Local Water District ("LWD") created under PD 198, as amended, is a government-owned or controlled corporation subject to the audit jurisdiction of COA;
2. Whether Section 20 of PD 198, as amended, prohibits COA's certified public accountants from auditing local water districts; and
3. Whether Section 18 of RA 6758 prohibits the COA from charging government-owned and controlled corporations auditing fees.

The Ruling of the Court

The petition lacks merit.

The Constitution and existing laws^[4] mandate COA to audit all government agencies, including government-owned and controlled corporations ("GOCCs") with original charters. An LWD is a GOCC with an original charter. Section 2(1), Article IX-D of the Constitution provides for COA's audit jurisdiction, as follows:

SECTION 2. (1) The Commission on Audit shall have the power, authority and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, **including government-owned and controlled corporations with original charters**, and on a

post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto. (Emphasis supplied)

The COA's audit jurisdiction extends not only to government "agencies or instrumentalities," but also to "government-owned and controlled corporations with original charters" as well as "other government-owned or controlled corporations" without original charters.

Whether LWDs are Private or Government-Owned and Controlled Corporations with Original Charters

Petitioner seeks to revive a well-settled issue. Petitioner asks for a re-examination of a doctrine backed by a long line of cases culminating in ***Davao City Water District v. Civil Service Commission***^[5] and just recently reiterated in ***De Jesus v. Commission on Audit***.^[6] Petitioner maintains that LWDs are not government-owned and controlled corporations with original charters. Petitioner even argues that LWDs are private corporations. Petitioner asks the Court to consider certain interpretations of the applicable laws, which would give a "new perspective to the issue of the true character of water districts."^[7]

Petitioner theorizes that what PD 198 created was the Local Waters Utilities Administration ("LWUA") and not the LWDs. Petitioner claims that LWDs are created "pursuant to" and not created directly by PD 198. Thus, petitioner concludes that PD 198 is not an "original charter" that would place LWDs within the audit jurisdiction of COA as defined in Section 2(1), Article IX-D of the Constitution. Petitioner elaborates that PD 198 does not create LWDs since it does not expressly direct the creation of such entities, but only provides for their formation on an optional or voluntary basis.^[8] Petitioner adds that the operative act that creates an LWD is the approval of the Sanggunian Resolution as specified in PD 198.

Petitioner's contention deserves scant consideration.

We begin by explaining the general framework under the fundamental law. The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. Section 16, Article XII of the Constitution provides:

Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations.

Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens.^[9] The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens.^[10]

In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code,^[11] except that the Cooperative Code governs the incorporation of cooperatives.^[12]

The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled.

Obviously, LWDs are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. Section 14 of the Corporation Code states that “[A]ll corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation x x x.” LWDs have no articles of incorporation, no incorporators and no stockholders or members. There are no stockholders or members to elect the board directors of LWDs as in the case of all corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. This Court has ruled that LWDs are not created under the Corporation Code, thus:

From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the CSC are those corporations created pursuant to the Corporation Code. **Significantly, petitioners are not created under the said code, but on the contrary, they were created pursuant to a special law and are governed primarily by its provision.**^[13] (Emphasis supplied)

LWDs exist by virtue of PD 198, which constitutes their special charter. Since under the Constitution only government-owned or controlled corporations may have special charters, LWDs can validly exist only if they are government-owned or controlled. To claim that LWDs are private corporations with a special charter is to admit that their existence is constitutionally infirm.

Unlike private corporations, which derive their legal existence and power from the Corporation Code, LWDs derive their legal existence and power from PD 198. Sections 6 and 25 of PD 198^[14] provide:

Section 6. Formation of District. — **This Act is the source of authorization and power to form and maintain a district. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act.**

(a) The name of the local water district, which shall include the name of the city, municipality, or province, or region thereof, served by said system, followed by the words "Water District".

(b) A description of the boundary of the district. In the case of a city or municipality, such boundary may include all lands within the city or municipality. A district may include one or more municipalities, cities or provinces, or portions thereof.

(c) A statement completely transferring any and all waterworks and/or sewerage facilities managed, operated by or under the control of such city, municipality or province to such district upon the filing of resolution forming the district.

(d) A statement identifying the purpose for which the district is formed, which shall include those purposes outlined in Section 5 above.

(e) The names of the initial directors of the district with the date of expiration of term of office for each.

(f) A statement that the district may only be dissolved on the grounds and under the conditions set forth in Section 44 of this Title.

(g) A statement acknowledging the powers, rights and obligations as set forth in Section 36 of this Title.

Nothing in the resolution of formation shall state or infer that the local legislative body has the power to dissolve, alter or affect the district beyond that specifically provided for in this Act.

If two or more cities, municipalities or provinces, or any combination thereof, desire to form a single district, a similar resolution shall be adopted in each city, municipality and province.

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Sec. 25. Authorization. — **The district may exercise all the powers which are expressly granted by this Title or which are necessarily implied from or incidental to the powers and purposes herein stated.** For the purpose of carrying out the objectives of this Act, a district is hereby granted the power of eminent domain, the exercise thereof shall, however, be subject to review by the Administration. (Emphasis supplied)