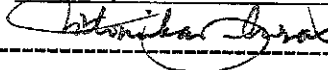


EN BANC

G.R. No. 202897 *MAYNILAD WATER SERVICES, INC. vs. THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ("DENR"), THE POLLUTION ADJUDICATION BOARD ("PAB"), THE REGIONAL EXECUTIVE DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU – NATIONAL CAPITAL REGION ("EMB-NCR"), THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU – REGION III ("EMB-REGION III"), THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU – REGION IV ("EMB-REGION IV")*; G.R. No. 206823 *MANILA WATER COMPANY, INC. vs. THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), THE REGIONAL EXECUTIVE DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU – NATIONAL CAPITAL REGION (EMB-NCR), THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU – REGION III (EMB-REGION III), THE REGIONAL DIRECTOR, ENVIRONMENTAL MANAGEMENT BUREAU – REGION IV ("EMB-REGION IV-A") and THE POLLUTION ADJUDICATION BOARD (PAB)*; G.R. No. 207969 *METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM vs. THE POLLUTION ADJUDICATION BOARD and ENVIRONMENTAL MANAGEMENT BUREAU.*

Promulgated:

July 19, 2022



X-----X

**SEPARATE CONCURRING OPINION**

**LOPEZ, J. J.:**

I concur in the *ponencia*.

The actions undertaken by the water concessionaries and the surrounding circumstances of the case should merit a lesser penalty.

To restate, the liability of petitioners Maynilad Water Services, Inc., Manila Water Company, Inc., and the Metropolitan Waterworks and Sewerage System (*petitioners*) stems from their failure to comply with their obligation under Section 8 of the Philippine Clean Water Act (*PCWA*), which reads:

**SECTION 8. Domestic Sewage Collection, Treatment and Disposal.** - Within five (5) years following the effectivity of this Act, the Agency vested to provide water supply and sewerage facilities and/or

concessionaires in Metro Manila and other highly urbanized cities (HUCs) as defined in Republic Act No. 7160, in coordination with LGUs, shall be required to connect the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households to available sewerage system: Provided, That the said connection shall be subject to sewerage services charge/fees in accordance with existing laws, rules or regulations unless the sources had already utilized their own sewerage system: Provided, further, That all sources of sewage and septage shall comply with the requirements herein. In areas not considered as HUCs, the DPWH in coordination with the Department, DOH and other concerned agencies, shall employ septage or combined sewerage-septage management system.

For the purpose of this section, the DOH, in coordination with other government agencies, shall formulate guidelines and standards for the collection, treatment and disposal of sewage including guidelines for the establishment and operation of centralized sewage treatment system.

In the year 2004, the PCWA took into effect. Thusly, petitioners had until the year 2009 to connect the sewage lines of establishments in Metro Manila and other highly urbanized cities to available sewerage system. Failure to do so would merit the imposition of penalties, of which a fine may be imposed in accordance with Section 28 of the PCWA, which provides in part:

**SECTION 28. Fines, Damages and Penalties.** - Unless otherwise provided herein, any person who commits any of the prohibited acts provided in the immediately preceding section or violates any of the provision of this Act or its implementing rules and regulations, shall be fined by the Secretary, upon the recommendation of the PAB in the amount of not less than Ten thousand pesos (P10,000.00) nor more than Two hundred thousand pesos (P200,000.00) for every day of violation. The fines herein prescribed shall be increased by ten percent (10%) every two (2) years to compensate for inflation and to maintain the deterrent function of such fines: *Provided*, That the Secretary, upon recommendation of the PAB may order the closure, suspension of development or construction, or cessation of operations or, where appropriate disconnection of water supply, until such time that proper environmental safeguards are put in place and/or compliance with this Act or its rules and regulations are undertaken. This paragraph shall be without prejudice to the issuance of an *ex parte* order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case.

x x x x

In the Decision dated August 6, 2019, the Court imposed the maximum penalty of ₱200,000.00 per day of violation upon the petitioners considering their dismal compliance with Section 8 of the PCWA.

Petitioners, thus, filed a motion for reconsideration.

After taking into consideration the contributory factors that leads to water pollution, and the actions undertaken by petitioners, I agree with the *ponencia* that they may be fined in the amount of ₱30,000.00 per day of violation.

Section 28 of the PCWA imposes a daily fine against those violators who fail to comply with the mandate of the law. Primarily, the law seeks to abate pollution of the country's water resources.<sup>1</sup> Understandably, pollutants that have already been mixed with our water resources cannot be easily separated therefrom. Certainly, the flow of water transcends beyond boundaries and its condition affects not only marine life but more so, the health of human beings. Nonetheless, imposing a severe penalty to the petitioners for bringing in pollutants to our water resources for which no readily ascertainable data could support a finding that their actions and omissions solely contributed to water pollution could possibly lead to unfairness and injustice.

Water pollution, especially along the water tributaries leading to Manila Bay, has long been a challenging task for every administration. This is because different establishments have already occupied a significant portion of certain areas in Metro Manila and other highly urbanized cities, with different approaches employed in water treatment and facilities that they use. Knowingly, or unknowingly, these establishments may have already contributed to the pollution in the country's water resources.

As mentioned in the *ponencia*, there are only two decided cases that has reached the Court that tackled water pollution. These are the cases of *Republic v. De la Merced & Sons, Inc.*<sup>2</sup> (*Dela Merced*) and *Summit One Condominium Corporation v. Pollution Adjudication Board*<sup>3</sup> (*Summit One*). In *Dela Merced*, it was found that the Guadalupe Commercial Complex has discharged its regulated water pollutants without a discharge permit, which has found its way to Pasig River.<sup>4</sup> After inspection, it was found that the samples collected from its facility failed to conform to the DENR Effluent Standards. In *Summit One*, it was found that the company's sewage treatment facility failed to comply with the DENR Effluent Standards, and that it caused pollution threats pouring out from the corporation's sewerage within its vicinity.

<sup>1</sup> See Philippine Clean Water Act of 2004, Section 2(a).

<sup>2</sup> 824 Phil. 87 (2018).

<sup>3</sup> 813 Phil. 178 (2017).

<sup>4</sup> *Supra* note 2, at 91.

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In effect, these cases recognized that there are establishments that has contributed to water pollution in the country. In *Dela Merced*, the polluted water found its way to Pasig River, a river that connects Laguna de Bay to Manila Bay. It is highly possible that the pollutants released at Pasig River may have reached either of these rivers. The same may also be said in the case of *Summit One* where the polluted water may have reached other bodies of water. As such, its is not simply the failure of petitioners to connect the sewage lines with the sewage system that causes water pollution.

Moreover, when the range of penalty is viewed in the context of a daily violation, several factors must be taken into consideration before a severe penalty may be imposed. This is especially so when water pollution has hounded the country since the industrial revolution. The cause of these pollutants cannot be attributed to a few entities alone, which, while may be contributory to water pollution, should not be severely penalized when certain factors that are beyond its control also contributes to water pollution. For sure, the daily activities of certain establishments, as in *Dela Merced* and *Summit One*, contribute in part to water pollution in the country, which will have a daily effect on the lives of human beings.

Considering that Section 28 of the PCWA provides a range of penalty from ₱10,000.00 to ₱200,000.00 per day of violation, discretion must be prudently exercised by taking into consideration the contributory factors to water pollution and the efforts undertaken by the petitioners.

In criminal cases, *United States. v. Lim Sing*<sup>5</sup> discussed the exercise of discretion in the imposition of a penalty where a prescribed range is provided by law, holding that the purpose and object of the statute as a whole must be taken into consideration, thus:

An exceptionally wide range of discretion is conferred upon the courts in the imposition of the penalties prescribed for violations of the penalized provisions of the Opium Law. But this discretion should not be exercised arbitrarily, and in imposing the prescribed penalties the courts should always have in mind the purpose and object of the statute as a whole. We think that a review of the legislation having for its object the regulation of the use and sale of opium, its derivatives and compounds, as such legislation has been adopted in this as well as in many foreign jurisdictions, justifies the conclusion that the primary object of the statute now in force in these Islands is the protection of the body politic from the evils which are believed to be incident to the widespread use of this habit forming drug other than as a medicine or for scientific purposes. With this object in view all unauthorized use of or traffic in the drug is penalized, the prescribed penalties to be imposed by the courts in their discretion within the very wide limits.<sup>6</sup>

<sup>5</sup> 23 Phil. 424 (1912).

<sup>6</sup> Id. at 427.

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In civil cases, it was discussed in *Ligutan v. Court of Appeals*<sup>7</sup> that the imposition of a penalty, as stipulated by the parties, must consider all the circumstances, including the manner of compliance, to wit:

A penalty clause, expressly recognized by law, is an accessory undertaking to assume greater liability on the part of an obligor in case of breach of an obligation. It functions to strengthen the coercive force of the obligation and to provide, in effect, for what could be the liquidated damages resulting from such a breach. The obligor would then be bound to pay the stipulated indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach. Although a court may not at liberty ignore the freedom of the parties to agree on such terms and conditions as they see fit that contravene neither law nor morals, good customs, public order or public policy, a stipulated penalty, nevertheless, may be equitably reduced by the courts if it is iniquitous or unconscionable or if the principal obligation has been partly or irregularly complied with.

The question of whether a penalty is reasonable or iniquitous can be partly subjective and partly objective. Its resolution would depend on such factors as, but not necessarily confined to, the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties, and the like, the application of which, by and large, is addressed to the sound discretion of the court. In *Rizal Commercial Banking Corp. vs. Court of Appeals*, just an example, the Court has tempered the penalty charges after taking into account the debtor's pitiful situation and its offer to settle the entire obligation with the creditor bank. The stipulated penalty might likewise be reduced when a partial or irregular performance is made by the debtor. The stipulated penalty might even be deleted such as when there has been substantial performance in good faith by the obligor, when the penalty clause itself suffers from fatal infirmity, or when exceptional circumstances so exist as to warrant it.<sup>8</sup>

In cases of an administrative fine, regulatory agencies are authorized to impose such fine in order to stress the need to comply with existing regulations, as demonstrated in *Civil Aeronautics Board v. Philippine Airlines Inc.*<sup>9</sup> as follows:

There is no doubt that the fine imposed on appellant PAL in CAB resolution 109(70) and 132(70) is that fine or civil penalty contemplated and mentioned in the foregoing provisions of Republic Act 776 and not a fine in the nature of criminal penalty as contemplated in the Revised Penal Code, because the "fine" in this case was imposed by the C.A.B. because of appellant PAL's violation of C.A.B. rules on flagstops without previous authority on "May 12, 1970 and on previous occasions", said C.A.B. explaining clearly in its resolution No. 132(70) that the "imposition of the fine is not so much on exacting penalty for the violation committed as the need to stress upon the air carriers to desist from wanton disregard of

<sup>7</sup> 427 Phil. 42 (2002).

<sup>8</sup> Id. at 51-52. (Citations omitted)

<sup>9</sup> 159-A Phil. 142 (1975).

existing rules, regulations or requirements of the government regulating agency x x x.” In other words, it is an administrative penalty which administrative officers are empowered to impose without criminal prosecution. Similar power has been granted to the Commissioners of Immigration and Customs for violation of the Immigration law and Tariff and Customs Code, respectively. (Sec. 44 of Commonwealth Act 613, Immigration Act of 1940, as amended by R.A. 118, 135, 144, 503, 749, 827 and 1901; Sec. 2307 of R.A. 1937, Tariff and Customs Code) The same power has been given to the Public Service Commission in its exercise of an effective administrative regulatory supervision and control over public service enterprises. (Section 21, Chapter IV, Commonwealth Act No. 146, as amended).<sup>10</sup>

In the aforementioned cases, the objective of the law, the power of regulation, and the manner of compliance were taken into consideration in the imposition of a penalty. Albeit applied in different types of cases, the principles adopted with respect to the imposition of the penalty may be adopted in *pari materia* to the instant case considering that a range of penalty is provided by the PCWA and discretion is given as to the penultimate penalty to be imposed.

With the objective of protecting, preserving and reviving the quality of our fresh, brackish and marine waters,<sup>11</sup> the efforts undertaken by petitioners to achieve this objective must be factored in, when imposing a penalty for non-compliance with the obligation imposed by Section 8 of the PCWA. Moreover, the main purpose of imposing these penalties is to exact compliance with the obligations laid down under the law to achieve its objective. *Apropos*, the steps undertaken by petitioners, as shown by their reported accomplishments, should be considered as partial compliance to the objective of the law, which should lead to a lesser penalty.

As mentioned in the *ponencia*, the DENR Secretary, in his October 7, 2009 Order, noted the actual efforts exerted by the petitioners, notable of which are their accomplishments as follows:

ACCOMPLISHMENTS AND PROPOSED PROJECTS OF  
MWSS:

Number of household sewer service connections increased from 118,769 to 151,248 from 1997 privatization to the present.

884,897 household served with sanitation services from 1997 privatization to April 2009.

x x x x

<sup>10</sup> Id. at 147-148.

<sup>11</sup> See Philippine Clean Water Act of 2004, Section 2(a).

## ACCOMPLISHMENTS OF MANILA WATER:

1. Manila Water currently operates thirty one (31) Sewage Treatment Plants (STP) which are capable on treating 85 million liters of wastewater per day
2. A total of 68,000 households and major commercial establishments now have access to full wastewater treatment.

x x x x

4. For areas not covered by and STP like San Juan, Manila Water provides emptying of septic tanks on a regular basis. This desludging program is carried out in coordination with barangays to ensure efficient desludging service to its customers. Manila Water currently has 90 desludging trucks. Since 1997, 455,413 households have benefitted from the desludging service. At present, Manila Water operates two (2) Septage Treatment Plants, which allow treatment of sludge siphoned from the septic tanks;

x x x x

## ACCOMPLISHMENTS OF MAYNILAD:

Maynilad's Wastewater Management Program in compliance with its contractual obligations under the CA includes the sanitation services to the water-served population in the City of Valenzuela. Of the 49,336 domestic customers in Valenzuela, Maynilad has offered sanitation services to 30,728 customers and desludged a total of 16,470 septic tanks since 1997;

Maynilad further explained that while the city of San Juan is not within its coverage area, Maynilad provides sanitation services to the portion of Quezon City under the West Zone. Of the 210,182 domestic customers in Quezon City, Maynilad offered sanitation services to 124,125 customers and desludged a total of 62,008 septic tanks;

x x x x

Maynilad stated that in compliance with the CA, Maynilad offers sanitation (desludging) services in the Cavite area. Of the 30,741 domestic customers in the Cavite area, Maynilad has offered sanitation services to 17,850 customers and desludged a total of 9,577 septic tanks in the Cavite area since 1997.

x x x x<sup>12</sup>

These accomplishments show petitioners' recognition of their obligation to provide sewerage facilities in their respective concession areas, and their willingness to comply with the directive of the law. On the part of MWSS, its creation was directed towards the proper operation and maintenance of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water and the proper operation and

<sup>12</sup> Ponencia, pp. 15-17.

maintenance of sewerage systems.<sup>13</sup> One of the powers granted to MWSS under Republic Act. No. 6234 includes the power to regulate the establishment and construction of waterworks and sewerage systems, thus:

**Section 3. Attributes, Powers and Functions.** The System shall have the following attributes, powers and functions:

x x x x

(g) To construct, maintain, and operate such sanitary sewerages as may be necessary for the proper sanitation and other uses of the cities and towns comprising the System;

(h) To fix periodically water rates and sewerage service fees as the System may deem just and equitable in accordance with the standards outlined in Section 12 of this Act;

x x x x

(o) To assist in the establishment, operation and maintenance of waterworks and sewerage systems within its jurisdiction under cooperative basis;

(p) To approve and regulate the establishment and construction of waterworks and sewerage systems in privately owned subdivisions within its jurisdiction;

x x x x

Towards this end, MWSS has entered into Concession Agreements with Maynilad and Manila Water, thereby delegating its functions to the private sector, and effectively performing the functions of a regulator. Nonetheless, being a regulator and a principal to the obligations it delegated to the water concessionaires, whatever actions undertaken by these concessionaires will necessarily be attributed as its act, being the principal. As such, whatever accomplishments Maynilad and Manila Water has achieved, may also be attributed to MWSS.

On the part of Maynilad, aside from the accomplishments recognized by the DENR Secretary in his October 7, 2009 Order, it bears noting that the parties do not dispute that Maynilad underwent corporate rehabilitation from 2003 to 2008.<sup>14</sup> Undeniably, from the time of the enactment of the PCWA in 2004 until the water concessionaires' compliance with the obligations imposed therein in the year 2009, Maynilad's coffers has to be carefully managed, lest it runs the risk of running out of business. It has been held that the purpose of rehabilitation proceedings is not only to enable the company to gain a new lease on life, but also to allow creditors to be paid their claims

<sup>13</sup> Republic Act No. 6234 (1971), Section 1.

<sup>14</sup> Motion for Reconsideration of Maynilad, p. 90.



from its earnings when so rehabilitated.<sup>15</sup> In the process, a Stay Order was issued on November 17, 2003.<sup>16</sup> This is a mechanism of suspension of all actions and claims against the distressed corporation upon the due appointment of a management committee or rehabilitation receiver.<sup>17</sup> Throughout the period of this Stay Order, it would not be prudent for Maynilad to spend its funds for the fulfillment of a subsequent obligation, which was not even in existence yet when it started the process of its corporate rehabilitation in 2003.

Notably, it was only on February 6, 2008 when Maynilad's corporate rehabilitation was terminated after the successful implementation of its Rehabilitation Plan.<sup>18</sup> From this period until May 2009, which was supposed to be the end of the 5-year period mandated by the PCWA, it would appear that Maynilad only had a period of 15 months within which to comply with its obligation of connecting sewage lines to available sewerage system. This equates to a 75% reduction in the 5-year period within which Maynilad has to comply with its obligation. Given the gargantuan task it had to accomplish under the PCWA, it would be nearly impossible for Maynilad to fully comply within the shorter period of 15 months. Nonetheless, despite the limited period of time, which became even more limited because of the rehabilitation proceedings it underwent, it was still able to partially perform its obligation, and is still complying with its obligation as mandated by the PCWA.

On the part of Manila Water, it has shown that in 2009, it was able to connect the sewer systems then available in 2004, to the available sewerage systems.<sup>19</sup> It then claims that such proves compliance with the obligation imposed by Section 8 of the PCWA as it only requires connection with the available sewerage systems and not create new sewerage systems. Nonetheless, it recognized that at the time, there remained 3% of customers that remained unconnected to the existing sewage lines, which includes customers who refused to connect to existing sewage lines, those establishments where connections are technically not feasible due to elevation and inaccessibility of structures, and those located in areas where sewerage systems have reached maximum capacity of wastewater load.<sup>20</sup>

With the data provided by Manila Water, it would appear to have complied with majority of its obligation under Section 8 of the PCWA. However, the law requires connection of the existing sewage line found in **all** subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial

<sup>15</sup> *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.*, 788 Phil. 355, 383 (2006).

<sup>16</sup> Motion for Reconsideration of Maynilad, p. 89.

<sup>17</sup> *De la Torre v. Primetown Property Group, Inc.*, 826 Phil. 153, 160 (2018). (Citation omitted)

<sup>18</sup> Motion for Reconsideration of Maynilad, p. 90.

<sup>19</sup> Motion for Reconsideration Manila Water, pp. 24-25.

<sup>20</sup> *Id.* at 25.

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complex and other similar establishments including households to available sewerage system. The effort made by Manila Water may be commendable at the time; however, it was duty bound to perform what the law requires, which is 100% compliance. Moreover, with the objective of abating water pollution, it cannot simply limit its obligation to merely connecting with available sewerage system, especially when the available sewerage system could no longer handle the wastewaters flowing therein.

It must be underscored that the PCWA seeks the abatement and control of pollution in our water resources. Infamous of which is the pollution in the Manila Bay, which has been a persistent problem that has hounded different administrations. The water tributaries leading to this body of water has been handled by Maynilad in west zone, and Manila Water in the east zone. Together with MWSS, these two concessionaires must work together to actualize the aspirations of the PCWA. They have been working on these obligations, and with the circumstances by which they were presented, a prudent course of action would be for majority of the funding of these institutions to be directed towards the fulfillment of their obligation.

With a 75% reduction in the period for which Maynilad must comply with its obligation, as brought about by the rehabilitation proceedings it underwent, and with Manila Water's 97% compliance with connecting sewers to the existing sewerage treatment in 2009, taken together with the accomplishments and continuous effort of these institutions to comply with their obligation under the law, it would be more in keeping with the principles of fairness and justice to reduce the amount of fine imposed upon them.

It is likewise not amiss to point out, as raised by Associate Justice Midas Marquez, that the enactment of R.A. No. 11600 and R.A. No. 11601, which both took effect on January 22, 2022, have effectively amended the obligations of petitioners Maynilad and Manila Water and their compliance period. Pertinently, Section 21 of R.A. No. 11600 pertaining to the franchise of Maynilad reads:

SEC. 21. Reportorial Requirement. – x x x x x x The grantee shall submit to the MWSS Regulatory Office a completion plan for the establishment and operation of water, sewerage and sanitation projects covering a period until 2037 which shall include periodic five (5)-year completion targets with the end goal of achieving one hundred percent (100%) water, sewerage and sanitation coverage by 2037. The grantee shall submit an annual progress report of its compliance with such targets to the MWSS Regulatory Office and to Congress. (Emphasis supplied.)

The same wordings can be found under Section 21 of R.A. No. 11601 pertaining to the franchise of Manila Water, thus:

SEC. 21. Reportorial Requirement. –

x x x x

The grantee shall submit to the MWSS Regulatory Office a completion plan for the establishment and operation of water, sewerage and sanitation projects covering a period until 2037 which shall include periodic five (5)-year completion targets with the end goal of achieving one hundred percent (100%) water and combined **sewerage and sanitation coverage by 2037**. The grantee shall submit an annual progress report of its compliance with such targets to the MWSS Regulatory Office and to Congress. (Emphasis supplied.)


Correlatively, Section 28 of both laws likewise provide:

SEC 28. Repealing Clause. – All laws, decrees, orders, resolution, instructions, rules or regulations, and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

While these laws may have extended the compliance period of Maynilad and Manila Water under the PCWA, their non-compliance to their obligations as imposed by the PCWA prior to the enactment of these laws does not excuse them from liability. If at all, these laws, taken together with their partial compliance and the surrounding circumstances, merits a lesser penalty.

Given the attendant circumstances and in order to immediately exact compliance with the obligations imposed by law, an imposition of a 15% of the maximum penalty would already suffice. Thus, I agree with the *ponencia* that petitioners MWSS, Maynilad and Manila Water may already be fined in the amount of ₱30,000.00 per day of violation.

  
JHOSEP V. LOPEZ  
Associate Justice

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MARIA LUISA M. SANTILLA  
Deputy Clerk of Court and  
Executive Officer  
OCC-En Banc, Supreme Court

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