



## Editorial

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### ***Philippines Regional Court Reiterates Constitutional Right to Environment: The Manila Bay case***

In *Oposa v Factoran*,<sup>1</sup> the Philippines Supreme Court gained international recognition for recognising that minors can, for themselves, for others of their generation and for succeeding generations, file a class suit. It declared also that the Philippines Constitution protects a right to the full enjoyment of a balanced and healthful ecology, despite the fact that this right is to be found under the Declaration of Principles and State Policies, and not under the Bill of Rights. Both of these principles have been reaffirmed in a recent case decided by a Regional Court in the Philippines.<sup>2</sup>

The plaintiffs known as 'Concerned Residents of Manila Bay', representing and joined by a number of plaintiffs including minors, made an application to the court for an order of mandamus against various government agencies. These included the Metropolitan Waterworks and Sewerage System (MWSS); the Local Water Utilities Administration (LWUA); the Department of Environment and Natural Resources (DENR); the Department of Education, Culture and Sports (DECS); the Department of Health (DOH); the Department of Agriculture/Bureau of Fisheries and Aquatic Resources (DA-BFAR); the Department of Public Works and Highways (DPWH); the Department of Budget and Management (DBM); Philippine Coast Guard and the PNP Maritime Group; Philippine Ports Authority (PPA); Metropolitan Manila Development Authority; all concerned Local Government Units and the Department of Interior and Local Government. Private parties also cited as defendants included septic and sludge companies and polluting corporations. Although the PPA attempted to challenge the standing of the plaintiffs, the court in previous proceedings had confirmed their standing, derived from the trust doctrine and intergenerational responsibility.

<sup>1</sup> 224 SCRA 792.

<sup>2</sup> Republic of the Philippines, Fourth Judicial Region, Regional Trial Court, Branch 20, Imus, Cavite 13 September 2002.

The essential questions to be tried were: whether or not the water quality of Manila Bay meets the standards set by law; whether or not ss. 17 and 20 of the Environmental Code relate only to the cleaning up of specific pollution incidents or cleaning up in general; and, assuming that s. 20 does apply to all cases of clean up, whether the judiciary can order the executive by way of mandamus to do such a thing.

Based on the evidence of the DENR it emerged that the water quality of Manila Bay was not suitable for primary contact like bathing, swimming and skin diving in view of the tremendous content of fecal coliforms. One of the major reasons for the increase in fecal coliforms is the absence of proper treatment of waste water at sewerage treatment plants. A Project Manager of MWSS tendered evidence to the court that she was managing the implementation of the Manila Second Sewerage and the Pasig River Rehabilitation Projects through two concessionaries, the Manila Water Company and the Maynilad Water Service, in coordination with other government agencies. These Projects were designed to reduce pollution in the Bay by cleaning existing sewerage systems, rehabilitating existing sewage pipes, and constructing waste water and septic treatment plants. However, at the time of trial neither of the projects had been implemented and were found by the court to be at the design or planning stage.

Addressing the first question, the court held that it was 'crystal clear' from the results of the bacteriological analyses, conducted by DENR over a period of three years, that the water pollution in Manila Bay far exceeded the allowable standard set by law. The court found that the defendant agencies are the government agencies primarily concerned and tasked with cleaning up and preserving Philippines' environmental waters. Failure or neglect on their part to do so constituted non-feasance. The court reiterated at this point the plaintiffs' clear right to a balanced and healthful ecology under the Constitution, and the agencies' duty to safeguard and protect that right.

As for the second question, the court found that s. 20 of the Environmental Code<sup>3</sup> requires government agencies to clean up all pollutants spilled or discharged in the water as fecal coliforms. The court refused to countenance argument by the defendants that the section refers only to specific pollution incidents.

The question whether or not the court could order a government agency by way of mandamus to clean up the pollution in Manila Bay, was answered in the

<sup>3</sup> Section 20 provides '*Clean-Up Operations*' - It shall be the responsibility of the polluter to contain, remove and clean up water pollution incidents at his own expense. In case of his failure to do so, the government agencies concerned shall undertake the containment, removal and clean-up operations and expenses incurred in said operations shall be charged against the persons and/or entities responsible for such pollution.'

affirmative. The court relied on a number of Supreme Court cases<sup>4</sup> to support its decision. Justice Tagle stated:

The modern trend is to involve the judiciary in the protection and preservation of the environment. The role of courts at present is to act as guardians of this and of future generations. They have trusteeship duties towards nature.

Justice Tagle relied on the opinion of Indian public interest lawyer, Mr M.C. Metha, who called on courts to redefine the existing concepts of law; broaden the horizon of substantive and procedural laws; create new laws; develop new strategies for extending the arms of justice to all sections of society; and give effect to an affirmative judicial relief system.<sup>5</sup>

The court held that it was fitting and proper for courts to step in to grant relief to affected parties by fashioning remedial measures. The plaintiffs' rights to a balanced and healthful ecology called forth the State's correlative duty to rehabilitate and upgrade Manila Bay. The court went on to say that coordinated, consolidated, concerted and harmonious action was urgently needed to arrest the fecal coliform threat, since water is the lifeline of the entire metropolis.

The defendant government agencies, with DENR as lead agency were ordered, within six months, to clean up and rehabilitate Manila Bay and restore its water to SB classification<sup>6</sup> to make it fit for swimming, skin-diving and other forms of contact recreation. In particular, the following orders were made:

- MWSS to install, operate and maintain adequate sewerage treatment facilities in strategic places under its jurisdiction and increase their capacities;
- LWUA to see to it that the water districts within its jurisdiction provide, construct and operate sewage treatment facilities for the proper disposal of waste;
- DENR, as the lead agency, to install, operate and maintain waste facilities to rid the bay of toxic and hazardous substances;
- PPA to prevent and also to treat the discharge of not only ship-generated waste but also of other solid and liquid wastes from docking vessels that contribute to the pollution of the bay;
- MMDA to establish, operate and maintain an adequate and appropriate sanitary landfill and/or solid waste and liquid disposal system, as well as other alternative garbage disposal systems such as the re-use or recycling of wastes;

4 *Tamano v Manglapus* 214 SCRA 567, *Angehangco, Jr v Ombudsman* 268 SCRA 744, *GMCR, Inc Smart Communication v Bell Telecommunications, Inc* 271 SCRA 790, and *Oposa v Factoran* 224 SCRA 792.

5 Justice Tagle referred to a paper delivered at the Symposium on the Judiciary and the Law of Sustainable Development (date not provided); see judgment at p. 11-12.

6 In SB Classification the level of fecal coliforms should not exceed 200mpn/100ml.

- DA-BAFR to revitalize the marine life in Manila Bay and restock its waters with indigenous fish and other aquatic animals;
- DBM to provide and set aside an adequate budget solely for the purpose of cleaning up and rehabilitating Manila Bay;
- DPWH to remove and demolish structures and other nuisances that obstruct the free flow of waters to the bay. DPWH was also ordered to remove debris like sunken vessels and other non-biodegradable garbage from the bay;
- DOH to closely supervise and monitor the operations of septic and sludge companies and require them to have proper facilities for treating and disposing of fecal sludge and sewage coming from septic tanks;
- DECS to educate people about the importance of preserving and protecting the environment; and
- Philippine Coast Guard and PNP Maritime Group to protect at all costs Manila Bay from all forms of illegal fishing.

No pronouncement was made as to damages and costs.

The Editors of the *Asia Pacific Journal of Environmental Law* wish to commend the Philippine Regional Court for its decision in this case. It confirms the important principles already enunciated by the Supreme Court of the Philippines in *Oposa v Factoran*. It also makes a significant contribution to the environmental rights jurisprudence which has been developed by courts in the Asian region, including the Indian and Pakistan Supreme Courts.

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