Republic of the Philippines
Supreme Court
Manila

EN BANC

MAYNILAD WATER SERVICES, INC.,
Petitioner,

-versus-

NATIONAL WATER AND RESOURCES BOARD, CENTER FOR POPULAR EMPOWERMENT, KONGRESO NG PAGKAKAISA NG MARALITANG LUNGSOD, KAPISANANG PANLIPUNAN NG COMMONWEALTH, QUEZON CITY, INC., CECIL D. PONCE, EFREN BOSTON, VICTORIA C. GUINTO, ERNESTO L. JAVIER, ANTONIO L. MAGANDI, MANUEL S. MORANTE, ROMY NACARIO, SR., PASARINO A. OCHOCO, FEDERICO V. ROBLES, and SALVADOR M. SARTING,
Respondents,

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METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM AND METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM REGULATORY OFFICE,
Petitioners,

G.R. No. 181764

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G.R. No. 187380

-versus-

NATIONAL WATER RESOURCES BOARD, CENTER FOR POPULAR EMPOWERMENT, KONGRESO NG PAGKAKAISA NG MARALITANG LUNGSOD, KAPISANANG PANLIPUNAN NG COMMONWEALTH, QUEZON CITY, INC., CECIL D. PONCE, EFREN BOSTON, VICTORIA C. GUINTO, ERNESTO L. JAVIER, ANTONIO L. MAGANDI, MANUEL S. MORANTE, ROMY NACARIO, SR., PASARINO A. OCHOCO, FEDERICO V. ROBLES, and SALVADOR M. SARTING,

Respondents,

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G.R. No. 207444

WATERWATCH COALITION, INC., REPRESENTED HEREIN BY RODRIGO G. GATMAITAN, JR., ALYANSA NG MAMAMAYANG NAGHIHIRAP INC. REPRESENTED BY EDUARDO F. LANDAYAN, NICANOR E. FAELDON, CRISTETO DINOPOL, JR., DR. RESTITUTO T. ENRIQUEZ, DR. NOWELL P. LETRONDO, ALDA E. GARADO, ALVIN "TADO" JIMENEZ, MICHAEL P. UNTALAN, SALVACION CORPIN, AND EDUARDO D. VERZOLA,

Petitioners,

-versus-

RAMON B. ALIKPALA, JR., IN HIS CAPACITY AS CHAIRPERSON OF THE BOARD OF TRUSTEES OF THE

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, GERARDO A.I. ESQUIVEL, IN HIS CAPACITY AS ADMINISTRATOR/VICE CHAIRPERSON OF THE METROPOLITAN WATERWORKS AND SEWERAGE STSTEM, ATTY. EMMANUEL L. CAPARAS, IN HIS CAPACITY AS CHIEF REGULATOR OF THE METROPOLITAN WATERWORK AND SEWERAGE SYSTEM REGULATORY OFFICE, AND IN HIS CAPACITY AS MEMBER OF THE BOARD OF TRUSTEES OF THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, ATTY. RAOUL C. CREENCIA, MA. CECILIA G. SORIANO, JOSE RAMON T. VILLARIN, AND BENJAMIN J. YAMBOA, IN THEIR CAPACITIES AS MEMBERS OF THE BOARD OF TRUSTEES OF THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, MANILA WATER COMPANY, INC., AND MAYNILAD WATER SYSTEMS, INC.

Respondents,

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WATER FOR ALL REFUND MOVEMENT (WARM), REPRESENTED BY ITS PRESIDENT, ROBERTO B. JAVELLANA JR., AND MARCELO L. TECSON

Petitioners,

x----------x

G.R. No. 208207

-versus-

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, RAMON B. ALIKPALA, JR., IN HIS CAPACITY AS CHAIRPERSON OF THE BOARD OF TRUSTEES OF THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, ATTY. RAOUL C. CREENCIA, MA. CECILIA G. SORIANO, JOSE RAMON T. VILLARIN, AND BENJAMIN J. YAMBOA, NATHANIEL C. SANTOS, ZOILO L. ANDIN, JR. AND LEONOR CLEOFAS, IN THEIR CAPACITIES AS MEMBERS OF THE BOARD OF TRUSTEES OF THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, GERARDO A.I. ESQUIVEL, IN HIS CAPACITY AS ADMINISTRATOR/ VICE CHAIRPERSON OF THE METROPOLITAN WATERWORKS AND SEWERAGE STSTEM, METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM REGULATORY OFFICE, ATTY. EMMANUEL L. CAPARAS, IN HIS CAPACITIES AS CHIEF REGULATOR OF THE METROPOLITAN WATERWORK AND SEWERAGE SYSTEM REGULATORY OFFICE AND AS MEMBER OF THE BOARD OF TRUSTEES OF THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, MANILA WATER COMPANY, INC., AND MAYNILAD WATER SYSTEMS,

INC.

Respondents,

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VIRGINIA S. JAVIER, LUNINGNING PELEA, CARIDAD P. DE GUZMAN, VIRGIE S. PAQUIBOT, JULITA B. NACUA, ROBELLA A. ORAZA, CELSO L. MANGAYA, JOSEPHINE I. CHANCHICO, IRENE M. ARRIESGADO, MARICEL OBLIOPAS, PEDRO B. SABIO, JR. NECITAS D. CABERTE, ANITA C. LIPIO, LILIBETH A. LAGNASON, IRENE ABARCA, ROSITA A. NIDERA, LAILANI B. LAGUADIA, FORTUNATA E. NIMO, MARCELO D. TUASOC, MARCELINA SIA, CATALINA ANGELES, MAURA R. PANGANIBAN, TERESITA C PANGANIBAN, FRISCO F. BASUL, ERLINDA P. MACATUNO, MARIANO S. MATA, MINA MANIQUIZ, LOURDES C. RUBIO, REPRESENTED HEREIN BY EUFEMIA RUBIO, GENALEN D. TUASOC, JOSEFA R. ULEP, RICARDO P. RIVERA, ARNEL H. MAQUITISTA, DELIA L. GARDUQUE, GEMMA D. PENAÑO, SALVACION L. APAZ, MARINA BERNAL, TERESITA PATRIARCA, ENGRACIA R. COLON, ANNA MARIE A. DORIA, MELANIE GOSGOLAN, MA. DELBORA S. CANALES, RODOLFO MERINO, SR., MERLE L. EMBOLTORIO, LYDIA L. DOLLENTE, CRISTITA N. CONCHA, EDNA A. BALTONADO, FELY B. ROMANTICO, FE ORIAS, GRACITA MARCOS, ESTEBAN B. VERULA, PATRICIA V. MONTERO, VANESSA A. BUSTERO, NATIVIDAD C.

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G.R. No. 210147

PRINCILLO, ROSALINDA C. LAHER, NENITA FERNANDEZ, JOEL C. APOSTOL, RUBEN DACANAY, MA. ELIZABETH FERNANDEZ, RONNIE V. FERNANDEZ, HELEN GRACE N. CALONIA, MARIBETH B. VISTA, RAYMUNDO B. DE SUR, DENNIS M. ARIESGA, BERNARDO S. REGINIO, JOSEFA A. MAGNO, NELLY T. CONNING, AZUCENA TROGO, ELESIO B. DIVINO, REYNALDO A. BATULA, RENDIE DIEGON, MARISSA RUIVIVAR, LORENA MAGANGO, ELSA R. LARA, PERFECTO N. VERGARA, VIRGINIA OBSIOMA, DOLORES O. SIMBILLA, ANASTACIA D. NAGAP, LEAH MARIE JANE SAITO, ROBERTO R. CHU, ALMA MONTOYA, JAVIER R. MALABANA, ANTONIO B. VALERIO, FELIPE I. SANTAMARIA, RAMONCHITO E. GRIMALDO, IMELDA COSME BAUSTISTA, GINA NADAL, ERLINDA S. DELA CRUZ, LEOPOLDO RIOVEROS, NEPOMOCENO BELEN, ARCERNIA DIPASUPIL, REPRESENTED BY CHERRY SERRONA DERRAMAS, EDWIN BALDEVIA VERGARA, APOLONIA RAYMUNDO KISAJON, FELEX M. ANGELES, REPRESENTED BY GENOVEVA LAMSEN ANGELES, EDNA B. RESTOR, GERLIE W. JAMANDRON, ROSARIO R. GLIPONEO, ELVA R. GLIPONEO, LUZ B. AMIDAO, ARMANDO ASTOR, REPRESENTED BY ALICIA YU ASTOR, JESSIE BOCO, REPRESENTED BY HERMENIGILDA L. BOCO, JOEL DOANE GOZUM, CARMELITA LABANDA, AIDA ALARCON,

DOMINADOR J. GONZAGA, ESTELA DE JESUS, SHIRLEY Y. PAGUIO, BENJIE V. ACRANEDA, SEVERINO ARABIT BOLANTE, RENE M. TORRECAMPO, ROSY D. VITANCUR, NELDA A. YORDAN, EDELINA A. PARIN, MARINA D. PAPA, GUILLERMO L. PAPA, JURITA R. CARLOS, RAFAEL RAYMUNDO, BRIAN MENDOZA, JOSE B. PAGKALIWANGAN, LERMA D. GUMBA, MARCELINA S. FECHALIN, REGINA JOY TRANCE, ELENITA F. JONOHAN, ARTURO QUINIO, MYRNA CAPARAZ, LOLITA A. ADRIANO, EVA M. BARRERA, BERNADETH DOSOL, ERLINDAN BRINGAS, MA. TERESA M. CAIRME, LEONIDA DOSOL, REMY WALSIYEN, ALICE E. MOJICA, CLARIZA I. BAUTISTA, JULIETA T. DE LEON, JULIETA CAIRME, MIRIAM A. PAPA, FRANCY E. SAYSON, VIRGILIO L. PILAPIL, RAMON C. VERNIZ, ROBERTO G. PERMEL, AND ELEVADO YOLANDA, ON THEIR OWN BEHALF AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Petitioners,

-versus-

THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM REGULATORY OFFICE, MANILA WATER COMPANY, INC., AND MAYNILAD WATER SYSTEMS, INC.,

Respondents,

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ABAKADA-GURO PARTY LIST, REPRESENTED HEREIN BY ATTY. FLORANTE B. LEGASPI, JR.,

Petitioner,

-versus-

THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM REGULATORY OFFICE, MANILA WATER COMPANY, INC., AND MAYNILAD WATER SYSTEMS, INC.,

Respondents,

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G.R. No. 213227

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NERI COLMENARES AND CARLOS ISAGANI ZARATE, REPRESENTATIVES OF BAYAN MUNA PARTY-LIST,

Petitioners,

-versus-

HON. CESAR V. PURISIMA, IN HIS CAPACITY AS SECRETARY OF FINANCE, METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS), GERARDO A.I. ESQUIVEL, IN HIS CAPACITY AS THE ADMINISTRATOR AND ACTING CHAIRMAN OF THE MWSS, JOEL YU, IN HIS CAPACITY AS THE CHIEF REGULATOR OF THE MWSS REGULATORY OFFICE (MWSS-RO), MANILA WATER COMPANY, INC.

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G.R. No. 219362

(MWCI), MAYNILAD WATER SERVICES, INC. (MWSI), AND PRES. BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC,
Respondents,

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METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM,
Petitioners,

-versus-

MAYNILAD WATER SERVICES, INC.,
Respondent.

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x----------x

G.R. No. 239938

Present:

GESMUNDO, *CJ*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA*,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO**, and
MARQUEZ, *JJ.*

Promulgated:

December 7, 2021

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DECISION

LEONEN, *J.*:

Providing the public with clean and reasonably priced water is a business imbued with public interest. It is a public service, and operating it, whether under a legislative franchise or a contract, vests the operator the status of a public utility. Consequently, concessionaires Maynilad Water Services, Inc. (Maynilad) and Manila Water Company, Inc. (Manila Water) are water utilities subject to the 12% rate of return cap under Republic Act No. 6234.[1]

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* No part.
** On official leave
[1] Republic Act No. 6234 (1971), sec. 12 provides:

These are consolidated Petitions, some under Rule 45 of the Rules of Court, others, under Rule 65, but all raising a common issue: Whether Maynilad and Manila Water are public utilities whose profits are subject to the 12% rate of return cap under Republic Act No. 6234 and are prohibited from treating corporate income taxes as business expenditures as ruled in *Republic v. MERALCO* (*MERALCO*).[2]

In G.R. Nos. 181764 and 187380, Maynilad questions the National Water Resources Board's exercise of jurisdiction to review Resolution No. 04-014-CA of the Metropolitan Waterworks and Sewerage System Regulatory Office. Maynilad contends that it is not a public utility whose rates may be reviewed by the National Water Resources Board.

In G.R. Nos. 207444, 208207, 210147, and 213227, petitioners assail the legality of the Concession Agreements[3] respectively entered into by the Metropolitan Waterworks and Sewerage System with Maynilad, on the one hand, and Manila Water, on the other.

In G.R. No. 219362, petitioners seek to void the arbitration clause in the concession agreements. They mainly argue that the arbitration of disputes between the Metropolitan Waterworks and Sewerage System and the concessionaires removes governmental oversight over water pricing, a governmental function inextricably linked to public welfare.

Finally, in G.R. No. 239938, the Metropolitan Waterworks and Sewerage System assails the Court of Appeals Decision[4] affirming the confirmation of the arbitral award[5] issued by the Appeals Panel in Arbitration Case No. UNC 141/CYK. It argues that the award's implementation is

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SECTION 12. *Review of Rates by the Public Service Commission.* The rates and fees fixed by the Board of Trustees for the System and by the local governments for the local systems shall be of such magnitude that the System's rate of net return shall not exceed twelve per centum (12%), on a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital. Such rates and fees shall be effective and enforceable fifteen (15) days after publication in a newspaper of general circulation within the territory defined in Section 2 (c) of this Act. The Public Service Commission shall have exclusive original jurisdiction over all cases contesting said rates or fees. Any complaint against such rates or fees shall be filed with the Public Service Commission within thirty (30) days after the effectivity of such rates, but the filing of such complaint or action shall not stay the effectivity of said rates or fees. The Public Service Commission shall verify the rate base, and the rate of return computed therefrom, in accordance with the standards above outlined. The Public Service Commission shall finish, within sixty (60) calendar days, any and all proceedings necessary and/or incidental to the case, and shall render its findings or decisions thereon within thirty (30) calendar days after said case is submitted for decision.

In cases where the decision is against the fixed rates or fees, excess payments shall be reimbursed and/or credited to future payments, in the discretion of the Commission.

2 440 Phil. 389 (2002) [Per J. Puno, Third Division].

3 *Rollo* (G.R. No. 207444), pp. 78–155, 303–376.

4 *Rollo* (G.R. No. 239938), pp. 64–75. The May 30, 2018 Decision was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Remedios A. Salazar-Fernando and Zenaida T. Galapate-Laguilles of the Second Division of Court of Appeals, Manila.

5 *Rollo* (G.R. No. 239938), pp. 78–190.

violative of public policy.

Created in 1971, the Metropolitan Waterworks and Sewerage System is a government corporation with jurisdiction, supervision, and control over all waterworks and sewerage systems in Metro Manila and the Provinces of Rizal and Cavite.[6] It exercises its powers and functions through its board of trustees.[7]

Among its powers is to periodically fix water rates and sewerage service fees as it may deem just and equitable.[8] Specifically, the Metropolitan Waterworks and Sewerage System is allowed a rate of net return not exceeding 12% of a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital.

In 1995, the National Water Crisis Act[9] was passed, with the privatization of state-run water facilities provided as a possible measure to address the national water crisis.[10] Accordingly, then President Fidel V. Ramos issued Executive Order No. 286,[11] revamping the organizational structure of the Metropolitan Waterworks and Sewerage System. Executive Order No. 311[12] was also issued, encouraging private sector participation in the operations and facilities of the Metropolitan Waterworks and Sewerage System. The modes of private sector participation enumerated in the Executive Order are the following, namely, franchising, concession, management, or other arrangements; privatization; contracts for projects to be implemented under Built-Operate Transfer; and/or related schemes for the financing, construction, repair, rehabilitation, improvement, and operation of water facilities and projects related to consumers.

The government proceeded to bid out the waterworks and sewerage

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6 Republic Act No. 6234 (1971), sec. 2(c).

7 Republic Act No. 6234 (1971), sec. 4.

8 Republic Act No. 6234 (1971), sec. 12 provides:
SECTION 12. *Review of Rates by the Public Service Commission.* The rates and fees fixed by the Board of Trustees for the System and by the local governments for the local systems shall be of such magnitude that the System's rate of net return shall not exceed twelve per centum (12%), on a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital. Such rates and fees shall be effective and enforceable fifteen (15) days after publication in a newspaper of general circulation within the territory defined in Section 2 (c) of this Act. The Public Service Commission shall have exclusive original jurisdiction over all cases contesting said rates or fees. Any complaint against such rates or fees shall be filed with the Public Service Commission within thirty (30) days after the effectivity of such rates, but the filing of such complaint or action shall not stay the effectivity of said rates or fees. The Public Service Commission shall verify the rate base, and the rate of return computed therefrom, in accordance with the standards above outlined. The Public Service Commission shall finish, within sixty (60) calendar days, any and all proceedings necessary and/or incidental to the case, and shall render its findings or decisions thereon within thirty (30) calendar days after said case is submitted for decision.
In cases where the decision is against the fixed rates or fees, excess payments shall be reimbursed and/or credited to future payments, in the discretion of the Commission.

9 Republic Act No. 8041 (1995).

10 Republic Act No. 8041 (1995), sec. 2

11 Executive Order No. 286 (1995).

12 Executive Order No. 311 (1996).

operations in Metro Manila, dividing the area into two. The Service Area East[13] was awarded to Manila Water while the Service Area West[14] was awarded to Maynilad. Concession Agreements[15] were then entered into by Manila Water and Maynilad with Metropolitan Waterworks and Sewerage System on February 21, 1997,[16] with each of the concessions having a term of 25 years.[17]

Generally, the Concession Agreements provide for the rights and obligations of the parties under the concession, the mechanisms for setting the rates chargeable to water consumers, and their chosen process of dispute resolution. They both define the grant of concession to Manila Water and Maynilad in Section 2.1:

> ARTICLE 2. APPOINTMENT
>
> 2.1 Grant of Concession
>
> On the terms and subject to the conditions set forth herein, MWSS hereby grants to the Concessionaire, as contractor to perform certain functions and as agent for the exercise of certain rights and powers under the Charter, the sole right to manage, operate, repair, decommission and refurbish the Facilities in the Service Area, including the right to bill and collect for water and sewerage services supplied in the Service Area (the "Concession"). The Concessionaire shall perform its functions and exercise its rights under this Agreement directly or, in respect of functions and rights delegated to the Joint Venture, through the Joint Venture. The rights and benefits of the Concessionaire under this Agreement shall be deemed to apply with equal force to the Joint Venture to the extent that the Joint Venture is performing functions delegated to it under this Agreement.[18]

In exchange for the exclusive right to operate the waterworks and sewerage operations in the East and West Service Areas, Manila Water and Maynilad shall pay the Metropolitan Waterworks and Sewerage System "concession fees," defined in Section 6.4 of the Concession Agreements. In turn, Manila Water and Maynilad may bill water consumers "standard rates," which, under the Concession Agreements, are subject to the 12% limit on the rate of return provided in Section 12 of Republic Act No. 6234.

Article 9.1 of the Concession Agreements states:

> ARTICLE 9. RATES AND CONNECTION CHARGES

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[13] The Service Area East covers certain parts of Quezon City, Manila, and Makati, as well as Mandaluyong, Marikina, Pasig, San Juan, Taguig, the Municipality of Pateros, and the Province of Rizal.

[14] The Service Area West covers certain areas of Makati, Manila, and Quezon City, as well as Caloocan, Las Piñas, Muntinlupa, Parañaque, Pasay, Valenzuela, the then Municipalities of Navotas and Malabon, and the Province of Cavite.

[15] *Rollo* (G.R. No. 207444), pp. 78–155, 303–376.

[16] Id. at 90, 304.

[17] Id. at 132, 351.

[18] Id. at 98, 313–314.

9.1. Standard Rates/[Currency Exchange Rate Adjustment] (CERA) Fee

Subject to the limitation of Section 12 of the Charter, Standard Rates may be adjusted from time to time in accordance with the rate adjustment provisions set forth in Sections 9.2, 9.3 and 9.4 below. In the event that the Standard Rates chargeable under this Agreement during any period would exceed the limitation of Section 12 of the Charter applicable to that period, the Charter limitation shall be observed but the Regulatory Office shall treat the excess amount (and interest accrued thereon at the Appropriate Discount Rate) as an Expiration Payment; provided, however, that the Concessionaire may agree to forgo such Expiration Payment in exchange for some other benefit, such as an adjustment to one or more of the coverage targets, that the Regulatory Office may at the time offer to the Concessionaire. Without prejudice to the obligation of MWSS to pay any such Expiration Payment on the Expiration Date, it is the intention of the MWSS, should it choose to solicit bids from private parties for the right to operate the system following the Expiration Date, to obtain a lump-sum cash payment from such parties as part of the consideration for the awarding of such rights and to fund any Expiration Payment required by this Section from the proceeds of such cash payment.

The Concessionaire may charge Customers a [Currency Exchange Rate Adjustment] payment of one Pesos per cubic meter of water consumed above the Standard Rates. Although [Currency Exchange Rate Adjustment] has historically been used by MWSS to adjust for exchange rate movements, that function will be performed through the operation of Section 9.3.1 (vi) of this Agreement.[19]

The standard rates are revised annually, subject to the overall Rates Adjustment Limit defined under Section 9.2.1 of the Concession Agreement. Certain unforeseen events[20] may likewise lead to extraordinary price adjustments to be incorporated in computing the Rates Adjustment Limit.

Under the Concession Agreements, the base from which the net rate of return is applied shall be recomputed every five years beginning 1997. This recomputation, termed "rate rebasing" in the Concession Agreements, is governed by Section 9.3.4 (for Manila Water) and Section 9.4 (for Maynilad) on the General Rates Setting Policy/Rate Rebasing Determination. Essentially, the provision defines the maximum rates chargeable to water consumers and enumerates the items that Manila Water and Maynilad may recover by way of tariff, such as operating, capital maintenance, and investment expenditures efficiently and prudently incurred, Philippine business taxes, and payment corresponding to debt service on the loans and concessionaires loans incurred to finance such expenditures. The provision adds that Manila Water and Maynilad are allowed to earn an "appropriate discount rate" or a rate of return on these items of expenditure during the remaining life of the concession.

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19 Id. at 125, 343–344

20 Id. at 129, 347.

9.3.4 General Rates Setting Policy/Rate Rebasing Determination

The maximum rates chargeable by the Concessionaire for water and sewage services hereunder applicable to the period through the second Rate Rebasing Date (subject to interim adjustments as described in this Article 9) are set out in Schedule 5 to this Agreement. It is the intention of the parties that, from and after the second Rate Rebasing Date, the rates for water and sewerage services provided by the Concessionaire shall be set at a level that will permit the Concessionaire to recover over the 25-year term of the Concession (net of any grants from third parties and any possible Expiration Payment) operating, capital maintenance and investment expenditures efficiently and prudently incurred, Philippine business taxes and payments corresponding to debt service on the MWSS Loans and Concessionaire Loans incurred to finance such expenditures, and to earn a rate of return (referred to herein as the "Appropriate Discount Rate") on these expenditures for the remaining term of the Concession in line with the rates of return being allowed from time to time to operators of long-term infrastructure concession agreements in other countries having a credit standing similar to that of the Philippines. The parties further agree that the maximum rates chargeable for such water and sewerage services shall be subject to general adjustment at five-year intervals commencing on the second Rate Rebasing Date; provided that the Regulatory Office may exercise its discretion to make a general adjustment of such rates on the First Rate Rebasing Date, but, if it does not do so, the Regulatory Office shall implement the assumptions set out in paragraph 2 of Exhibit E on the fifth anniversary of the Commencement Date. It is understood that the determination of the appropriate rate of return will be made separately at the time of each generalized rate rebasing.

It is also the intention of the parties that rates be set in such a way as to provide appropriate efficiency incentives to the Concessionaire, with a view toward benefiting both the Customers and the Concessionaire.

The Regulatory Office shall determine the Rebasing Adjustment to be used for the purposes of calculating the Rates Limit for each of the five Charging Years of each Rebasing Period, in accordance with the provisions set forth below.[21]

The rates proposed by Manila Water and Maynilad are reviewed and the extraordinary price adjustments and rate rebasing adjustments determined by the Metropolitan Waterworks and Sewerage System Regulatory Office (MWSS Regulatory Office), a five-person[22] committee established under the jurisdiction of the board of trustees of the Metropolitan Waterworks and Sewerage System.[23] In case of dispute, Metropolitan Waterworks and Sewerage System and the concessionaires endeavored to first resort to mutual consultation and negotiation, failing which, they shall submit the dispute to arbitration before an appeals panel whose decisions shall be final and binding upon the parties.[24]

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21 Id. at 132, 351–352.
22 Id. at 210.
23 Id.
24 Id. at 145, 367.

ARTICLE 12. DISPUTE RESOLUTION

12.1 Consultation

The parties hereto agree to use reasonable efforts to resolve any disagreements or disputes concerning the interpretation or implementation of this Concession Agreement through mutual consultation and negotiation.

12.2 Arbitration

All disagreements, disputes, controversies or claims arising out of or relating to this Agreement or the interpretation hereof or any arrangements relating hereto or contemplated herein or the breach, termination or invalidity hereof (including all decisions by the Regulatory Office with respect to the Concession) which cannot be resolved through consultation and negotiation among the parties hereto shall be finally settled by an arbitration proceedings in accordance with the arbitration rules of the United Nations Commission on International Trade Law as in effect on the dates of this Agreement (the "Rules"), except insofar as the Rules conflict with the provisions of this Agreement.

. . . .

12.5 Waiver of Right to Appeal

Any decision or award of the Appeals Panel shall be final and binding upon the parties hereto. To the maximum extent permitted by applicable law, each party hereby waives any right to seek any interlocutory or other relief from any judicial or regulatory body, or to appeal or seek the review of an Appeals Panel award by any court, regulatory body or other tribunal. Each of the parties hereto agrees that an award of the Appeals Panel may be enforced against it or its assets wherever they may be found and that judgment upon such award may be entered in any court having jurisdiction thereof. Each such party hereby waives and agrees not or plead any immunity (whether on the basis of sovereignty or otherwise) to which such party or its assets might otherwise be entitled in connection with any such enforcement proceeding.[25]

In separate Letters of Undertaking,[26] the Republic acknowledged and approved the execution of the Concession Agreements, guaranteeing the compliance by Metropolitan Waterworks and Sewerage System of its obligations.

The first-rate rebasing exercise was conducted in 2002. During this year, the corporate income taxes paid by Manila Water and Maynilad were considered "Philippine business taxes," hence, part of operating expenses that Manila Water and Maynilad may recover from consumers and from which they may recover an appropriate discount rate.[27]

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25 Id. at 142–145, 364–367.
26 Id. at 845, 3807
27 Id. at 3625, 3818–3819.

On November 15, 2002, however, this Court promulgated *MERALCO*[28], where it held that public utilities are prohibited from including income taxes as operating expense for purposes of computing the rates chargeable to consumers:

> . . .*[I]ncome tax should not be included in the computation of operating expenses of a public utility.* Income tax paid by a public utility is inconsistent with the nature of operating expenses. In general, operating expenses are those which are reasonably incurred in connection with business operations to yield revenue or income. They are items of expenses which contribute or are attributable to the production of income or revenue. . . . [O]perating expenses "should be a requisite of or necessary in the operation of a utility, recurring, and that it redounds to the service or benefit of customers.
>
> Income tax, it should be stressed, is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income. In exchange for the protection extended by the State to the taxpayer, the government collects taxes as a source of revenue to finance its activities. Clearly, by its nature, income tax payments of a public utility are not expenses which contribute to or are incurred in connection with the production of profit of a public utility. Income tax should be borne by the taxpayer alone as they are payments made in exchange for benefits received by the taxpayer from the State. No benefit is derived by the customers of a public utility for the taxes paid by such entity and no direct contribution is made by the payment of income tax to the operation of a public utility for purposes of generating revenue or profit. *Accordingly, the burden of paying income tax should be Meralco's alone and should not be shifted to the consumers by including the same in the computation of its operating expenses.*
>
> The principle behind the inclusion of operating expenses in the determination of a just and reasonable rate is to allow the public utility to recoup the reasonable amount of expenses it has incurred in connection with the services it provides. It does not give the public utility the license to indiscriminately charge any and all types of expenses incurred without regard to the nature thereof, *i.e.*, whether or not the expense is attributable to the production of services by the public utility. To charge consumers for expenses incurred by a public utility which are not related to the service or benefit derived by the customers from the public utility which are not related to the service or benefit derived by the customers from the public utility is unjustified and inequitable.[29] (Emphasis supplied)

This Decision was affirmed in a Resolution.[30]

Thereafter, the Commission on Audit submitted audit reports to the Metropolitan Waterworks and Sewerage System on the operations of Manila Water and Maynilad. It found that from January 1 to December 31, 1999,

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28 440 Phil. 389 (2002) [Per J. Puno, Third Division].

29 Id. at 401–402.

30 *See Republic v. MERALCO*, 449 Phil. 118 (2003) [Per J. Puno, Third Division].

Manila Water's rate of return was 40.92%, while that of Maynilad was 7.71%.[31] In determining the concessionaires' invested capital, it considered "only those properties acquired, owned, and actually used in the operation of the concessionaires[.]"

On March 31, 2004, the Metropolitan Waterworks and Sewerage System Regulatory Office issued a Notice of Extraordinary Price Adjustment to Manila Water and Maynilad. It cited as basis *MERALCO* as a "change in law, government regulation, rule or order, or interpretation that affects or is likely to affect the Cash Flow of the Concessionaire."[32] This meant that income taxes will thereafter be excluded in computing the rate chargeable by Manila Water and Maynilad.

Manila Water and Maynilad disputed the Notice of Extraordinary Price Adjustment, contending that they are not public utilities and, therefore, *MERALCO* does not apply to them.

On June 2, 2004, the Metropolitan Waterworks and Sewerage System Board of Trustees directed the MWSS Regulatory Office, Manila Water, and Maynilad to create a technical working group to study Manila Water's and Maynilad's objections and determine whether Manila Water and Maynilad are public utilities.[33]

In its Memorandum, the technical working group concluded that the intent of the parties in entering into the Concession Agreement was for the Metropolitan Waterworks and Sewerage System to remain the public utility and for Manila Water and Maynilad to be its agents and contractors.[34] In making this conclusion, it relied on Article 2.1 of the Concession Agreement on the "grant of concession" and concluded that the *MERALCO* ruling does not apply to concessionaires Manila Water and Maynilad.[35]

In a Resolution,[36] the Metropolitan Waterworks and Sewerage System Regulatory Office adopted the findings and recommendations of the technical working group. This was later approved by its board of trustees.

Accordingly, Manila Water and Maynilad were again allowed to recover corporate income taxes by way of tariff for the second-rate rebasing exercise in 2007.

In the meantime, a petition was filed before this Court to assail the

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31 *Rollo* (G.R. No. 207444) Vol. VII, p. 3627.
32 Id. at 3627–3628.
33 Id. at 3628, 3819–3820.
34 Id. at 3629, 3819–3820.
35 Id. at 3629–3631, 3820.
36 Id. at 3631, 3820.

Resolutions by the Regulatory Office and the board of trustees of the Metropolitan Waterworks and Sewerage System. The petitioners contended that the finding that Manila Water and Maynilad are mere agents of the Metropolitan Waterworks and Sewerage System effectively excluded the rates set by such concessionaires from the limitation in Section 12 of Republic Act No. 6234, thereby "increasing the rates that can be charged against [petitioners] and the subscribers to the water service provided by the concessionaires."[37]

In a Decision,[38] this Court dismissed the petition for lack of merit. It held that the petitioner failed to exhaust its plain and speedy remedy before the National Water Resources Board in contesting the rates.[39] It also cited the failure of the petitioner to implead Manila Water and Maynilad as indispensable parties[40] and the fact that the petition raised question of fact, i.e., whether the concessionaires are public utilities.[41]

In 2009, Metropolitan Waterworks and Sewerage System and the concessionaires respectively entered into Memorandum of Agreements, extending their Concession Agreements for an additional 15 years.[42] The Republic, through the Secretary of Finance, issued second Letters of Undertaking,[43] wherein it approved the extension and guaranteed the compliance of Metropolitan Waterworks and Sewerage System with its obligations.

For the third-rate rebasing exercise in 2013, Manila Water petitioned for a tariff increase of ₱5.83 per cubic meter of water or an upward adjustment of 22.79%, effective for charging years 2013 to 2017.

On its part, Maynilad prayed for a rate increase of ₱8.58 per cubic meter or an upward adjustment of 28.35%.

In separate Resolutions, the Regulatory Office of the Metropolitan Waterworks and Sewerage System recommended the denial of the petitions for upward adjustment. For Manila Water,[44] it recommended a *negative* adjustment of 29.47% of its average basic charge of ₱24.57 per cubic meter or a negative 5.894% adjustment for the charging years 2013 to 2017. As for Maynilad,[45] it recommended a *negative* adjustment of 4.82% of its average basic charge of ₱30.28 per cubic meter or a negative 0.964% adjustment for

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37 Id. at 577.
38 *Freedom from Debt Coalition v. Metropolitan Waterworks and Sewerage System*, 564 Phil. 566 (2007) [Per J. Sandoval-Gutierrez, En Banc].
39 *Rollo* (G.R. No. 207444) Vol. VII, pp. 577–578.
40 Id. at 578.
41 Id. at 578–580.
42 *Rollo* (G.R. No. 207444) Vol. II, pp. 880-882; *Rollo* (G.R. No. 219362) Vol. III, p. 1596.
43 Id.
44 *Rollo* (G.R. No. 219362) Vol. I, pp. 405–442.
45 Id. at 363–397.

the charging years 2013 to 2017.

In making its recommendations, the Regulatory Office took the position that Manila Water and Maynilad are prohibited from including their corporate income taxes as expenditures recoverable from water consumers. First, it held that the *MERALCO* applies equally to the public utility, the Metropolitan Waterworks and Sewerage System, and the operators of the public utility, the Manila Water and Maynilad. Second, it held that income taxes are not "Philippine business taxes" contemplated under Section 9.4 of the Concession Agreements.

The recommendations of the Regulatory Office were approved by the board of trustees for Manila Water[46] and for Maynilad.[47]

Objecting to the denial of their petitions, Manila Water and Maynilad respectively submitted the dispute to arbitration pursuant to Article 12 of the Concession Agreements. In the arbitration instituted by Manila Water, the Appeals Panel ruled that corporate income tax was not an allowable expenditure.[48] Meanwhile, in that instituted by Maynilad, it was held that Maynilad may recover its corporate income tax by way of tariff.[49]

In view of the refusal of Metropolitan Waterworks and Sewerage System to implement the final award in its favor, Maynilad wrote the Republic of the Philippines (Republic), demanding compensation for the revenue losses allegedly caused by the delay in the implementation of the adjusted rate for the fourth-rate rebasing period.

With no response from the Republic, Maynilad served a Notice of Arbitration to the Republic pursuant to the terms of the Undertaking Letter.[50]

The cases to first reach this Court were docketed as G.R. Nos. 181764 and 187380. The cases emanated from a January 28, 2005 Complaint[51] filed by the Center for Popular Empowerment, Kongreso ng Pagkakaisa ng Maralitang Lungsod, Kapisanang Panlipunan ng Commonwealth, Quezon City, Inc., and several water customers[52] (collectively, "complainants") before the National Water Resources Board. Impleaded as respondents were Maynilad, Metropolitan Waterworks and Sewerage System, and the MWSS Regulatory Office.

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46 Id. at 443–448.
47 Id. at 398–404.
48 *Rollo* (G.R. No. 219362) Vol. III, pp. 1533–1534.
49 Id. at 1533.
50 Id. at 1605–1606.
51 *Rollo* (G.R. No. 181764) Vol. I, pp. 105–139.
52 Cecil D. Ponce, Efren Boston, Victoria C. Guinto, Ernesto L. Javier, Antonio L. Magandi, Manuel S. Morante, Romy Nacario, Sr., Pasarino A. Ochoco, Federico V. Robles, and Salvador M. Sarting joined in the filing of the Complaint.

The complainants assailed the Regulatory Office's Resolution[53] No. 04-014-CA, which allowed the increase in water rates charged by Maynilad to ₱30.19 per cubic meter starting January 1, 2005. They claimed that the increased water rate exceeds the 12% maximum rate of return allowed for water utilities.

Maynilad,[54] on the one hand, and the Metropolitan Waterworks and Sewerage System and the MWSS Regulatory Office,[55] on the other, filed their respective Motions to Dismiss, arguing that the National Water Resources Board has no jurisdiction over the subject matter of the Complaint. They argued that the National Water Resources Board's jurisdiction is only with respect to public utilities, not private corporations, such as Maynilad. They added that the water tariff rates charged by the concessionaires are governed by the provisions of the Concession Agreement and enforcing the 12% rate of return under Section 12 of Republic Act No. 6234 will be tantamount to impairment of contracts proscribed by the Constitution.

Opposing the Motion to Dismiss, complainants maintained that the Board has jurisdiction over Maynilad despite it being a private corporation. Even though the Concession Agreement provides for a mechanism for rate rebasing, they argued that the concessionaires are agents of the Metropolitan Waterworks Sewerage System. Considering that the Metropolitan Waterworks Sewerage System is subject to the jurisdiction of the Board, Maynilad, as agent, is likewise subject to its jurisdiction. Complainants added that the Metropolitan Waterworks Sewerage System cannot simply delegate its power of rate fixing to the concessionaires as this would be tantamount to undue delegation of power.[56]

Complainants also countered the argument on impairment of contracts, arguing that laws are deemed written in every contract. In case of conflict, legal provisions should prevail.

In its Resolution,[57] the National Water Resources Board upheld its jurisdiction over the Complaint. It maintained that it is the successor of the Public Service Commission, which, under Section 12 of Republic Act No. 6234, had exclusive original jurisdiction over all cases contesting water rates set by the Metropolitan Waterworks Sewerage System. Considering that the Board has jurisdiction over the principal, it claimed jurisdiction over the agents, including Maynilad.

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53 *Rollo* (G.R. No. 181764), p. 143.
54 Id. at 155–163.
55 Id. at 164–182.
56 Id. at 436–444.
57 Id. at 201–203.

Only Maynilad filed a Motion for Reconsideration,[58] contending that that the National Water Resources Board is not the Public Service Commission with jurisdiction over cases contesting water rates set by the Metropolitan Waterworks Sewerage System. It cited *BF Northwest Homeowners Association, Inc. v. Intermediate Appellate Court* (*BF Northwest*),[59] where this Court ruled that decisions of the National Water Resources Board are not directly appealable to the Supreme Court, unlike the decisions of the defunct Public Service Commission. In addition, Maynilad argued that the rates imposed by the Metropolitan Waterworks Sewerage System are not those imposed pursuant to the Concession Agreement, and that Maynilad is not an agent of the Metropolitan Waterworks Sewerage System but a mere concessionaire. Finally, it maintained that it is not a public utility subject to the 12% rate of return cap under Republic Act No. 6234.

In its Resolution,[60] the Board denied Maynilad's Motion for Reconsideration.

Alleging grave abuse of discretion on the part of the National Water Resources Board, Maynilad filed before the Court of Appeals a Petition[61] for *Certiorari* and Prohibition with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction. It maintained that the Board had no jurisdiction to take cognizance of the Complaint assailing the Resolution No. 04-014-CA of the Metropolitan Waterworks Sewerage System-Regulatory Office.

In a Decision,[62] the Court of Appeals dismissed the Petition. Outlining the history of water regulation in the Philippines, the Court of Appeals determined that the Board is indeed the successor of the Public Service Commission under Section 12 of Republic Act No. 6234. Therefore, it held that the Board properly took cognizance of the Complaint filed by the complainants.

The Court of Appeals further explained that it is immaterial that the rates were determined pursuant to the Concession Agreement, adding that the privatization of the Metropolitan Waterworks Sewerage System did not divest the business of supplying water of its character as a public service. As the successor of the Public Service Commission, the Board was found to have jurisdiction over the Complaint, regardless of Maynilad being a private corporation.

According to the Court of Appeals, the Board's jurisdiction was not put

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58 Id. at 445–459.

59 234 Phil. 537 (1987) [Per J. Melencio-Herrera, *En Banc*].

60 *Rollo* (G.R. No. 181764), pp. 204–206.

61 Id. at 207–240.

62 Id. at 9–19. The May 28, 2007 Decision was penned by Associate Justice Marlene Gonzales-Sison and was concurred in by Associate Justices Vicente Q. Roxas and Vicente S.E. Veloso.

at issue in *BF Northwest*.[63] In *BF Northwest*, this Court allegedly held that "the turnover of the functions of the Public Service Commission. . . to the [Board] did not make [the Public Service Commission] and [Board] identical as to make appeals from their decision both directly to the Supreme Court."[64] This "did not foreclose the fact that [the Board] has regulatory and adjudicatory power over water utilities."[65]

With respect to the alleged impairment of contracts, the Court of Appeals held that provisions of existing laws are always read into contracts. Furthermore, the supply of water is an essential public service subject to the police power of the State. As the State cannot contract away its police power, the Concession Agreement was held subject to the 12% rate of return, as well as state regulation through the Board.

The dispositive portion of the Decision reads:

> Wherefore, the instant petition is hereby DISMISSED for lack of merit. The assailed Resolutions dated July 29, 2005 and October 14, 2005 of public respondent NWRB in case No. 05-062c are AFFIRMED.
>
> SO ORDERED.[66]

After the Court of Appeals had rendered its Decision, the Metropolitan Waterworks Sewerage System and its Regulatory Office filed a Motion, asking that it be allowed to intervene and to have their Motion for Reconsideration in Intervention admitted.[67] They mainly alleged that as the owner of the franchise and party to the Concession Agreement, the Metropolitan Waterworks Sewerage System has legal interest in the matter in litigation. They also insisted that the Board has no jurisdiction over the Complaint.

Maynilad also filed a Motion for Reconsideration.[68]

In its Omnibus Resolution,[69] the Court of Appeals denied the two Motions. As to the Motion filed by the Metropolitan Waterworks and Sewerage System and the MWSS Regulatory Office, it found that while they have legal interest in the matter in litigation, their Motion was filed to belatedly cure their failure to file a motion for reconsideration before the Board. This cannot be done as they had already lost their right to seek a review of the Board's Resolution. As regards Maynilad's Motion for

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63 234 Phil. 537 (1987) [Per J. Melencio-Herrera, En Banc].
64 *Rollo* (G.R. No. 181764), p. 18.
65 Id.
66 Id. at 19.
67 *Rollo* (G.R. No. 187380), pp. 39–74.
68 *Rollo* (G.R. No. 181764), pp. 515–547.
69 Id. at 102-104.

Reconsideration, the Court of Appeals found no reason to reverse its Decision.

The dispositive portion of the Omnibus Resolution reads:

> WHEREFORE, the Court resolves to DENY the said motions for lack of merit.
>
> SO ORDERED.[70]

The Court of Appeals denied the Motion for Reconsideration[71] filed by the Metropolitan Waterworks and Sewerage System and the MWSS Regulatory Office in another Omnibus Resolution.[72] Its dispositive portion reads:

> WHEREFORE, premises considered, the Compliance and Manifestation of Petitioner is hereby NOTED. Our Resolution dated January 28, 2009 denying the motion for reconsideration of petitioner MWSI is hereby RECALLED. Whereas, the Motion for Reconsideration filed by MWSS and MWSS-RO of Our earlier Omnibus Resolution which denied their Motion to Intervene and to Admit Attached Motion for Reconsideration in Intervention is DENIED for lack of merit.
>
> SO ORDERED.[73]

Subsequently, the Petition for Review on *Certiorari*[74] filed by Maynilad was docketed as G.R. No. 181764, whereas that filed by the Metropolitan Waterworks and Sewerage System and the MWSS Regulatory Office was docketed as G.R. No. 187380. In both cases, Comments and Replies were filed.

Meanwhile, five of the consolidated cases in G.R. Nos. 207444, 208207, 210147, 213227, and 219362 are original actions.

The first of these original Petitions was filed by Waterwatch Coalition Inc. and Alyansa ng Mamamayang Naghihirap, Inc., docketed as G.R. No. 207444. The G.R. No. 207444 Petition[75] prayed for the following reliefs:

> WHEREFORE, it is respectfully prayed for this Honorable Court:
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> 1. Upon filing of this Petition, a Temporary Restraining Order, Preliminary Injunction and/or Status Quo Ante Order be ISSUED against the Respondents, requiring them to maintain and observe the

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70 Id. at 103.
71 *Rollo* (G.R. No. 187380), pp. 75–83.
72 Id. at 36–38.
73 Id. at 37.
74 *Rollo* (G.R. No. 181764), pp. 27–81; *Rollo* (G.R. No. 187380), pp. 11–32.
75 *Rollo* (G.R. No. 207444), pp. 3–77.

status quo prevailing before the commencement of the 2013 Rate Rebasing Exercises;

2. This Petition be given DUE COURSE, and issue an ORDER:

a. DECLARING the Concession Agreements dated February 1997 between respondents MWSS, MWCI and MWSI to be VOID for being constitutionally infirm or *ultra vires*; in the alternative,

b. DECLARING the 2013 Tariff Schedule for respondent MWCI and MWSI as VOID for being in violation of law, SETTING ASIDE any ruling of respondent MWSS to the contrary, and DIRECTING respondent MWSS to determine anew the appropriate water tariffs in line with the pronouncements made herein; in the alternative,

c. DECLARING that respondents MWCI and MWSI are public utilities subject to the rules and regulations of public service laws and the auditing powers of the Commission on Audit.

Other reliefs just and equitable are likewise prayed for.[76]

The second original Petition,[77] docketed as G.R. No. 208207, was filed by the Water for All Refund Movement (WARM), Inc.[78] WARM, Inc. prayed for the following reliefs:

[WHEREFORE], in view of all the foregoing considerations, petitioners respectfully pray that this Honorable Court:

a. upon filing of this Petition for Certiorari, ISSUE a Temporary Restraining Order, Status Quo Ante Order and/or Writ of Preliminary Injunction against all the respondents, requiring them to maintain and observe the status quo prevailing before the commencement of the 2013 Rate Rebasing Exercises;

b. GIVE DUE COURSE to this Petition;

c. ISSUE an Order, Resolution, or such other appropriate form of adjudication:

i. DECLARING the Concession Agreements dated 21 February 1997 between MWSS, on the one hand, and Manila Water and Maynilad, on the other, to be void for being constitutionally infirm and/or ultra vires; and,

ii. in the alternative, DECLARING THE 2013 Tariff Schedule for Manila Water and Maynilad void for being in violation of law;

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76 Id. at 61–62.

77 *Rollo* (G.R. No. 208207) Vol. I, pp. 3–74.

78 Water for All Refund Movement, Inc. is represented by its President, Rodolfo B. Javellana, Jr. and was joined by Marcelo L. Tecson.

iii. SETTING ASIDE any ruling of MWSS and/or the Regulatory Office to the contrary;

iv. DIRECTING MWSS to determine anew the appropriate water tariffs in line with the pronouncements made herein;

v. DECLARING Manila Water and Maynilad to be public utilities subject to the rules and regulations of public service laws and the auditing powers of the COA;

vi. ORDERING Manila Water and Maynilad, whether by themselves or through MWSS, to refund to water consumers within their respective Service Areas the following amounts billed, charged, and/or collected from them:

- All amounts in excess of the 12% cap provided in Republic Act No. 6234;

- All amounts representing income taxes of MWSS and/or the concessionaires; and

- All amounts for future and/or abandoned projects; and

d. SET the case at Bench for oral argument at a time, and on a date, most convenient to this Honorable Court.

Petitioners likewise pray for other just and equitable reliefs under the premises.[79]

The third original Petition[80] was docketed as G.R. No. 210147 and was filed by 141 individuals led by Virginia S. Javier. The Petition contained the following prayer:

WHEREFORE, in view of all the foregoing considerations, Petitioners respectfully pray:

1. Upon the filing of this Petition for Certiorari, Prohibition, and Mandamus, this Honorable Court:

a. ISSUE a Temporary Restraining Order, Preliminary Injunction and/or Status Quo Ante Order against all Respondents:

i. REQUIRING them to maintain and observe the status quo prevailing before the commencement of arbitration proceedings under the Concession Agreements;

ii. REQUIRING all Respondents to implement the rate reductions set forth in the 12 September 2013 Reduction Orders, pending determination of a

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79 *Rollo* (G.R. No. 208207) Vol. I, pp. 65–66.
80 *Rollo* (G.R. No. 210147) Vol. I, pp. 3–101.

REFUND order;

iii. PREVENTING respondents from billing against future projects against their water consumers and/or taking out new loans to finance these projects;

iv. ORDERING the parties to refrain from proceeding further in arbitration proceedings between one another regarding the rate reduction ordered by the MWSS in the latest Rate Rebasing Exercise; and

v. REQUIRING Maynilad and Manila Water to comply with the rate reduction orders of the MWSS in the latest Rate Rebasing Exercise, which rate reduction orders were "stayed" by arbitration;

2. This Honorable Court GIVE DUE COURSE to this Petition;

3. This Honorable Court SET the case at Bench for Oral Argument at a time, and on a date, most convenient to this Honorable Court; and

4. After the conduct of appropriate and just proceedings, this Honorable Court ISSUE an Order, Resolution or such other appropriate form of adjudication:

a. DECLARING the Concession Agreements between MWSS and Maynilad and between MWSS and Manila Water VOID for being constitutionality infirm and/or ultra vires, and,

b. In the alternative, DECLARING the 2013 Tariff Schedule for Manila Water and Maynilad VOID for being in violation of the law;

c. SETTING ASIDE any ruling of MWSS and/or the Regulatory Office to the contrary;

d. DIRECTING MWSS to determine anew the appropriate water tariffs in line with the pronouncements made, under pre-and post-audit of the Commission on Audit, strictly under the operative test for assets and expenditures "actually in operation" and expenditures "efficiently and prudently incurred," and subtracting therefrom, among others, intangible assets such as Concession Fees;

e. DECLARING Manila Water and Maynilad to be public utilities subject to the rules and regulations of public service laws and the auditing powers of the COA;

f. DECLARING that any such guaranteed "ADR" or Appropriate Discount Rate ought to be read with the 12% profit cap under the law on public utilities and the MWSS Charter, under the operative tests for assets and expenditures "actually in operation" and expenditures "efficiently and prudently incurred"; and under the correct empirical basis test "countries having a credit standing similar to that of the Philippines," which is now *investment grade*;

g. DECLARING the fifteen (15) year extensions of the Concession Agreements VOID and CONTRARY TO LAW;

h. ORDERING Manila Water and Maynilad, whether by themselves or through MWSS, to REFUND to water consumers within their respective Service Areas the amounts unlawfully billed, charged, and/or collected from them, which include without limitation:

i. All amounts in excess of the 12% cap provided in Republic Act No. 6234 and/or the public service law, considering the operative terms "efficiently and prudently incurred";

ii. All amounts representing income taxes of the Concessionaires despite enjoying tax holidays;

iii. All amounts for future and/or abandoned projects passed on to the public through the years;

iv. All amounts referring to "CERA" and other forex hedging costs passed on to the public through the years; and

v. All arbitration costs, including attorneys' fees booked as "Expenditures" and passed on to the public; and

i. REFERRING the records of this case to the Commission on Audit for it to conduct a special audit on MWSS, Maynilad and Manila Water, for being under the jurisdiction of the Commission on Audit under the Government Auditing Code of the Philippines (Presidential Decree No. 1445, as amended).

Petitioners likewise pray for other just and equitable reliefs under the premises.[81]

The fourth original Petition[82] was docketed as G.R. No. 213227 and was filed by ABAKADA-GURO Party List. It contained the following prayer:

WHEREFORE, Petitioner respectfully prays that this Honorable Court:

a. Give due course to this Petition;

b. Declare the Concession Agreements dated 21 February 1997 between MWSS, on the one hand, and Manila Water and Maynilad, on the other, to be void for being constitutionally infirm; and as a consequence, vacate any ruling of MWSS and/or the Regulatory Office pertaining to the implementation and

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81 Id. at 84–86.

82 *Rollo* (G.R. No. 213227) Vol. I, pp. 3–63.

extension of the Concession Agreements, and terminate the ongoing arbitration proceedings between the Parties;

c. Declare Manila Water and Maynilad to be public utilities subject to the rules and regulations of public service laws and the auditing powers of the COA;

d. Declare the Appeals Panel to have gravely abused its discretion for the unduly protracted arbitration proceedings and order its immediate termination or, in the alternative, that the public, namely the consumers and legislators, be allowed to participate in the arbitration proceedings;

e. Set the case at Bench for oral argument at a time, and on date, most convenient to this Honorable Court.

Petitioner likewise prays for other just and equitable reliefs under the premises.[83]

The fifth original Petition[84] was docketed as G.R. No. 219362 and was filed by Bayan Muna Party List Representatives Neri Colmenares and Carlos Isagani Zarate. It prayed for the following:

In view of the foregoing, Petitioners respectfully pray of this Honorable Court that:

a) By way of a writ of certiorari: The Arbitration Clause, Article 12 of the Concession Agreements, be set aside and declared void for being unconstitutional, illegal and/or *ultra vires* of the parties thereto;

b) By way of writ of certiorari: The Letters of Undertaking executed by the Republic in relation to the Concession Agreements be set aside and declared void for being unconstitutional, illegal and/or *ultra vires* of the parties thereto;

c) By way of a writ of certiorari: Corporate income taxes of both Maynilad and Manila Water be expressly declared to be excluded from allowed expenditures under the Concession Agreements, with the effect that corporate income taxes of Maynilad and Manila Water cannot be passed on directly or indirectly to the water consumers;

d) By way of a writ of prohibition: Respondents Secretary Purisima and President Aquino be prohibited from processing Respondents Maynilad and Manila Water's claims for alleged damages against the Sovereign Guarantee embodied in the Republic's Letter of Undertaking;

e) In the meantime, pending this litigation, by way of a TRO and a writ of preliminary injunction:

a. Secretary Purisima and President Aquino be immediately restrained by way of a TRO or writ of preliminary injunction

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83 Id. at 56–57.

84 *Rollo* (G.R. No. 219362) Vol. I, pp. 3–61.

> from paying out of the national coffers any amount to Maynilad and Manila Water for alleged damage claims against the Sovereign Guarantee embodied in the Republic's Letters of Undertaking;
>
> b. MWSS, MWSS Administrator Esquivel, MWSS-RO and MWSS-RO Chief Regulator Yu be immediately restrained by way of a TRO or writ of preliminary injunction from implementing the Arbitral Awards which may result to two contradictory regulatory regimes in the lone MWSS franchise area; and
>
> c. Maynilad and Manila Water be immediately restrained by way of a TRO or writ of preliminary injunction from recovering from the national coffers their income tax liabilities (by way of claiming alleged damages against the Sovereign Guarantee embodied in the Republic's Letters of Undertaking) which the *Meralco* ruling expressly and categorically prohibits.
>
> Other remedies or relief just and equitable under the circumstances are prayed for.[85]

The Metropolitan Waterworks and Sewerage System, Manila Water, and Maynilad filed their respective Comments on five Petitions, all praying for their dismissal. Replies were subsequently filed.

In the Resolution,[86] this Court directed the parties in G.R. Nos. 207444, 208207, 210147, and 213227 to file their respective memoranda. Only Water for all Refund Movement, Inc.,[87] the Metropolitan Waterworks and Sewerage System,[88] and concessionaires Manila Water[89] and Maynilad[90] filed their Memoranda, while Waterwatch Coalition, et al., Javier, et al., and the ABAKADA-GURO Party List filed Manifestations, praying that this Court treat their respective Petitions and Replies as their memoranda.

As for Representatives Colmenares and Zarate, their Petition in G.R. No. 219362 was consolidated[91] with the Petitions in G.R. Nos. 207444, 208207, 210147, and 213227 after the filing of memoranda had already been ordered by this Court. The Republic was also ordered to file a Comment on the Petition in G.R. No. 219362.

The latest Petition in these consolidated cases was docketed as G.R. No. 239938. The Petition emanated from a domestic arbitration case commenced by Maynilad against the Metropolitan Waterworks and Sewerage System and the Metropolitan Waterworks and Sewerage System Regulatory Office.

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85 Id. at 56–57.
86 *Rollo* (G.R. No. 207444) Vol. VI, pp. 3450–3451.
87 *Rollo* (G.R. No. 207444) Vol. VII, pp. 4042–4119.
88 *Rollo* (G.R. No. 207444) Vol. VII, pp. 3725–3774.
89 Id. at 3601–3724.
90 Id. at 3795–3937.
91 *Rollo* (G.R. No. 219362) Vol. II, pp. 584–587.

Pursuant to Section 12.4(i)[92] of its Concession Agreement, Maynilad filed a dispute notice[93] for the "appropriate rebasing adjustment and the resulting adjusted average basic water charge per cubic meter that [Maynilad] can collect for every charging year of the parties' Fourth Rate Rebasing Period" in October 2013.[94] It maintained that it may recover its corporate income taxes from water consumers.

In accordance with Section 12.3 of the Concession Agreement, the Appeals Panel was constituted and its three members appointed.

Later, the Appeals Panel rendered a Final Award[95] in favor of Maynilad. It ruled that Maynilad may include its corporate income taxes as an item of expenditure in its future cash flows. The dispositive portion of the Final Award reads:

> 471. For the foregoing reasons, the Appeals Panel renders the following decision:
>
> (1) By majority, finds that Claimant is entitled to include its Corporate Income Tax in its Future Cash Flows for each year of operations;
>
> (2) By majority, upholds Claimant's alternative Rebasing Adjustment for the Fourth Rate Rebasing Period of 13.41%, which means an average basic water charge of Php 30.28/cu.m., resulting in an adjusted rate of Php 34.34/cu.m. for every Charging Year of the Fourth Rate Rebasing Period;
>
> (3) Unanimously decides that each party shall bear its own legal costs and that the costs of the arbitration shall be borne by the parties equally;
>
> (4) Unanimously Orders Respondents to reimburse Claimant the sums of USD 15,012.50, Php 540,502.81 and HKD 179.73, representing Respondents' share of the costs of the arbitration that were advanced by Claimant; and
>
> (5) Dismiss all other claims.[96]

Subsequently, Maynilad filed a Petition for Confirmation and

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92 Concession Agreement, sec. 12.4(i) provides:
ARTICLE 12. DISPUTE RESOLUTION
12.4 Procedures
The Appeals Panel shall decide Disputes in accordance with the following procedures:
(i) Disputes may be referred to the Appeals Panel by any party hereto by providing written notice to the Appeals Chairman of the Appeals Panel and the other parties hereto (each a "Dispute Notice") setting out in reasonable detail the circumstances of such dispute.

93 The arbitration case, entitled Maynilad Water Services, Inc. v. Metropolitan Waterworks and Sewerage System and Regulatory Office was docketed as Case No. UNC 141/CYK.

94 *Rollo* (G.R. No. 239938) Vol. I, p. 66.

95 Id. at 78–190.

96 Id. at 190.

Execution of Arbitral Award before the Regional Trial Court. It claimed that the Final Award had already attained finality considering that the Metropolitan Waterworks and Sewerage System failed to challenge it within 30 days from notice. Despite the same, the Metropolitan Waterworks and Sewerage System failed to implement it.[97]

Opposing the Petition, the Metropolitan Waterworks and Sewerage System argued that implementing the Final Award would be violative of the equal protection clause. It alleged that in a separate arbitral proceeding commenced by Manila Water for the Service Area East, the arbitral panel held that Manila Water may not include corporate income taxes in the computation of tariff rates chargeable to water consumers. If the Final Award in favor of Maynilad is implemented, it would create a disparity in the cost of water between the two services areas.[98]

In its Decision, the Regional Trial Court granted the Petition and confirmed the Final Award. It upheld the agreement of the parties to hold "final and binding" upon them any decision or award of the Appeals Panel. It emphasized that under Rule 11.9 of the Special Alternative Dispute Resolution Rules, courts "shall either confirm or vacate" an arbitral award and "shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law."[99]

The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, the Court resolves to CONFIRM the Final Award dated December 29, 2014 rendered by the Appeals Panel in Arbitration Case No. UNC 141/CYK, entitled *Maynilad Water Services, Inc. vs. Metropolitan Waterworks and Sewerage System and Regulatory Office*, the dispositive portion of which is as follows:
>
> "471. For the foregoing reasons, the Appeals Panel renders the following decision:
>
> (1) By majority, finds that Claimant is entitled to include its Corporate Income Tax in its Future Cash Flows for each year of operations;
> (2) By majority, upholds Claimant's alternative Rebasing Adjustment for the Fourth Rate Rebasing Period of 13.41%, which means an average basic water charge of Php 30.28/cu.m., resulting in an adjusted rate of Php 34.34/cu.m. for every Charging Year of the Fourth Rate Rebasing Period;
> (3) Unanimously decides that each party shall bear its own legal costs and that the costs of the arbitration shall be borne by the parties equally;
> (4) Unanimously Orders Respondents to reimburse Claimant the sums of USD 15,012.50, Php 540,502.81 and HKD 179.73, representing Respondents' share of the costs of the arbitration that were advanced by Claimant; and
> (5) Dismiss all other claims."

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97 Id. at 67.
98 Id.
99 Id. at 68.

> The respondent is hereby ordered to immediately implement the said Final Award.
>
> SO ORDERED.[100]

In a Decision, the Court of Appeals affirmed the ruling.[101] Citing the Special Alternative Dispute Resolution Rules, the Court of Appeals held that courts have no power to modify an arbitral award. Considering that the Metropolitan Waterworks and Sewerage System failed to file a petition to vacate the Final Award, the trial court had no other choice but to grant the Petition for Confirmation. In addition, the Opposition to the Petition for Confirmation filed by Metropolitan Waterworks and Sewerage System cannot be deemed a petition to vacate because it did not raise any of the grounds for vacation of an arbitral award. Finally, the Court of Appeals stressed that it "deliberately refrained from passing upon the merits of the [Final Award]."[102]

The dispositive portion of the Decision reads:

> WHEREFORE, the Petition For Review filed by petitioner is hereby DENIED. The Decision dated 30 August 2017 and Order dated 23 November 2017, issued by the Regional Trial Court of Quezon City, Branch 93 in Civil Case No. R-QZN-15-06702-CV, are AFFIRMED.
>
> SO ORDERED.[103]

The Metropolitan Waterworks and Sewerage System filed a Petition for Review on Certiorari,[104] assailing the Decision of the Court of Appeals. This Petition was docketed as G.R. No. 239938.

In a Resolution,[105] G.R. No. 239938 was consolidated with G.R. Nos. 207444, 208207, 210147, 213227, and 219362. Subsequently, the Petitions in G.R. Nos. 181764 and 187380 were elevated to the En Banc and consolidated with the Petitions in G.R. Nos. 207444, 208207, 210147, 213227, and 219362.

In another Resolution,[106] this Court ordered the parties to move in the premises in view of the alleged dropping by the concessionaires of their claims against the government arising from arbitration decisions.

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100 Id. at 64–65.
101 Id. at 64–75. The May 30, 2018 Decision was penned by Associate Justice Jane Aurora C. Lantion and was concurred in by Associate Justices Remedios A. Salazar-Fernando and Zenaida T. Galapate-Laguilles.
102 *Rollo* (G.R. No. 239938) Vol. I, p. 74.
103 Id.
104 Id. at 20–56.
105 *Rollo* (G.R. No. 239938), p. 339.
106 Id. at 445.

In its Compliance,[107] the Metropolitan Waterworks and Sewerage System alleged that the Release from and Waiver of Claim on Arbitral Award executed by Maynilad effectively rendered its Petition in G.R. No. 239938 waived in favor of the Metropolitan Waterworks and Sewerage System.

Maynilad countered that the Release from and Waiver of Claim on Arbitral Award it executed involved the arbitral award issued in Permanent Court of Arbitration Case No. 2015-37. G.R. No. 239938, however, involves the confirmation of the arbitral award in Arbitration Case No. UNC 141/CYK, which is a different arbitration case. It thus claimed that it has not abandoned its claim in G.R. No. 239938.

The issues to be resolved in G.R. Nos. 181764 and 187380 are:

First, whether or not the Court of Appeals erred in denying the Motion to Intervene filed by the Metropolitan Waterworks and Sewerage System and the Metropolitan Waterworks and Sewerage System Regulatory Office;

Second, whether or not the National Water Resources Board inherited the adjudicatory powers of the Public Service Commission with respect to cases contesting water rates set by the Metropolitan Waterworks and Sewerage System;

Third, whether or not Section 12 of Republic Act No. 6234 covers Maynilad, an agent and concessionaire of the Metropolitan Waterworks and Sewerage System; and

Fourth, whether or not the tariff rates determined through the rate rebasing mechanism under the Concession Agreements are subject to the 12% rate of return cap for water utilities.

As for G.R. Nos. 207444, 208207, 210147, 213227, and 219362, the issues are:

First, whether or not *certiorari* and prohibition are the proper remedies;

Second, whether or not this case presents an actual case or controversy;

Third, whether or not petitioners have legal standing to sue;

Fourth, whether or not petitioners violated the doctrine of hierarchy of

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[107] *Rollo* (G.R. No. 239938), pp. 537–543.

courts;

Fifth, whether or not the Concession Agreements are unconstitutional for unduly delegating sovereign powers of the State to concessionaires Manila Water and Maynilad;

Sixth, whether or not concessionaires Manila Water and Maynilad are public utilities subject to the 12% limit on its returns;

Seventh, whether or not Manila Water and Maynilad may recover during the life of the concession the corporate income taxes they paid as operating expenses;

Eighth, whether or not the waterworks and sewerage system in Metro Manila is in a state of regulatory capture;

Ninth, whether or not the disputes between Metropolitan Waterworks and Sewerage System and concessionaires Manila Water and Maynilad can properly be the subject of arbitration; and

Tenth, whether or not the sovereign guarantee under the Republic's Letters of Undertaking is valid and results in legal contractual obligations on the part of the government.

Finally, the issues for resolution in G.R. No. 239938 are:

First, whether or not the Final Award was correctly confirmed considering that Maynilad filed the Petition for Confirmation of arbitral award beyond the 30-day period provided in Republic Act No. 876; and

Second, whether or not the Final Award is violative of public policy and should be vacated.

I

We deny the Petitions in G.R. Nos. 181764 and 187380.

I (A)

On first issue on the propriety of intervention, the Metropolitan Waterworks and Sewerage System and its Regulatory Office argue that they should have been allowed to intervene in the *certiorari* proceedings as parties

to the Concession Agreement. Maynilad counters that their intervention is improper considering that they had lost their right to seek review by way of certiorari when they failed to file a Motion for Reconsideration before the National Water Resources Board.

We rule in favor of Maynilad.

Rule 19, Section 1 of the Rules of Court on intervention provides:

> SECTION 1. *Who may intervene.* – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenors' rights may be fully protected in a separate proceeding.

Rule 19, Section 1 essentially requires an intervenor to have a legal interest in the matter in litigation. This interest may either be in the success of either of the parties, or against the success of both, or that the intervenor is so situated as to be adversely affected by a distribution or other distribution of property in custody of the court or its officer.[108]

Nevertheless, it is not enough that the person seeking intervention allege any legal interest. This interest must be actual and material, direct and of an immediate character, such that the intervenor will either gain or lose by the direct legal operation of the judgment.[109] It cannot be merely contingent or expectant.[110]

Furthermore, even if legal interest exists, admission as an intervenor is subject to the discretion of the trial court.[111] A motion for intervention may be denied if it will unduly delay or prejudice the adjudication of the rights of the original parties, or if the rights of the person wanting to intervene may be fully protected in a separate proceeding.[112]

Thus, the person intervening must be a third party not originally

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108 RULES OF COURT, Rule 19, sec. 1.

109 *Firestone Ceramics, Inc. v. Court of Appeals*, 372 Phil. 401 (1999) [Per J. Gonzaga-Reyes, Third Division].

110 Id.

111 *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, 656 Phil. 537 (2011) [Per J. Peralta, Second Division].

112 RULES OF COURT, rule 19, sec. 1.

impleaded in the proceedings.[113] If they are originally a party, but, through their own fault loses the opportunity to participate in the proceedings, the person cannot be allowed to intervene at the subsequent stages of the proceedings. To allow such intervention will necessarily result in further delay and will enable parties to disregard court directives.

Here, the Metropolitan Waterworks and Sewerage System and the Metropolitan Waterworks and Sewerage System Regulatory Office had already lost whatever legal interest they had, at least with respect to the Complaint filed by the Center for Popular Empowerment, et al. They were original parties to the case before the National Water Resources Board, having been impleaded as respondents. Then, they filed a Motion to Dismiss. After the denial of their Motion to Dismiss, however, they no longer filed a motion for reconsideration. They only appeared again before the Court of Appeals to file a Motion to Intervene in the certiorari proceedings commenced by Maynilad.

By failing to file a Motion for Reconsideration, the Metropolitan Waterworks and Sewerage System and the MWSS Regulatory Office are deemed to have acquiesced to the Board's exercise of jurisdiction. They cannot belatedly assail its jurisdiction in the Petition for Certiorari solely filed by Maynilad.

I (B)

As to the second issue on whether the National Water Resources Board inherited the jurisdiction of the Public Service Commission with respect to regulating water utilities, Maynilad maintains that there is no law conferring it with jurisdiction. It argues that the legislative history of water rate-fixing in the Philippines shows that the Board did not inherit the Public Service Commission's power to review water rates set by the Metropolitan Waterworks and Sewerage System.

The National Water Resources Board counters that it is possessed of jurisdiction to fix and review the water rates set by Maynilad, arguing that it is the successor of the Public Service Commission named in Section 12 of Republic Act No. 6234. It adds that its power is not limited to verifying the rate base and rate of return of the water rates set by the Metropolitan Waterworks and Sewerage System but includes the power to adjudicate cases contesting these water rates.

The Metropolitan Waterworks and Sewerage System and the MWSS Regulatory Office reiterate the arguments they made in their Motion to

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[113] *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, 656 Phil. 537 (2011) [Per J. Peralta, Second Division].

Intervene and Petition-in-Intervention. They argue that the National Water Resources Board did not inherit the adjudicatory powers of the Public Service Commission. As basis, they cite *B.F. Northwest*, where this Court held that decisions of the Board, unlike those of the Public Service Commission, are to be appealed before the regional trial court, not the Court of Appeals. From this ruling, they deduce that the Board is not the Public Service Commission, the former being inferior to the latter.

As for private respondents Center for Popular Empowerment et al., they likewise outline the legislative history of the water regulatory agencies but contrarily concluded that the Board inherited all the powers of the defunct Public Service Commission, including the power to hear and decide cases contesting water rates.

Maynilad argues that it is only the Metropolitan Waterworks and Sewerage System over which the Board admittedly has jurisdiction. It claims that it is a private corporation, which is a mere concessionaire and agent under the Concession Agreements. The Metropolitan Waterworks and Sewerage System remains the public utility subject to regulation by the State.

The Metropolitan Waterworks and Sewerage System and the Metropolitan Waterworks and Sewerage System Regulatory Office agree that the former is the one under the jurisdiction of the Board. Under the Concession Agreements, the Metropolitan Waterworks and Sewerage System remains the public utility, while Maynilad is a mere concessionaire and agent.

For the National Water Resources Board, Maynilad remains subject to its jurisdiction, despite it being a private corporation. It cites Section 13(a) of the Public Service Act, which includes "privately-owned public services," such as Maynilad, under the jurisdiction of the Public Service Commission, now the Board, with respect to the business of supplying water.

Meanwhile, the Center for Popular Empowerment et al. argue that Maynilad, being engaged in the service of providing water for a fee to the public, is necessarily engaged in the operation of a public utility. It thus remains subject to regulation by the State through the Board.

Maynilad counters that even assuming that the Board has jurisdiction, the water tariff rates fixed by the concessionaires are not the water rates set by the Metropolitan Waterworks and Sewerage System pursuant to Section 12 of Republic Act No. 6234. The rate-fixing framework in Section 12 applies to the Metropolitan Waterworks and Sewerage System and its entire waterworks and sewerage system, whereas the water rates fixed by the concessionaires are set pursuant to Section 9.4 of the Concession Agreements. Accordingly, it claims that the Board remains bereft of jurisdiction over cases

contesting fixed by the concessionaires.

We rule that National Water Resources Board inherited the adjudicatory powers of the Public Service Commission with respect to cases contesting water rates set by the Metropolitan Waterworks and Sewerage System.

Section 12 of Republic Act No. 6234 provides:

> SECTION 12. *Review of Rates by the Public Service Commission.* The rates and fees fixed by the Board of Trustees for the System and by the local governments for the local systems shall be of such magnitude that the System's rate of net return shall not exceed twelve *per centum* (12%), on a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital. Such rates and fees shall be effective and enforceable fifteen (15) days after publication in a newspaper of general circulation within the territory defined in Section 2 (c) of this Act. *The Public Service Commission shall have exclusive original jurisdiction over all cases contesting said rates or fees.* Any complaint against such rates or fees shall be filed with the Public Service Commission within thirty (30) days after the effectivity of such rates, but the filing of such complaint or action shall not stay the effectivity of said rates or fees. The Public Service Commission shall verify the rate base, and the rate of return computed therefrom, in accordance with the standards above outlined. The Public Service Commission shall finish, within sixty (60) calendar days, any and all proceedings necessary and/or incidental to the case, and shall render its findings or decisions thereon within thirty (30) calendar days after said case is submitted for decision.
>
> In cases where the decision is against the fixed rates or fees, excess payments shall be reimbursed and/or credited to future payments, in the discretion of the Commission. (Emphasis supplied)

Section 12 refers to the Public Service Commission that has "exclusive original jurisdiction over all cases contesting [rates and fees fixed by the Board of Trustees for the System[.]" Obviously, the Public Service Commission is not the same entity as the present National Water Resources Board.

This does not mean that the Board cannot take cognizance of controversies involving water rates fixed by the Metropolitan Waterworks and Sewerage System. History shows that the National Water Resources Board is the successor of the Public Service Commission with respect to water regulation.

The first regulatory agency created to oversee rates charged by public service corporations was the Board of Rate Regulation, created in 1907.[114] Its

[114] This was created in 1907 pursuant to Act No. 1779. AN ACT TO CREATE A BOARD FOR THE REGULATION OF RATES CHARGEABLE BY PUBLIC-SERVICE CORPORATIONS IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES

Charter provides that it "shall exercise a watchful and careful supervision over the rates of every public service corporation, and the said Board shall have the duty to fix, revise, regulate, reduce, or increase the said rates from time to time as justice to the public and the corporation may require." It also defined a "public-service corporation" to "include. . . any person, association, corporation, receiver, or trustee owning, leasing, or operating for hire. . . all gas, electric-light, heat, power, irrigation, and water-supply works, plants, and systems rendering service to the public[.]"[115]

Then, in 1913, Act No. 2307[116] created the Board of Public Utility Commissioners with power, among others, "to fix just and reasonable. . . rates. . . which shall be imposed, observed, and followed thereafter by any public utility as herein defined." Among those considered as a "public utility" were persons, whether natural or juridical, operating, managing, or controlling waters or sewers for public use under the privileges granted or hereafter to be granted by the government.[117]

In 1936, the Public Service Commission was created.[118] Unlike its predecessors, it exercised more powers and had the authority to fix and determine rates to be "imposed, observed, and followed thereafter by any public service[.]"[119] Its Charter defined "public service" to include all persons engaged in the business of, among others, water supply and sewerage systems owned, operated, managed, or controlled for public service.[120]

The Public Service Commission was abolished in 1972 with the issuance of Presidential Decree No. 1. It was replaced with three specialized regulatory boards, namely, the Board of Transportation, the Board of Communications, and the Board of Power and Waterworks. The latter inherited the functions of the Commission with respect to waterworks and sewerage systems.[121]

In 1977, the Board of Power and Waterworks was abolished by Presidential Decree No. 1206, and its powers with respect to waterworks were transferred to the National Water Resources Council.[122]

In 1987, the National Water Resource Council was reorganized as the present National Water Resources Board.[123] It is thus clear that the Board is the successor of the Public Service Commission. Moreover, it has the

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115 Act No. 1779 (1907), sec. 25.
116 AN ACT CREATING A BOARD OF PUBLIC UTILITY COMMISSIONERS AND PRESCRIBING ITS DUTIES AND POWERS, AND FOR OTHER PURPOSES
117 Act No. 2307, sec. 14.
118 Commonwealth Act No. 146 (1936).
119 Commonwealth Act No. 146, sec. 16(d)
120 Commonwealth Act No. 146, sec. 13 (b).
121 Integrated Reorganization Plan, Art. III, paragraphs 1, 6, and 8.
122 Presidential Decree No. 1206, sec. 11(e).
123 Executive Order No. 124, sec. 28 (as amended by Executive Order No. 124-A, sec. 1).

jurisdiction over controversies over water rates fixed by the Metropolitan Waterworks and Sewerage System despite our ruling in *BF Northwest*.[124]

In *BF Northwest*, subdivision owner and developer BF Homes, Inc. filed a certificate of public convenience and for authority to charge water rates before the then Board of Power and Waterworks. With the abolition of the Board in 1977, the National Water Resources Council took over its functions and resolved to grant the application for certificate of public convenience and approve a compromise agreement that embodied the water rates to be charged by BF Homes.

Later, the National Water Resources Council issued two resolutions, increasing the water rates in BF Homes subdivision. BF Northwest Homeowners Association, Inc. filed a petition for *certiorari*, prohibition, and *mandamus* before the regional trial court to bar the charging of the increased water rates. In turn, BF Homes, Inc. filed a motion to dismiss on jurisdictional grounds, which was denied by the trial court. On appeal, the Court of Appeals reversed and held that the trial court and the National Water Resources Council were coequal, the latter allegedly having the same rank as that of a trial court. Consequently, only superior courts, such as the Supreme Court pursuant to the Public Service Act and, later, the Court of Appeals pursuant to Batas Pambansa Blg. 129, had the jurisdiction to review the decisions of the National Water Resources Council.

In reversing the Court of Appeals, this Court held that the National Water Resources Council was not of equal rank with the regional trial courts and was even inferior to the Public Service Commission. This Court highlighted that the National Water Resources Council was governed by various cabinet members and deputies, unlike the Public Service Commission, which was governed by commissioners explicitly conferred the rank and privileges of judges of courts of first instance. With respect to contempt powers, the National Water Resources Council had no authority to summarily punish for contempt, whereas the Public Service Commission had such authority. Finally, the decisions of the National Water Resources Council were appealable to the proper regional trial court, whereas the Public Service Act provided that the decisions of the Public Service Commission were appealable to the Supreme Court.

From these differences, this Court held that the regional trial court had jurisdiction to take cognizance of the petition for certiorari filed by BF Northwest Homeowners Association, Inc., the trial court being superior to the National Water Resources Council and with express appellate jurisdiction over its decisions. This Court thus remanded the case to the regional trial court for trial on the merits.

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[124] 234 Phil. 537 (1987) [Per J. Melencio-Herrera, En Banc].

Based on the foregoing, *BF Northwest* cannot be a precedent for the present case. The issue in *BF Northwest* was whether the regional trial court and the National Water Resources Council are coequals, such that the former cannot take cognizance of controversies involving decisions of the latter. The issue in *BF Northwest* is different from the issue presently before this Court, i.e., whether the National Water Resources Board is the successor of the Public Service Commission.

Admittedly, the National Water Resources Board cannot be "given the stature of the Public Service Commission." The defunct Commission had jurisdiction over all entities providing public service, whereas the Board's jurisdiction is with respect to public utilities engaged in waterworks and sewerage systems. The jurisdiction of the National Water Resources Board is only a part of the jurisdiction the Commission used to possess.

Still, the ruling in *BF Northwest*—that the regional trial court has jurisdiction over decisions of the National Water Resources Council (now Board)—is consistent with the National Water Resources Board's jurisdiction over public utilities engaged in water and sewerage businesses. As provided by law, the Board has jurisdiction over controversies involving water rates determined by the Metropolitan Waterworks and Sewerage System. However, its decisions are appealable to the regional trial court, not to the Court of Appeals or the Supreme Court, unlike the Public Service Commission.

At any rate, *BF Northwest* was overturned in *National Water Resources Board v. A.L. Ang Network, Inc.* (*A.L. Ang Network, Inc.*).[125]

In *A.L. Ang Network, Inc*, A.L. Ang Network applied for a certificate of public convenience to operate and maintain a water system in Bacolod City. Bacolod City Water District opposed the application, contending that it is the only entity authorized to operate a water system in Bacolod.

The National Water Resources Board granted A.L. Ang Network the certificate of public convenience. This prompted Bacolod City Water District to file a petition for certiorari before the regional trial court. The Board filed a motion to dismiss, arguing that the trial court had no jurisdiction over the petition, the proper court being the Court of Appeals.

The trial court agreed with the Board and dismissed the petition. It held that Batas Pambansa Blg. 129 had long repealed Article 89 of Presidential Decree No. 1067, which granted regional trial courts jurisdiction over decisions of the Board on water rights controversies. Batas Pambansa Blg.

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[125] 632 Phil. 22 (2010) [Per J. Carpio Morales, First Division].

129 now provides that decisions of quasi-judicial agencies, such as the Board, are appealable to the Court of Appeals. Therefore, Bacolod City Water District should have filed its petition for *certiorari* before the Court of Appeals.

Citing *BF Northwest*, the Court of Appeals reversed and ruled that the trial court had jurisdiction over the petition for *certiorari*. It found that Batas Pambansa Blg. 129 did not expressly repeal Article 89 of Presidential Decree No. 1067. Instead, Article 89 should be considered as an exception to rule that the Court of Appeals has certiorari jurisdiction over the decisions of quasi-judicial agencies, with Rule 65 of the Rules of Court providing that the Court of Appeals' jurisdiction only applies "unless otherwise provided by law or these rules."

On appeal, this Court reversed and ruled that the Court of Appeals had jurisdiction over the petition for certiorari. It agreed with the trial court that Article 89 of Presidential Decree No. 1067 had long been repealed by Batas Pambansa Blg. 129, with the latter providing a general repealing clause that "predicates the intended repeal under the condition that a substantial conflict must be found in existing and prior acts." It also held that "the legislative intent to repeal Article 89 is clear and manifest given the scope and purpose of [Batas Pambansa Blg. 129], one of which is to provide a homogeneous procedure for the review of adjudications of quasi-judicial entities to the Court of Appeals." Further, what Article 89 provided was the appellate jurisdiction of the regional trial court over the decisions of the National Water Resources Board, not certiorari jurisdiction. Batas Pambansa Blg. 129 vis-à-vis Rule 43 of the Rules of Court therefore governs.

In abandoning *BF Northwest*, this Court explained that the case "is no longer controlling in light of the definitive instruction of Rule 43 of the Revised Rules of Court."

All told, the National Water Resources Board is the successor of the Public Service Commission with jurisdiction to take cognizance of cases contesting rates fixed by the Metropolitan Waterworks and Sewerage System.

I (C)

The third and fourth issues are related and will be discussed together.

Maynilad argues that the rates contested by the Center for Popular Empowerment et al. are not "rates and fees fixed by the Board of Trustees for the System." Instead, these rates were determined through the rate rebasing mechanism provided in the Concession Agreement between the Metropolitan Waterworks and Sewerage System and Maynilad. Thus, even if the National

Water Resources Board is the successor of the Public Service Commission, it cannot take cognizance of the Petition because the rates assailed are not those provided in Section 12 of Republic Act No. 6234.

On the other hand, the Metropolitan Waterworks and Sewerage System and its Regulatory Office argue that the water tariff set in Resolution No. 04-014-CA cannot be considered "public utility rates" subject to Section 12 of Republic Act No. 6234. Similar to Maynilad, they argue that the tariff rates were determined through the rate-rebasing mechanism under the Concession Agreements and, therefore, are not reviewable by the Board.

The National Water Resources Board does not address the issue of whether the rates fixed through the rate rebasing mechanism under the Concession Agreements are rates fixed under Section 12 of Republic Act No. 6234. Nevertheless, it contends that it is *ultra vires* for the Metropolitan Waterworks and Sewerage System to fix the rates for a private corporation, such as Maynilad, as no such power can be deduced from Section 12 of Republic Act No. 6234.

Meanwhile, the Center for Popular Empowerment et al. claim that the argument that the water rates determined through the rate-rebasing mechanism in the Concession Agreement are not the water rates set pursuant to Section 12 of Republic Act No. 6234 "partakes of needless legal hair-splitting."[126] It is absurd, they said, for the National Water Resources Board to have jurisdiction over water rates that took into account the entire waterworks system but none over that the "tariff rates" that applied to a portion of that same waterworks system.

They argue that "[w]hat applies to the [Metropolitan Waterworks and Sewerage System] must necessarily apply to its agent, [which is Maynilad]."[127] Even if the "tariff rates" are determined through the rate-rebasing mechanism under the Concession Agreements, they point out that these "tariff rates" still had to be approved by the Metropolitan Waterworks and Sewerage System. Ultimately, these "tariff rates" are determined by the Metropolitan Waterworks and Sewerage System and subject to the review of the National Water Resources Board.

Maynilad's theory is wrong. It is true that the rates chargeable by Maynilad are initially determined through the rate rebasing mechanism under Section 9.2.3 of the Concession Agreement. Nevertheless, the rates are subject to action by the board of trustees of the Metropolitan Waterworks and Sewerage System.

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126 *Rollo* (G.R. No. 181764), p. 701.
127 Id. at 702.

Section 11.1 of the Concession Agreement is clear on this:

> ARTICLE 11. REGULATORY OFFICE
>
> 11.1 Organization
>
> The MWSS Board of Trustees shall establish and fund a regulatory office (the "Regulatory Office") to be organized and operated in a manner consistent with the description contained in Exhibit A hereto, subject to such changes thereto that the MWSS Board may make from time to time, and shall have the functions and powers described in that Exhibit. *Decisions of the Regulatory Office requiring action by the MWSS Board of Trustees, including decisions affecting the level of Standard Rates, shall promptly be submitted to the Board in accordance with Section 7.1 hereof.* (Emphasis supplied)

Considering that the powers of the Metropolitan Waterworks and Sewerage System, including rate fixing, is exercised by its board of trustees,[128] the rates determined through the rate rebasing mechanism are ultimately "rates and fees fixed by the Board of Trustees for the System[.]" Besides, it would be anomalous to leave water consumers without a recourse should they choose to contest water rates just because certain aspects of the Metropolitan Waterworks and Sewerage System have been privatized.

II

We partially grant the Petitions in G.R. Nos. 207444, 208207, 210147, 213227, and 219362.

II (A)

For the first issue in these Petitions, petitioners argue that their original actions for certiorari and prohibition are allowable under the expanded jurisdiction of this Court. They contend that the execution of the Concession Agreements and the concessionaires' setting of water rates above that allowed by law constitute grave abuse of discretion correctible by certiorari.[129]

The Metropolitan Waterworks and Sewerage System, the MWSS Regulatory Office, Maynilad, and Manila Water counter that petitioners availed themselves of the wrong remedies because the Concession Agreements and assailed Resolutions were not issued in the exercise of judicial or quasi-judicial functions. There also exists a plain, speedy, and adequate remedy available with the National Water Resources Board to question the water rates charged by Manila Water and Maynilad. This remedy

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[128] Republic Act No. 6234, sec. 3(h).
[129] *Rollo* (G.R. No. 207444), pp. 4082–4084.

renders certiorari and prohibition unavailable.[130]

They add that the validity of the Concession Agreements may no longer be assailed because these were executed in 1997, more than 60 days from petitioners' notice of the agreements' execution. Furthermore, the 2013 Tariff Schedule was even disapproved by the Metropolitan Waterworks and Sewerage System and, therefore, there is nothing to be prohibited.

As for the remedy of mandamus, Metropolitan Waterworks and Sewerage System, the MWSS Regulatory Office, Maynilad, and Manila Water argue that no ministerial act is involved in this case. The determination of rates chargeable to consumers is a discretionary act on the part of the Metropolitan Waterworks and Sewerage System, while the proposed refund of allegedly excess payments cannot be ordered because Manila Water and Maynilad are private entities.[131]

We resolve to take cognizance of the Petitions.

The original jurisdiction of this Court is provided in Article VIII, Section 5(1) of the Constitution:

> SECTION 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

On the other hand, Rule 65, Section 1 of the Rules of Court provides:

> Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

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[130] Id. at 3736–3738; *Rollo* (G.R. No. 207444), pp. 3642–3646; *Rollo* (G.R. No. 207444), pp. 3843–3846; *Rollo* (G.R. No. 219362, pp. 660–662; *Rollo* (G.R. No. 219362), pp. 1681–1621.

[131] *Rollo* (G.R. No. 207444), pp. 3736–3738, 3831–3832.

The writ of *certiorari* corrects errors of jurisdiction. As worded in Rule 65, a petition for *certiorari* may be availed of "when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction."

The requisites for filing a petition for *certiorari* are the following, namely: first, the petition must be directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; second, the tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and, third, there is neither appeal nor any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding.[132]

On the first requisite, an act is said to be judicial if it involves "receiving evidence and making factual conclusions in a controversy, accompanied by the authority of applying the law to those factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitely, subject to such appeals or modes of review as may be provided by law."[133] Meanwhile, it is quasi-judicial when an administrative officer or board is "required to investigate or ascertain the existence of facts and draw conclusions therefrom as the basis for official action and to exercise its discretion or judgment of a judicial nature."[134]

In *Galicto v. Aquino III*,[135] we dismissed the petition on the ground that the executive order directing the review of incentives granted to employees of government-owned or controlled corporations was not issued in the exercise of judicial or quasi-judicial functions.

The petition in *The Liga ng mga Barangay National v. The City Mayor of Manila*[136] was also dismissed on the same ground:

> After due deliberation on the pleadings filed, we resolve to dismiss this petition for certiorari.
>
> First, the respondents neither acted in any judicial or quasi-judicial capacity nor arrogated unto themselves any judicial or quasi-judicial prerogatives. A petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is a special civil action that may be invoked only against a tribunal, board, or officer exercising judicial or quasi-judicial functions.

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132 *See Galicto v. Aquino*, 683 Phil. 141, 167 (2012) [Per J. Brion, *En Banc*], *citing Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529 (2004).

133 *Cariño v. The Commission on Human Rights*, 281 Phil. 547, 558 (1991) [Per C.J. Narvasa, *En Banc*].

134 *See Galicto v. Aquino*, 683 Phil. 141, 167 (2012) [Per J. Brion, *En Banc*], *citing Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529 (2004).

135 683 Phil. 141 (2012) [Per J. Brion, *En Banc*].

136 465 Phil. 529 (2004) [Per C.J. Davide, *En Banc*].

. . . .

> Elsewise stated, for a writ of *certiorari* to issue, the following requisites must concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.
>
> A respondent is said to be exercising judicial function where he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties.
>
> Quasi-judicial function, on the other hand, is "a term which applies to the actions, discretion, etc., of public administrative officers or bodies … required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature."
>
> Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties.
>
> The respondents do not fall within the ambit of tribunal, board, or officer exercising judicial or quasi-judicial functions. As correctly pointed out by the respondents, the enactment by the City Council of Manila of the assailed ordinance and the issuance by respondent Mayor of the questioned executive order were done in the exercise of legislative and executive functions, respectively, and not of judicial or quasi-judicial functions. On this score alone, certiorari will not lie.[137]

The second requisite involves lack or excess of jurisdiction. *Certiorari* likewise addresses "grave abuse of discretion" where the tribunal, board, or officer has jurisdiction but exercises it in such a capricious and arbitrary manner. As traditionally defined, grave abuse of discretion is such capricious and arbitrary exercise of judgment as amounting to lack of jurisdiction, or the exercise of power in an arbitrary or despotic manner by reason of passion or personal hostility so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[138]

The third requisite requires that there be no appeal or any plain, speedy, and adequate remedy available to the petitioner. It is a rule that if appeal is available, *certiorari* may no longer be resorted to even if the ground relied

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[137] Id. at 540–541.

[138] *See Padilla v. Congress of the Philippines*, 814 Phil. 344 (2017) [Per J. Leonardo-de Castro, *En Banc*].

upon is grave abuse of discretion.[139] Remedies considered "plain, speedy, and adequate" include a motion for reconsideration[140] and administrative remedies. Indeed, under the doctrine of primary jurisdiction:

> The Courts will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered.[141]

Corollary to the doctrine of primary jurisdiction is the doctrine of exhaustion of administrative remedies, which requires litigants to "exhaust all the administrative remedies provided by law before seeking a judicial intervention in order to give the administrative agency an opportunity to decide correctly the matter and prevent unnecessary and premature resort to the court."[142]

The assailed Concession Agreements were not issued in the exercise of judicial or quasi-judicial power. They are contracts entered into by the Metropolitan Waterworks and Sewerage System and the concessionaires, where no reception of evidence or making conclusions of fact to resolve a controversy was done. The first requisite, therefore, is absent in this case.

Besides, there is a plain, speedy, and adequate remedy available to petitioners, who are essentially questioning the rates charged by the concessionaires. Under Section 12 of Republic Act No. 6234, a complaint questioning the rates charged by the Metropolitan Waterworks and Sewerage System may be filed before the National Water Resources Board within 30 days after the effectivity of the rates:

> SECTION 12. *Review of Rates by the Public Service Commission.* — The rates and fees fixed by the Board of Trustees for the System and by the local governments for the local systems shall be of such magnitude that the System's rate of net return shall not exceed twelve per centum (12%), on a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital. Such rates and fees shall be effective and enforceable fifteen (15) days after publication in a newspaper of general circulation within the territory defined in Section 2 (c) of this Act. *The Public Service Commission shall have exclusive*

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[139] *See Bugarin v. Palisoc*, 513 Phil. 59, 66 (2005) [Per J. Quisumbing, First Division]; *Association of Integrated Security Force of Bislig (AISFB)-ALU v. Hon. Court of Appeals*, 505 Phil. 10, 18 (2005) [Per J. Chico-Nazario, Second Division].

[140] *See Tiorosio-Espinosa v. Presiding Judge Hofileña-Europa*, 778 Phil. 735 (2016) [Per J. Jardeleza, Third Division].

[141] *Smart Communications, Inc. v. National Telecommunications, Inc.*, 456 Phil. 145, 158 (2003) [Per J. Ynares-Santiago, First Division].

[142] *Joson III v. Court of Appeals*, 517 Phil. 555, 565 (2006) [Per J. Carpio, Third Division].

> *original jurisdiction over all cases contesting said rates or fees. Any complaint against such rates or fees shall be filed with the Public Service Commission within thirty (30) days after the effectivity of such rates, but the filing of such complaint or action shall not stay the effectivity of said rates or fees.* The Public Service Commission shall verify the rate base, and the rate of return computed therefrom, in accordance with the standards above outlined. The Public Service Commission shall finish, within sixty (60) calendar days, any and all proceedings necessary and/or incidental to the case, and shall render its findings or decisions thereon within thirty (30) calendar days after said case is submitted for decision.
>
> In cases where the decision is against the fixed rates or fees, excess payments shall be reimbursed and/or credited to future payments, in the discretion of the Commission. (Emphasis supplied)

Petitioners could have also availed themselves of a remedy of declaratory relief before a regional trial court as provided in Rule 63 of the Rules of Court, considering that they are questioning the validity of the Concession Agreements, which are contracts. Rule 63, Section 1 of the Rules of Court provides:

> Section 1. *Who may file petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.
>
> An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule.

The third requisite is likewise lacking.

Nevertheless, the so-called expanded certiorari jurisdiction of this Court in Article VIII, Section 1 of the Constitution vests this Court the power to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government."

Considering petitioners' allegation that the Metropolitan Waterworks and Sewerage System, an instrumentality of government, gravely abused its discretion in entering into the Concession Agreements with Manila Water and Maynilad and even granting them rates over and above than that allowed by law, we resolve to take cognizance of the Petitions.

II (B)

We proceed to resolve the second and third issues in G.R. No. 207444, 208207, 210147, 213227, and 219362 simultaneously as they are linked.

On the issue of actual case or controversy, petitioners argue that the subject matter of this case—the supply of reasonably priced water—is a basic human right and of paramount public interest. In petitioners' view, Manila Water and Maynilad have been illegally including their corporate income taxes in their recoverable operating expenses, contributing to the illegal increase in the price of water over the years. This Court must therefore intervene to prevent the imminent increase in the price of water in Metro Manila by, first, prohibiting the impending approval of the 2013 Tariff Schedule and, second, prohibiting Manila Water and Maynilad from claiming on the Republic's Letter of Undertaking as a result of the arbitration between them and the Metropolitan Waterworks and Sewerage System.[143]

The Metropolitan Waterworks and Sewerage System, the MWSS Regulatory Office, Maynilad, and Manila Water counter that this case primarily involves allegations not established as facts. Manila Water and Maynilad argue that the issue of whether they are public utilities is an issue of fact that requires an examination of the intention of the parties to the Concession Agreement per this Court's ruling in *Freedom from Debt Coalition v. Metropolitan Waterworks and Sewerage System*.[144] As for the Metropolitan Waterworks and Sewerage System, the allegations of fraud as to the execution of the Concession Agreement is, again, an issue of fact. The failure of petitioners to establish these allegations renders the Petition dismissible as this Court is not a trier of facts. Therefore, there is no controversy for this Court to resolve.[145]

As to the issue of legal standing, petitioners contend that the issues they raise are of transcendental importance and paramount public interest, which vests them with the requisite standing.[146] They also claim that they can directly invoke this Court's jurisdiction as an exception to the doctrine of hierarchy of courts.[147]

Countering petitioners, Manila Water and Maynilad commonly argue that petitioners have no legal standing to sue because they could not have sustained any direct and personal injury, not being parties to the Concession

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143 *Rollo* (G.R. No. 207444), pp. 4081–4082; *Rollo* (G.R. No. 210147), pp. 33–34; *Rollo* (G.R. No. 213227), pp. 9–10; *Rollo* (G.R. No. 219362), pp. 10.

144 564 Phil. 566 (2007) [Per J. Sandoval-Gutierrez, *En Banc*].

145 *Rollo* (G.R. No. 207444), pp. 3736–3738; *rollo* (G.R. No. 219362), pp. 650–652.

146 *Rollo* (G.R. No. 207444), pp. 6–10; *rollo* (G.R. No. 207444), pp. 4079–4081; *rollo* (G.R. No. 210147), pp. 29–33; *rollo* (G.R. No. 213227), pp. 6–9; *rollo* (G.R. No. 219362), pp. 8–9.

147 *Rollo* (G.R. No. 207444), pp. 4082–4084; *rollo* (G.R. No. 210147), pp. 34–36; *Rollo* (G.R. No. 219362), pp. 7–8.

Agreements.[148] They further contend that petitioners cannot claim standing as taxpayers since no public funds were alleged to have been illegally disbursed.[149] Maynilad specifically argues that the Petition filed by petitioners Javier et al. is styled as a class suit, yet the interests of the petitioners are not common to the class petitioners allegedly represent.[150]

We find that the Petitions satisfy the requisites for judicial review.

Article VIII, Section 1 of the Constitution provides:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.

The power of judicial review is the power to "declare executive and legislative acts void if violative of the Constitution."[151] For this Court to exercise its power of judicial review, four requisites must be satisfied, namely, first, there must be an actual case or controversy; second, the party bringing suit must have *locus standi* or direct and personal interest in the outcome of the case; third, the exercise of judicial review must be pleaded at the earliest opportunity; and, fourth, the constitutional question must be the very *lis mota* of the case.[152]

There is an actual case or controversy when it involves "a conflict of legal rights or an assertion of opposite legal claims susceptible of judicial resolution."[153] An actual case or controversy entails issues "definite and concrete, touching on the legal relations of parties having adverse legal interests."[154] Conflicts that are conjectural, anticipatory, or hypothetical, are not controversies for purposes of judicial review. This Court does not render advisory opinions or resolve theoretical cases. In other words, there must be *actual facts* from which this Court can properly determine whether there has been any breach of constitutional text. Otherwise, the case must be

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148 *Rollo* (G.R. No. 207444), pp. 3654–3657; *rollo* (G.R. No. 207444), pp. 3829–3837; *Rollo* (G.R. No. 219362), pp. 652–653; *rollo* (G.R. No. 219362), pp. 1608–1615.

149 *Rollo* (G.R. No. 207444), pp. 3654–3657; *rollo* (G.R. No. 219362), pp. 653–657.

150 *Rollo* (G.R. No. 207444), pp. 3834–3837; *rollo* (G.R. No. 210147), pp. 40–43.

151 *Angara v. Electoral Commission*, 63 Phil. 139, 157 (1936) [Per J. Laurel, En Banc].

152 *See Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632 (2000) [Per J. Kapunan, *En Banc*], *citing Philippine Constitution Association v. Enriquez*, 305 Phil. 546 (1994), *citing Luz Farms v. Secretary of the Department of Agrarian Reform*, 270 Phil. 151 (1990); *Dumlao v. Commission on Elections*, 95 SCRA 392 (1980); *and*, *People v. Vera*, 65 Phil. 56 (1937).

153 *See Information Technology Foundation of the Philippines v. COMELEC*, 499 Phil. 281, 304 (2005) [Per C.J. Panganiban, *En Banc*].

154 Id. at 304–305.

dismissed.[155]

For instance, the petitioners in *Republic v. Roque*[156] sought the nullification of the Human Security Act of 2007 because of possible prosecution under the statute. As basis, they cited remarks of certain government officials addressed to the public. No information, however, was filed against them. Absent demonstration as to "how [the petitioners] are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372,"[157] this Court dismissed the petitions.

Another example of a petition not anchored on actual facts was that filed in *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*.[158] There, bus operators assailed Department Order No. 118-12 that mandated a part-fixed-part-performance-based compensation system for bus drivers and conductors, arguing that it would result in the diminution of profits of operators. This Court dismissed the petition because the allegation was based entirely on speculation. Nowhere in the petition was it shown that granting bus drivers and operators minimum wage and social welfare benefits will result in lower income for bus operators.

The petitioner in *Falcis III v. Civil Registrar General*[159] also failed to allege actual facts in his petition to declare Articles 1 and 2 of the Family Code as unconstitutional. The petition "neither cite[d] nor annexe[d] any credible or reputable studies, statistics, affidavits, papers, or statements" to support the allegation that the provisions assailed violated the right to marry of same-sex couples.

An actual case or controversy, however, does not require animosity, passion, or violence of a "full blown battle"[160] between the parties. The presence of "ripening seeds" of a controversy is sufficient so long as the "state of facts [indicates] imminent and inevitable litigation."[161]

Here, actual facts were alleged, giving rise to an actual controversy. Admissions in the pleadings have been made sufficient for this Court to rule on some of the issues raised by petitioners.

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155 *See Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per J. Carpio Morales, *En Banc*]. *See also Republic v. Roque*, 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, *En Banc*].

156 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, *En Banc*].

157 Id. at 305.

158 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

159 G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744> [Per J. Leonen, *En Banc*].

160 *Republic v. Roque*, 718 Phil. 294, 305 (2013) [Per J. Perlas-Bernabe, *En Banc*].

161 Id.

For instance, the execution and contents of the Concession Agreements were never denied by the parties. The parties also admit that the downward adjustment of the rates have been submitted to arbitration, and that arbitral awards have been rendered in both proceedings. The first requisite for the exercise of judicial review is therefore present here.

The second requisite is legal standing or *locus standi*, defined as the "right of appearance in a court of justice on a given question."[162] The rule is that the party bringing suit must have a direct and personal interest in the outcome of the suit, interest being material interest and not just "mere curiosity about the question involved."[163] This is to ensure "concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[164]

In constitutional litigation, however, suits filed for and on behalf of others have been allowed. This is especially true with respect to cases of constitutional and critical significance. A taxpayer may bring suit on a claim of illegal disbursement of public funds or that the tax measure is unconstitutional.[165] Voters have been allowed to question the validity of an election law.[166] As for legislators, they have been allowed to file cases against official action that infringes on their prerogatives as legislators.[167]

In *White Light Corporation v. City of Manila*,[168] hotel and motel operators were even allowed to bring suit on behalf of their patrons on the ground of "third party standing." When the City Council of Manila enacted an ordinance banning "short-time admission" in hotels and motels in the name of morality, hotel and motel operators led by White Light Corporation questioned the ordinance, alleging violation of the right to privacy, freedom of movement, and right to equal protection of *their patrons*. In allowing the suit, this Court explained:

> Standing or locus standi is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. More importantly, the doctrine of standing is built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government.

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162 *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 493 (2013) [Per J. Reyes, *En Banc*].

163 *Goco v. Court of Appeals*, 631 Phil. 394, 403 (2010) [Per J. Brion, Second Division].

164 *Association of Flood Victims v. Commission on Elections*, 740 Phil. 472, 481 (2014) [Per Acting C.J. Carpio, *En Banc*] citing *Integrated Bar of the Philippines v. Hon. Zamora*, 392 Phil. 618, 632–633 (2000).

165 *Funa v. Villar*, 686 Phil. 571, 586 (2012) [Per J. Velasco, Jr., *En Banc*].

166 Id.

167 Id.

168 596 Phil. 444 (2009) [Per J. Tinga, *En Banc*].

> The requirement of standing is a core component of the judicial system derived directly from the Constitution. The constitutional component of standing doctrine incorporates concepts which concededly are not susceptible of precise definition. In this jurisdiction, the extancy of "a direct and personal interest" presents the most obvious cause, as well as the standard test for a petitioner's standing. In a similar vein, the United States Supreme Court reviewed and elaborated on the meaning of the three constitutional standing requirements of injury, causation, and redressability in *Allen v. Wright*.
>
> Nonetheless, the general rules on standing admit of several exceptions such as the overbreadth doctrine, taxpayer suits, third party standing and, especially in the Philippines, the doctrine of transcendental importance.
>
> For this particular set of facts, the concept of third party standing as an exception and the overbreadth doctrine are appropriate. In *Powers v. Ohio*, the United States Supreme Court wrote that: "We have recognized the right of litigants to bring aetions on behalf of third parties, provided three important criteria are satisfied: the litigant must have suffered an 'injury-in-fact', thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests". Herein, it is clear that the business interests of the petitioners are likewise injured by the Ordinance. They rely on the patronage of their customers for their continued viability which appears to be threatened by the enforcement of the Ordinance. The relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit.[169]

Legal standing may likewise be granted to associations for purposes of suing on behalf of their members. In *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*,[170] this Court held that "[the modern view] fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents."[171] The association, however, must sufficiently establish its membership, the direct injury that the members will sustain, and the association's authority to sue on behalf of its members.[172]

There must also at least be a showing that the individual members could not have brought the petition as a class suit defined in Rule 3, Section 12 of the Rules of Court:

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169 Id. at 455–457.

170 561 Phil. 386 (2007) [Per J. Austria-Martinez, *En Banc*].

171 Id. at 395, citing *Executive Secretary v. Court of Appeals*, 473 Phil. 27 (2004) [Per J. Callejo, Sr., Second Division].

172 *See The Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386, 395 (2007) [Per J. Austria-Martinez, *En Banc*]; *Holy Spirit Homeowners Association, Inc. v. Defensor*, 529 Phil. 573 (2006) [Per J. Tinga, *En Banc*]; *Executive Secretary v. Court of Appeals*, 473 Phil. 27 (2004) [Per J. Callejo, Sr., Second Division].

> Section 12. *Class suit.* — When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

There must be legitimate reasons why the individual members could not have brought the actions for themselves. In *White Light*, hotel patrons cannot be expected to individually bring suits to assert their right to privacy, for the cost of litigation would be greater than the amount they pay for a stay in the hotel. In *Confederation for Unity, Recognition, and Advancement of Government Employees v. Abad,*[173] this Court allowed the Social Welfare Employees Association of the Philippines to sue on behalf of its members and assail a department circular that placed a ceiling upon the collective negotiations agreement incentive for 2011. According to this Court, the association's status as a labor organization is a legitimate reason for it to sue and protect its members' interest in collective negotiation agreements.

Under exceptional circumstances, concerned citizens may also be allowed to sue and granted legal standing under the doctrine of transcendental importance.[174] This means that the rule of direct and personal interest may be suspended when the issues raised are of paramount importance to the public. There remain policy issues that this Court can take cognizance of, such as those that may be difficult to raise because of the hegemony or patriarchy, this despite the lack of direct injury of the petitioner.[175] After all, this Court's duty is not to simply settle disputes. It also serves the important function of "clarifying the values embedded in our legal order anchored on the Constitution, laws, and other issuances by competent authorities."[176]

Given the foregoing, this Court finds that the petitioners are sufficiently possessed of legal standing. They raise an issue of transcendental importance, water being the most basic of all human necessities. The issue of access to clean and *affordable* water is essential to survival and of paramount importance to all.

II (C)

As to the fourth issue, Maynilad and Manila Water claim that petitioners

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[173] G.R. No. 200418, November 10, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67024> [Per J. Leonen, *En Banc*].

[174] *Funa v. Villar*, 686 Phil. 571, 586 (2012) [Per J. Velasco, Jr., *En Banc*].

[175] J. Leonen, Concurring Opinion, *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, *En Banc*].

[176] Id.

violated the doctrines of hierarchy of courts, primary jurisdiction, and exhaustion of administrative remedies. They contend that petitioners have not sufficiently justified their direct invocation of this Court's jurisdiction as their Petitions may be filed with the lower courts.[177] Furthermore, the National Water Resources Board has the exclusive original jurisdiction over cases questioning the water rates charged by the Metropolitan Waterworks and Sewerage System, a remedy that petitioners failed to avail of.[178]

We resolve to take cognizance of the Petitions.

This Court shares concurrent original jurisdiction with lower courts over petitions for certiorari, prohibition, and mandamus. Nevertheless, this is not license for parties to indiscriminately file their cases before this Court on the first instance. The doctrine of hierarchy of courts requires that recourse be first obtained from the lower courts so as to "prevent inordinate demands upon [this] Court's time and attention which are better devoted to those within its exclusive jurisdiction, and to prevent further overcrowding of this Court's docket."[179]

The doctrine was first introduced in *People v. Cuaresma*,[180] where a petition for certiorari questioning a trial court order granting a motion to quash was directly filed before this Court. In dismissing the petition, this Court said:

> The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence [to the doctrine of hierarchy of courts] in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometime even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land. The proceeding at bar is a case in point. The application for the writ of *certiorari* sought against a City Court was brought directly to this Court although there is discernable special and important reason for not presenting it to the Regional Trial Court.
>
> The Court therefore closes this decision with the declaration, for the information and guidance of all concerned, that it will not only continue to enforce the policy, but will require a more strict observance thereof.[181]

The Diocese of Bacolod v. Commission on Elections[182] expounds on the purpose of the doctrine, which is to "ensure that every level of the judiciary performs its designated roles in an effective and efficient manner"[183]:

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177 *Rollo* (G.R. No. 207444), pp. 3740, MWSS Memorandum; *Rollo* (G.R. No. 207444), pp. 3651–3654, Manila Water Memorandum; *Rollo* (G.R. No. 207444), pp. 3838-3839, Maynilad Memorandum.

178 *Rollo* (G.R. No. 219362), pp. 659–660, 662–664, Manila Water Comment.

179 *People v. Cuaresma*, 254 Phil. 418, 427 (1989) [Per J. Narvasa, First Division].

180 Id. at 418.

181 Id. at 428.

182 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

183 Id. at 329–330.

> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where to resort to courts at their level would not be practical considering that their decisions could still be appealed before the higher courts, such as the Court of Appeals.
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> The Court of Appeals is primarily designated as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
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> This [C]ourt, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this [C]ourt promulgates these doctrinal devices in order that it truly performs that role.[184]

In the event that the original jurisdiction of this Court is invoked, the petitioner must clearly and specifically allege the special and important reasons for the direct invocation. Generally, direct recourse to this Court is allowed in cases of national interest and of serious implications.[185] Those of transcendental importance,[186] and of first impression[187] were likewise taken

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184 Id. at 329-330.

185 Considered as cases of national interest, the following were resolved by this court on the first instance: *Chavez v. Romulo,* 475 Phil. 486, 499 (2004) [Per J. Sandoval-Gutierrez, *En Banc*], which involved citizens' right to bear arms; *Commission on Elections v. Judge Quijano-Padilla,* 438 Phil. 72, 88-89 (2002) [Per J. Sandoval-Gutierrez, *En Banc*], which involved the Commission on Elections' Voter's Registration and Identification System Project.

186 The issues in the following cases were considered to be of transcendental importance: *The Province of Batangas v. Hon. Romulo,* 473 Phil. 806, 827 (2004) [Per J. Callejo, Sr., *En Banc*], where this Court resolved the issue of whether Congress may impose conditions for the release of internal revenue allotment of local government units; *Senator Jaworski v. Philippine Amusement and Gaming Corporation,* 464 Phil. 375, 385 (2004) [Per J. Ynares-Santiago, *En Banc*], which involved the grant of authority to a private corporation to operate internet gambling facilities; *Agan, Jr. v. Phil. International Air Terminals Co., Inc.,* 450 Phil. 744, 805 (2003) [Per J. Puno, *En Banc*], which involved the construction and operation of the Ninoy Aquino International Airport Terminal III.

187 *Agan, Jr. v. Phil. International Air Terminals Co., Inc.*, 450 Phil. 744, 805 (2003) [Per J. Puno, *En Banc*], which involved the construction and operation of the Ninoy Aquino International Airport Terminal III; *Government of the United States of America v. Hon. Purganan,* 438 Phil. 417, 439 (2002) [Per J. Panganiban, *En Banc*], where this Court resolved for the first time the issue of whether bail may be availed of in a proceeding for extradition.

cognizance of on the first instance. We may even choose to suspend its application in the interest of substantial justice.

As we have earlier found, petitioners raise an issue of transcendental importance that involves access to basic human necessity. We therefore take cognizance of the present Petitions.

II (D)

As to the fifth issue, petitioners contend that the Concession Agreements were executed in violation of the Constitution for unduly delegating the inherent powers of the State to the concessionaires. For instance, the concessionaires are allowed to exercise the eminent domain powers of the Metropolitan Waterworks and Sewerage System under Section 7.2[188] of the Concession Agreements. In addition, Section 6.2[189] allegedly allows the concessionaires to assess and collect taxes from water consumers. These, according to petitioners, are unconstitutional for the inherent powers of the State can neither be contracted away nor delegated without an enabling statute.[190]

Disputing petitioners, respondents argue that the Concession Agreements are constitutional and valid as they were executed pursuant to the National Water Crisis Act of 1995 and Executive Order No. 286, series of 1995 and Executive Order No. 311, series of 1996. This validity was warranted by the State, through the Metropolitan Waterworks and Sewerage System, in Section 4.1.2 of the Concession Agreements.[191]

With respect to the alleged delegation of the inherent powers of the

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188 Concession Agreements, sec. 7.2 provides:
7.2 Easements, Eminent Domain, Right of Way and Similar Powers
MWSS hereby appoints the Concessionaires as its agent and representatives, for purposes of, among others, Section 3(k) of the Charter, in its name, place and stead, to apply for and exercise its easement, eminent domain, right of way and similar rights and powers given to MWSS under its Charter in connection with infrastructure projects and works undertaken relating to the Concession by the Concessionaire in the Service Area pursuant to this Agreement. The Concessionaire shall be solely responsible for the payment of any compensation to third parties occasioned by the exercise of such rights and powers.

189 Concession Agreements, sec. 6.2 provides:
6.2 Taxes
Subject to the Undertaking Letter, the Concessionaire shall be responsible for all income and withholding taxes and other forms of taxes arising from payments by Customers for services rendered on and after the Commencement Date and from any other income associated with the Concession arising on or after the Commencement Date. The Concessionaire shall be responsible for the payment of all documentary stamp taxes payable in connection with the execution of this Agreement and any related agreements or instruments; all customs, import duties and other taxes or assessments relating to the importation into the Philippines of plant and equipment to be used in connection with the Concession; and all local transfer taxes on property acquired through the exercise of rights pursuant to Section 7.2. In addition, the Concessionaire shall pay, for and on behalf of MWSS, or shall reimburse MWSS within 10 days of demand therefor, any real property taxes and other taxes or assessments payable by MWSS on MWSS property or assets in the Service Area used for the supply of water and sewerage services.

190 *Rollo* (G.R. No. 207444), pp. 21–24; *Rollo* (G.R. No. 207444), pp. 4092–4093 and 4103–4104; *Rollo* (G.R. No. 210147), p. 50; *Rollo* (G.R. No. 213227), pp. 32–36, *Rollo* (G.R. No. 219362), pp. 29–31.

191 *Rollo* (G.R. No. 207444), pp. 3659–3660; *Rollo* (G.R. No. 207444), pp. 3858–3861.

State, respondents mainly contend that the supply of water is *not* a governmental but a proprietary function and thus can be contracted out to private entities.[192] Specifically on police power, they point out that petitioners did not cite any legal authority for their contention that police power was delegated to the concessionaires. On the delegation of the power of eminent domain, they argue that Section 7.2[193] of the Concession Agreements states that the exercise will be "in the name of" Metropolitan Waterworks and Sewerage System, meaning that the concessionaires are only acting on behalf of Metropolitan Waterworks and Sewerage System should they exercise the power of expropriation. As to the power of taxation, nothing in Section 6.2[194] of the Concession Agreements states that the concessionaires may levy or collect taxes from water consumers. All that Section 6.2 provides is that the concessionaires shall pay the real property taxes on the properties of Metropolitan Waterworks and Sewerage System. Therefore, there is no undue delegation of sovereign powers.

After a review of the provisions of the Concession Agreements, we do not see any undue delegation in any of these provisions. Petitioners failed to clearly demonstrate a breach of the Constitution with the execution of the Concession Agreements. We therefore sustain their validity.

In deciding constitutional questions, this Court presumes that the official acts of our coequal branches are constitutional and that "before the act was done or the law was enacted, earnest studies were made by Congress or the President, or both, to [e]nsure that the Constitution would not be breached."[195]

Police power is the "power to prescribe regulations to promote the health, morals, peace, education, good order or safety, and general welfare of

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192 *Rollo* (G.R. No. 207444, pp. 3740–3741.

193 Concession Agreements, sec. 7.2 provides:
7.2 Easements, Eminent Domain, Right of Way and Similar Powers
MWSS hereby appoints the Concessionaires as its agent and representatives, for purposes of, among others, Section 3(k) of the Charter, in its name, place and stead, to apply for and exercise its easement, eminent domain, right of way and similar rights and powers given to MWSS under its Charter in connection with infrastructure projects and works undertaken relating to the Concession by the Concessionaire in the Service Area pursuant to this Agreement. The Concessionaire shall be solely responsible for the payment of any compensation to third parties occasioned by the exercise of such rights and powers.

194 Concession Agreements, sec 6.2 provides:
6.2 Taxes
Subject to the Undertaking Letter, the Concessionaire shall be responsible for all income and withholding taxes and other forms of taxes arising from payments by Customers for services rendered on and after the Commencement Date and from any other income associated with the Concession arising on or after the Commencement Date. The Concessionaire shall be responsible for the payment of all documentary stamp taxes payable in connection with the execution of this Agreement and any related agreements or instruments; all customs, import duties and other taxes or assessments relating to the importation into the Philippines of plant and equipment to be used in connection with the Concession; and all local transfer taxes on property acquired through the exercise of rights pursuant to Section 7.2. In addition, the Concessionaire shall pay, for and on behalf of MWSS, or shall reimburse MWSS within 10 days of demand therefor, any real property taxes and other taxes or assessments payable by MWSS on MWSS property or assets in the Service Area used for the supply of water and sewerage services.

195 256 Phil. 777 (1989) [Per J. Cruz, *En Banc*].

the people."[196] Here, petitioners did not cite any authority as to how the power was supposedly delegated to the concessionaires. On the contrary, it is the concessionaires who are regulated in the Concession Agreements.

Meanwhile, eminent domain is defined as the "power of the State to forcibly acquire private property intended for public use or purpose upon payment of just compensation to the owner."[197] Petitioners allege that Section 7.2 of the Concession Agreements grants the power of eminent domain to the concessionaires:

> 7.2 *Easements, Eminent Domain, Right of Way and Similar Powers*
>
> MWSS hereby appoints the Concessionaires as its agent and representatives, for purposes of, among others, Section 3(k) of the Charter, in its name, place and stead, to apply for and exercise its easement, eminent domain, right of way and similar rights and powers given to MWSS under its Charter in connection with infrastructure projects and works undertaken relating to the Concession by the Concessionaire in the Service Area pursuant to this Agreement. The Concessionaire shall be solely responsible for the payment of any compensation to third parties occasioned by the exercise of such rights and powers.

There is no undue delegation of the powers of eminent domain. Section 7.2 provides that the concessionaires' exercise of the easement, eminent domain, and similar powers shall be "in the name, place and stead" of Metropolitan Waterworks and Sewerage System. In other words, the concessionaires shall be acting on behalf of Metropolitan Waterworks and Sewerage System. Upon the termination of the Concession Agreements, the assets expropriated shall revert to Metropolitan Waterworks and Sewerage System.

Taxation, or the power to exact "proportional contributions from persons and property levied by the State by virtue of its sovereignty for the support of the government and for all public needs,"[198] was allegedly delegated to the concessionaires in Section 6.2 of the Concession Agreements:

> 6.2 Taxes
>
> Subject to the Undertaking Letter, the Concessionaire shall be responsible for all income and withholding taxes and other forms of taxes arising from payments by Customers for services rendered on and after the Commencement Date and from any other income associated with the Concession arising on or after the Commencement Date. The

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[196] *Edu v. Ericta*, 146 Phil. 469, 476 (1970) [Per J. Fernando, First Division], citing *Primicias v. Fugoso*, 80 Phil. 71 (1948) [Per J. Feria, *En Banc*].

[197] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 809 (1989) [Per J. Cruz, *En Banc*].

[198] *Republic v. Philippine Rabbit Bus Lines, Inc.*, 143 Phil. 158, 163 (1970) [Per J. Fernando, *En Banc*], *citing* I Cooley, Taxation, 4th ed., p. 61 (1924).

> Concessionaire shall be responsible for the payment of all documentary stamp taxes payable in connection with the execution of this Agreement and any related agreements or instruments; all customs, import duties and other taxes or assessments relating to the importation into the Philippines of plant and equipment to be used in connection with the Concession; and all local transfer taxes on property acquired through the exercise of rights pursuant to Section 7.2. In addition, the Concessionaire shall pay, for and on behalf of MWSS, or shall reimburse MWSS within 10 days of demand therefor, any real property taxes and other taxes or assessments payable by MWSS on MWSS property or assets in the Service Area used for the supply of water and sewerage services.

Nothing in this provision gives the concessionaires the power to collect or levy taxes from consumers. All it says is that the concessionaires shall be liable for paying taxes arising from the execution and implementation of the Concession Agreements. Therefore, there is no undue delegation of the power to tax to the concessionaires.

Contrary to the claim of ABAKADA-Guro in its Petition in G.R. No. 213227, the supply of water is *not* a governmental but a proprietary function of the State. Upon reviewing the functions of the National Waterworks and Sewerage Authority, the predecessor of the Metropolitan Waterworks and Sewerage System, this Court[199] made the following pronouncement:

> The business of providing water supply and sewerage service, as this Court held, "may for all practical purposes be likened to an industry engaged in by coal companies, gas companies, power plants, ice plants, and the like" (Metropolitan Water District vs. Court of Industrial Relations, et al., L-4488, August 27, 1952). These are but mere ministrant functions of government which are aimed at advancing the general interest of society. As such they are optional (Bacani vs. National Coconut Corporation, *supra*). And it has been held that "*although the state may regulate the service and rates of water plants owned and operated by municipalities, such property is not employed for governmental purposes and in the ownership operation thereof the municipality acts in its proprietary capacity, free from legislative interference*[.]"
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> . . . .
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> On the strength of the foregoing considerations, our conclusion is that the *NAWASA is not an agency performing governmental functions. Rather, it performs proprietary functions. . .*[200] (Underscoring provided)

That the supply of water is a proprietary function is reiterated in *Spouses Fontanilla v. Maliaman*:[201]

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199 *National Waterworks and Sewerage Authority v. NWSA Consolidated Unions*, 120 Phil. 736 (1964) [Per J. Bautista Angelo, *En Banc*].

200 Id. at 744–745.

201 272 Phil. 315 (1991) [Per J. Paras, *En Banc*].

> Of equal importance is the case of *National Waterworks and Sewerage Authority (NAWASA) vs. NWSA Consolidated Unions*,11 SCRA 766, which propounds the thesis that "the NAWASA is not an agency performing governmental functions; rather it performs proprietary functions ...." The functions of providing water supply and sewerage service are regarded as mere optional functions of government even though the service rendered caters to the community as a whole and the goal is for the general interest of society. The business of furnishing water supply and sewerage service, as held in the case of *Metropolitan Water District vs. Court of Industrial Relations, et al.*, 91 Phil. 840, "may for all practical purposes be likened to an industry engaged in by coal companies, gas companies, power plants, ice plants, and the like." Withal, it has been enunciated that "although the State may regulate the service and rates of water plants owned and operated by municipalities, such property is not employed for governmental purposes and in the ownership and operation thereof the municipality acts in its proprietary capacity, free from legislative interference." (1 McQuillin, p. 683)[202]

With the supply of water being a proprietary function, property employed for the supply of water may be operated "free from legislative interference."[203] Consequently, there can be no undue delegation of a power that Congress cannot interfere with in the first place.

We likewise see no illegality in the extension of the terms of the Concession Agreements. The addition of 15 years to the original 25-year effectivity of the agreements totals to 40 years, which is well within the 50-year limit required by the Constitution.[204] Rebidding is not required because the execution of the Concession Agreements was under the specific terms of the National Water Crisis Act, which authorized the State to adopt "urgent and effective measures to address the nationwide water crisis."[205] Moreover, it was made known to the other bidders during the bidding of the contracts that the contracts are renewable as provided in Section 16.12 of the Concession Agreements:

> 16.12 Reversion
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> ....
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> At the time of such expiration, MWSS shall have the option to rebid the Concession or undertake any other course of action it deems appropriate

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202 Id. at 319.

203 Id.

204 CONST., art. XII, sec. 11 provides:
SECTION 11. 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. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

205 Republic Act No. 8041, sec. 2.

> with respect to the Concession; it being understood that without their express approval at such time, neither MWSS nor the Republic shall incur any financial obligation in respect of such rebidding or other undertaking. This Agreement may not be renewed except with the express written consent of MWSS and the Republic.

It must be recalled that the Concession Agreements were executed pursuant to Republic Act No. 8041 that allowed the privatization of any segment, facilities, or operation of the Metropolitan Waterworks and Sewerage System to address the looming water crisis in 1995. There is no challenge against the constitutionality of the statutory basis of the Concession Agreements. Absent a clear showing of the invalidity of the Concession Agreements, they should be presumed valid and legal.

II (E)

The sixth and seventh issues are linked to one another.

The main controversy here is whether or not Manila Water and Maynilad are public utilities. On this issue, petitioners stress that the concessionaires are public utilities because they supply water to an indefinite public. It is immaterial that they do not have the legislative franchise because their status as public utilities is determined by how they operate.

Furthermore, the Concession Agreements refer to the concessionaires as "contractors" and "agents" of the Metropolitan Waterworks and Sewerage System, but in reality, they go above and beyond what is expected of an agent by taking on Metropolitan Waterworks and Sewerage System's staff as their employees. With the concessionaries being public utilities, this Court's ruling in *MERALCO*[206]—that public utilities are prohibited from including their corporate income taxes as operating expenses—applies to Manila Water and Maynilad.[207]

The Metropolitan Waterworks and Sewerage System agrees with petitioners that respondents Manila Water and Maynilad are public utilities. Based on the service obligations of Manila Water and Maynilad under the Concession Agreements, the Metropolitan Waterworks and Sewerage System argues that they have "assumed the role, and acquired the status, of public utilities." Even the public is dealt with directly by Manila Water and Maynilad, who are also the concessionaires' *own* customers.[208]

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206 440 Phil. 389 (2002) [Per J. Puno, Third Division].

207 *Rollo* (G.R. No. 207444), pp. 24–30; *Rollo* (G.R. No. 207444), pp. 4085–4091 and 4093-4101; *Rollo* (G.R. No. 210147), pp. 50–58; *Rollo* (G.R. No. 213227), pp. 40–49, pp. 38–47; *Rollo* (G.R. No. 219362), pp. 20–29.

208 *Rollo* (G.R. No. 207444), pp. 3742–3754; *Rollo* (G.R. No. 219362), pp. 1534–1548.

Similar to petitioners' argument, it does not matter that respondents Manila Water and Maynilad do not have a legislative franchise to acquire the status of a public utility. Citing *Albano v. Reyes*,[209] Metropolitan Waterworks and Sewerage System contends that a public utility may be operated by virtue of a contract. Furthermore, contractual intent may not override the law as regards a contractors' status as a public utility.

Even if the concessionaires are characterized as "contractors" and "agents" in the Concession Agreements, the Metropolitan Waterworks and Sewerage System argues that it does not have a principal-agent relationship with the concessionaires. For one, the Metropolitan Waterworks and Sewerage System does not compensate the concessionaires for performing actions on its behalf, as opposed to a true agency where the principal compensates the agent. Another is that the concessionaires are responsible for their own income and other tax payments for the operation of the waterworks system. If it were true that they are only agents, then it should be the Metropolitan Waterworks and Sewerage System, as principal, who should pay for these taxes.[210]

In rebuttal, respondents Manila Water and Maynilad commonly assert that they are not public utilities. They contend that when they entered into their respective agreements, the parties intended for Metropolitan Waterworks and Sewerage System to remain as the public utility in charge of all waterworks and sewerage systems in Metro Manila, while Manila Water and Maynilad will serve as Metropolitan Waterworks and Sewerage System's contractors and agents in the East and West Service areas, respectively.[211]

Manila Water and Maynilad cite *Freedom from Debt Coalition* where this Court said that the "intention of [the Metropolitan Waterworks and Sewerage System] and the concessionaires at the time of the bidding process, negotiation, and execution of the Concession Agreements" will determine whether Manila Water and Maynilad are public utilities.[212] With respect to *Albano v. Reyes*, respondents argue that nothing in the case states that the contractor acquired the status of a public utility by operating the Manila International Container Terminal, a part of the Port of Manila.[213]

Consistent with their contention that Manila Water and Maynilad are public utilities, petitioners in G.R. No. 207444, 208207, 210147, 213227, and 219362 and the Metropolitan Waterworks and Sewerage System argue that Manila Water and Maynilad cannot be reimbursed of their corporate income tax payments by way of tariff. Although Section 9.3.4 of the Concession

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209 256 Phil. 718 (1989) [Per J. Paras, *En Banc*].

210 *Rollo* (G.R. No. 207444), p. 3745.

211 Id. at 3663–3668, 3861–3865; *Rollo* (G.R. No. 219362), pp. 671–679; *Rollo* (G.R. No. 219362), pp. 1630–1649.

212 *Freedom from Debt Coalition v. Metropolitan Waterworks and Sewerage System*, 564 Phil. 566, 579 (2007) [Per J. Sandoval-Gutierrez, *En Banc*].

213 *Rollo* (G.R. No. 207444), pp. 3876.

Agreements allow Manila Water and Maynilad to recover "Philippine business taxes" as operating expenses, still, they cannot recover their income tax payments because: (1) income taxes are not incurred in connection with the production of profit; and (2) consumers are not directly benefited by the payment of income tax.

Income tax is a kind of excise tax or a tax on the privilege of earning income which, as income earners, Manila Water and Maynilad are directly liable for. Furthermore, petitioners and respondent Metropolitan Waterworks and Sewerage System argue that Manila Water and Maynilad's income from operating the waterworks and sewerage systems in their respective service areas cannot exceed the 12% limit allowed for public utilities.[214]

Manila Water and Maynilad counter that "Philippine business taxes" under Section 9.3.4 of the Concession Agreements include income taxes as what has been customarily allowed by the Metropolitan Waterworks and Sewerage System since the Concession Agreements were first implemented in 1997. Respondents Manila Water and Maynilad maintain that they are not public utilities but are mere contractors and agents of Metropolitan Waterworks and Sewerage System. They are private corporations not covered by the 12% limit on the rate of return of public utilities.[215]

We rule that Manila Water and Maynilad are public utilities.

A public utility is "a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service."[216] A more exhaustive definition can be found in *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*,[217] where this Court said:

> Public utilities are privately owned and operated businesses whose service are essential to the general public. They are enterprises which specially cater to the needs of the public and conduce to their comfort and convenience. As such, public utility services are impressed with public interest and concern. The same is true with respect to the business of common carrier which holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation when private properties are affected with public interest, hence, they cease to be *juris privati* only. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect grants to the public an interest in that use, and must submit to the control by the public for the common good, to the extent of the interest he has thus created.[218]

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214 Id. at 4101–4103; *Rollo* (G.R. No. 219362), pp. 47–55; *Rollo* (G.R. No. 207444), pp. 3756–3767; *Rollo* (G.R. No. 219362), pp.1553–1563.

215 *Rollo* (G.R. No. 207444), pp. 3698–3705; *Rollo* (G.R. No. 207444), pp. 3888–3894; *Rollo* (G.R. No. 219362), pp. 736–748; *Rollo* (G.R. No. 219362), pp. 1667–1681.

216 *Albano v. Reyes*, 256 Phil. 718, 724 (1989) [Per J. Paras, *En Banc*].

217 309 Phil. 358 (1994) [Per J. Kapunan, First Division].

218 Id. at 360.

Thus, the term "public utility" implies public use and service.[219] "Public service," in turn, is defined in Section 13(b) of Commonwealth Act No. 146[220] or the Public Service Act, to wit:

> (b) The term "public service" includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way, motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries, and small water craft, engaged in the transportation of passengers and freight, shipyard, marine railway, marine repair shop, warehouse, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, sewerage, gas, electric light, heat and power, water supply and power, petroleum, sewerage system, telephone, wire or wireless telegraph system and broadcasting radio stations: *Provided, however*, That a person engaged in agriculture, not otherwise a public service, who owns a motor vehicle and uses it personally and/or enters into a special contract whereby said motor vehicle is offered for hire or compensation to a third party or third parties engaged in agriculture, not itself or themselves a public service, for operation by the latter for a limited time and for a specific purpose directly connected with the cultivation of his or their farm, the transportation, processing, and marketing of agricultural products of such third party or third parties, shall not be considered as operating a public service for the purposes of this Act.

Given that public utilities provide basic commodities and services indispensable to the public's interests, a public utility—unlike an ordinary private business—cannot selectively serve a clientele, but it must provide service to an indefinite public.[221] The inelastic demand for public service requires State regulation to prevent public utilities from prioritizing earning too much profits over providing public service for the common good.[222]

Based on the foregoing definitions, Manila Water and Maynilad are public utilities. They are privately owned and operated business entities engaged in regularly supplying water—the most basic of all necessities for human survival. As provided in the Concession Agreements, they are to serve an indefinite public, at least within their respective service areas.

Nevertheless, Manila Water and Maynilad contend that they are not public utilities. They assert that under Section 2.1 of the Concession Agreements, they are mere "contractors" and "agents" of Metropolitan Waterworks and Sewerage System, the public utility and legislative franchise

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219 *National Power Corporation v. Court of Appeals*, 345 Phil. 9, 27 (1997) [Per J. Romero, Third Division].
220 Commonwealth Act No. 146, sec. 13(b) as amended by Republic Act No. 1270.
221 *Iloilo Ice and Cold Storage Company v. Public Utility Board*, 44 Phil. 551, 557 (1923) [Per J. Malcolm, Third Division].
222 *Republic v. MERALCO*, 449 Phil. 118, 124 (2003) [Per J. Puno, Third Division].

holder.

As early as 1953, this Court rejected a similar argument in *Luzon Stevedoring Co., Inc. v. The Public Service Commission.*[223] Luzon Stevedoring Co., Inc. (Luzon Stevedoring) owned watercrafts which it used to transport goods for hire or compensation between points in the Philippines. Upon Philippine Shipowners' Association's complaint, the Public Service Commission restrained Luzon Stevedoring's operations until the rates it charged were approved by the Commission on Audit.

On Luzon Stevedoring's argument that its contract with its shippers were private lease contracts, this Court held that "the mere fact that service is rendered only under contract [does not] prevent a company from being a public utility."[224] What is essential is "the relationship of the parties to transactions as revealed by the fundamental facts of record."[225] It was undisputed that Luzon Stevedoring was involved in the transportation of cargo for hire or compensation. Therefore, it was involved in "public service" as defined in Section 13(b) of the Public Service Act which rendered it a public utility whose returns are subject to the regulation by the State.

Here, that only the Metropolitan Waterworks and Sewerage System holds a legislative franchise does not prevent a declaration of Manila Water and Maynilad's status as public utilities.

In *Albano v. Reyes*,[226] the Philippine Ports Authority bid out a contract to operate the Manila International Container Terminal, one of the Port of Manila's major facilities. After the evaluation of bid proposals, the International Container Terminal Services, Inc. emerged as the winner. However, Rodolfo A. Albano, a Member of the House of Representatives, assailed the award of the contract. He argued that the winning bidder, International Container Terminal Services, Inc., cannot operate the Manila International Container Terminal without a legislative franchise on the theory that the Manila International Container Terminal is a "wharf" or a "dock" and, therefore, operating it is considered a public service.

Nevertheless, this Court upheld the award of the contract to International Container Terminal Services, Inc. mainly because the charter of the Philippine Ports Authority allows it to operate the Manila International Container Terminal on its own, by contract or otherwise.

Additionally, even if the Manila International Container Terminal Service is considered a public utility or public service, this Court said that a

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223 93 Phil. 735 (1953) [Per J. Tuason, *En Banc*].
224 Id. at 741.
225 Id.
226 256 Phil. 718 (1989) [Per J. Paras, *En Banc*]

legislative franchise is not the only mode of authorization to operate a public utility. Nothing in Article XII, Section 11[227] of the Constitution implies that only the Congress has the authority to grant such authorization. In *Albano v. Reyes*, the authorization was embodied in the Philippine Ports Authority's charter. Therefore, the award of the contract to International Container Terminal Service to operate the Manila International Container Terminal was valid.

The facts of *Albano v. Reyes* are analogous to those of the present case. Here, Republic Act No. 8041 or the National Water Crisis Act and Executive Order Nos. 286 and 311 mandated the Metropolitan Waterworks and Sewerage System to involve the private sector in any or all of its segments, operations, and facilities. It then went on to bid the operation of its facilities for Metro Manila's water supply, with Manila Water and Maynilad emerging as the winning bidders. Concession Agreements were then awarded to Manila Water and Maynilad.

No legislative franchise is necessary for Manila Water and Maynilad for them to operate the facilities of the Metropolitan Waterworks and Sewerage System and supply water in their respective service areas. Republic Act No. 8041, Executive Order No. 286 and Executive Order No. 311 are the authorizations for them to operate Metropolitan Waterworks and Sewerage System's facilities.

It is undisputed that Manila Water and Maynilad are private entities. Their status as private entities, however, is not inconsistent with their status as public utilities. That Metropolitan Waterworks and Sewerage System holds the legislature franchise and owns the facilities is neither inconsistent with the finding that Manila Water and Maynilad are public utilities. *Tatad v. Garcia, Jr.*[228] illustrates that it is not the ownership but the *operation* of the facilities used to provide the public service that vests the status as public utility.

In *Tatad*, Senators Francisco Tatad, John Osmeña, and Rodolfo Biazon assailed the award to a foreign corporation of the EDSA LRT III Build-Lease-Transfer project, mainly contending that it would be violative of the citizenship requirement for the operation of public utilities. In brushing aside the argument, this Court said that "[i]n the law, there is a clear distinction

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[227] CONST., art. XII, sec. 11 provides:
SECTION 11. 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. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[228] 313 Phil. 296 (1995) [Per J. Quiason, *En Banc*].

between the 'operation' of a public utility and the ownership of the facilities and equipment used to serve the public."[229]

> Ownership is defined as a relation in law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by law or the concurrence with the rights of another (Tolentino, II Commentaries and Jurisprudence on the Civil Code of the Philippines 45 [1992]).
>
> The exercise of the rights encompassed in ownership is limited by law so that a property cannot be operated and used to serve the public as a public utility unless the operator has a franchise. The operation of a rail system as a public utility includes the transportation of passengers from one point to another point, their loading and unloading at designated places and the movement of the trains at pre-scheduled times (*cf. Arizona Eastern R.R. Co. v. J.A. Matthews*, 20 Ariz 282, 180 P. 159, 7 A.L.R. 1149 [1919]; *United States Fire Ins. Co. v. Northern P.R. Co.*, 30 Wash 2d. 722, 193 P. 2d 868, 2 A.L.R. 2d 1065 [1948]).
>
> The right to operate a public utility may exist independently and separately from the ownership of the facilities thereof. One can own said facilities without operating them as a public utility, or conversely, one may operate a public utility without owning the facilities used to serve the public. The devotion of property to serve the public may be done by the owner or by the person in control thereof who may not necessarily be the owner thereof.[230]

Under the Concession Agreements, the waterworks and sewerage facilities and equipment are owned by Metropolitan Waterworks and Sewerage System but are *operated* by Manila Water and Maynilad:

> **2.1 Grant of Concession**
>
> On the terms and subject to the conditions set forth herein, MWSS hereby grants to the Concessionaire, as contractor to perform certain functions and as agent for the exercise of rights and powers under the Charter, the sole right to manage, operate, repair, decommission and refurbish the Facilities in the Service Area, including the right to bill and collect water and sewerage services supplied in the Service Area (the "Concession"). The Concessionaire shall perform its functions and exercise its rights under this Agreement directly or, in respect of functions and rights delegated to the Joint Venture. The rights and benefits of the Concessionaire under this Agreement shall be deemed to apply with equal force to the Joint Venture to the extent that the Joint Venture is performing functions delegated to it under this Agreement.
>
> . . . .
>
> **3.6 Movable Property**
>
> Legal title to all Movable Property in existence at the Commencement

[229] Id. at 322.
[230] Id. at 322–323.

Date shall be retained by MWSS. The Concessionaire is hereby granted the right to operate, maintain in good working order, repair, decommission and refurbish the Movable Property required to provide the water and sewage services under this Agreement; provided, however, that upon expiration of the useful life of any such Movable Property as maybe determined by the Concessionaire, such Movable Material shall be returned to MWSS in its then-current condition at no charge to MWSS or the Concessionaire.

. . . .

5.1 General Obligations Regarding the Provision of Water Services

The Concessionaire shall have the obligations set forth in this Article 5 in respect of the provision of water services in the Service Area. The Regulatory Office may defer the implementation of specific Service Obligations in any situation where, in the opinion of the Regulatory Office such a deferment is warranted in light of unforeseen circumstances (e.g., material delay in the completion of the UATP project beyond June 30, 1999 or a material delay in the completion of the LBT project, if such project is amended pursuant to Section 6.13.1 (ii)(B) hereof, beyond June 30, 1999).

5.1.1 Water Supply; New Connections

The Concessionaire shall offer water supply services to all existing Customers in the Service Area on the Commencement Date and, in addition, the Concessionaire shall make at least sufficient connections (net of any disconnections) to meet the coverage target percentages of the population in the designated municipality at the time of the target (excluding users who obtain water from a legal source other than the MWSS system) set out in Schedule 2 hereto by the dates specified in that Schedule. Further, the Concessionaire shall provide data and supporting evidence to the Regulatory Office that demonstrates compliance with such coverage targets, along with the method by which such compliance was calculated, prior to each Rebasing Date in accordance with Section 9.4.1.

. . . .

5.1.3 Obligation to Make Connections to a Water Main

Upon request from the owner or occupant of premises located in the Service Area for a connection to a water main, the Concessionaire shall make such a connection as soon as reasonably practicable. For such connection to a water main located less than 25 meters from the connection point for such main, the Customer shall pay the connection fee set out in Section 9.5(i). For all other connections, the Customer shall pay a fee determined in accordance with Section 9.5(ii).

. . . .

5.1.6 Provision of Water Other Than Through a Water Main

The Concessionaire shall make a supply of water available to Customers other than through a water main in circumstances where (i) supplies through a water main have been or will be interrupted for more than 24 hours, or (ii) supplies through a water main have been or will be subject to contamination. The charges for these services shall not exceed

the Standard Rates for piped water supplies. In circumstances where no connection to a water main exists, the Concessionaire may make a supply of water available to Customers other than through a water main at a fee equal to the costs reasonably and efficiently incurred by the Concessionaire in supplying such water.

. . . .

5.2 General Obligations Regarding the Provisions of Sewerage Services

The Concessionaire shall have the following obligations in respect of the provision of sewerage services in the Service Area:

5.2.1 Supply of Sewerage Service; New Connections

The Concessionaire shall offer to supply sewerage services to all Customers in the Service Area who have sewerage connections on the date hereof for domestic sewage and industrial effluents compatible with available treatment processes and, in addition, the Concessionaire shall meet the coverage target percentages of the total population in the designated municipality connected to the Concessionaire's water system at the time of the targets set out in Schedule 3 below by the dates specified in that Schedule.

5.2.2 Obligation to Make connections to a Public Sewer

Upon request from the owner or occupant of premises located in the Service Area for a connection to a public sewer, the Concessionaire shall make such a connection as soon as reasonably practicable. For such connection to a public sewer located less than 25 meters from the connection point, the Customer shall pay the connection fee set out in Section 9.5(i). For all other connections, the Customer shall pay a fee determined in accordance with Section 9.5(ii).

. . . .

6.5 Asset Management Obligations

The Concessionaire shall have the following obligations concerning the management of the Facilities:

6.5.1 General

During the term of the Concession, the Concessionaire shall:

(i) operate, maintain, renew and, as appropriate, decommission Facilities in a manner consistent with the National Building Standards and best industrial practices so that, at all times, the water and sewerage system in the Service Area is capable of meeting the Service Obligations (as such obligations may be revised from time to time by the Regulatory Office following consultation with the Concessionaire)[.]

These provisions clearly reflect the intent of the parties that the public

utility shall be *operated* by Manila Water and Maynilad. Following *Tatad*, Manila Water and Maynilad are public utilities, being the operator of the facilities and equipment owned by Metropolitan Waterworks and Sewerage System.

The only time that a legislative franchise is required is if the enabling law requires one. In the case of radio and television broadcasting companies, this Court found that Executive Order No. 546 creating the National Telecommunications Commission requires broadcast stations to secure a legislative franchise, as well as a certificate of public convenience before they can operate. In *Associated Communications and Wireless Service-United Broadcasting Networks v. National Telecommunications Commission*:[231]

> Our ruling in *Albano* that a congressional franchise is not required before "each and every public utility may operate" should be viewed in its proper light. Where there is a law such as P.D. No. 576-A which requires a franchise for the operation of radio and television stations, that law must be followed until subsequently repealed. As we have earlier shown, however, there is nothing in the subsequent E.O. No. 546 which evinces an intent to dispense with the franchise requirement. In contradistinction with the case at bar, the law applicable in *Albano*, i.e., E.O. No. 30, did not require a franchise for the Philippine Ports Authority to take over, manage and operate the Manila International Port Complex and undertake the providing of cargo handling and port related services thereat. Similarly, in *Philippine Airlines, Inc. v. Civil Aeronautics Board, et al.*, we ruled that a legislative franchise is not necessary for the operation of domestic air transport because "there is nothing in the law nor in the Constitution which indicates that a legislative franchise is an indispensable requirement for an entity to operate as a domestic air transport operator." Thus, while it is correct to say that specified agencies in the Executive Branch have the power to issue authorization for certain classes of public utilities, this does not mean that the authorization or CPC issued by the NTC dispenses with the requirement of a franchise as this is clearly required under P.D. No. 576-A.[232]

Divinagracia v. Consolidated Broadcasting System, Inc.[233] reiterates:

> *Associated Communications* makes clear that presently broadcast stations are still required to obtain a legislative franchise, as they have been so since the passage of the Radio Control Act in 1931. By virtue of this requirement, the broadcast industry falls within the ambit of Section 11, Article XII of the 1987 Constitution, the one constitutional provision concerned with the grant of franchises in the Philippines. The requirement of a legislative franchise likewise differentiates the Philippine broadcast industry from that in America, where there is no need to secure a franchise from the U.S. Congress.
>
> It is thus clear that the operators of broadcast stations in the Philippines must secure a legislative franchise, a requirement imposed by

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231 445 Phil. 621 (2003) [Per J. Puno, Third Division].
232 Id. at 644.
233 602 Phil. 625 (2009) [Per J. Tinga, Second Division].

> the Radio Control Act of 1931 and accommodated under the 1987 Constitution. At the same time, the Court in *Associated Communications* referred to another form of "permission" required of broadcast stations, that is the CPC issued by the NTC. . . .[234]

In the case of domestic air transport utilities, Republic Act No. 776, or the Civil Aeronautics Act of the Philippines, requires no legislative franchise before they can operate. As stated in *Philippine Airlines, Inc. v. Civil Aeronautics Board*:[235]

> [W]e find that the Civil Aeronautics Board has the authority to issue a Certificate of Public Convenience and Necessity, or Temporary Operating Permit to a domestic air transport operator, who, though not possessing a legislative franchise, meets all the other requirements prescribed by the law. Such requirements were enumerated in Section 21 of R.A. 776.
>
> There is nothing in the law nor in the Constitution, which indicates that a legislative franchise is an indispensable requirement for an entity to operate as a domestic air transport operator. Although Section 11 of Article XII recognizes Congress' control over any franchise, certificate or authority to operate a public utility, it does not mean Congress has exclusive authority to issue the same. Franchises issued by Congress are not required before each and every public utility may operate. In many instances, Congress has seen it fit to delegate this function to government agencies, specialized particularly in their respective areas of public service.[236]

Here, Metropolitan Waterworks and Sewerage System entered into the Concession Agreements with Manila Water and Maynilad pursuant to Republic Act No. 8041, or the National Water Crisis Act of 1995. Reading the law, there is nothing in it that requires a legislative franchise before an entity may operate Metropolitan Waterworks and Sewerage System's facilities. Republic Act No. 8041 expressly authorized the President to privatize segments of the operation and Metropolitan Waterworks and Sewerage System's facilities, thus:

> SECTION 2. *Declaration of Policy.* — It is hereby declared the policy of the State to adopt urgent and effective measures to address the nationwide water crisis which adversely affects the health and well-being of the population, food production and industrialization process.
>
> Pursuant thereto the government shall address the issues relevant to the water crisis including, but not limited to, supply, distribution, finance, privatization of state-run water facilities, the protection and conservation of watersheds and the waste and pilferage of water, including the serious matter of graft and corruption in all the water agencies.
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> . . . .

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234 Id. at 654.
235 337 Phil. 254 (1997) [Per J. Torres, Jr., Second Division].
236 Id. at 266.

SECTION 7. *Reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Waterworks and Utilities Administration (LWUA).* — Within six (6) months from the approval of this Act, the President of the Republic is hereby empowered to revamp the executive leadership and reorganize the MWSS and the LWUA, including the privatization of any or all segments of these agencies, operations or facilities if necessary, to make them more effective and innovative to address the looming water crisis. For this purpose, the President may abolish or create offices, transfer functions, equipment, properties, records and personnel; institute drastic cost-cutting and other related measures to carry out the said objectives. Moreover, in the implementation of this provision, the prescriptions of Republic Act No. 7430, otherwise known as the "Attrition Law," shall not apply. Nothing in this section shall result in the diminution of the present salaries and benefits of the personnel of the MWSS and the LWUA: *Provided*, That any official or employee of the said agencies who may be phased out by reason of the reorganization authorized herein shall be entitled to such benefits as may be determined by existing laws.

The President may upgrade the compensation of the personnel of the MWSS and the LWUA at rates commensurate to the improved and efficient revenue collection of the two agencies as determined by the Board of Trustees and the same shall be exempted from the provisions of Republic Act No. 6750, otherwise known as the "Salary Standardization Law," to take effect upon a reduction of non-revenue water to forty percent (40%) and upon approval by the respective board of trustees of the MWSS and the LWUA of their budgets. (Underscoring supplied)

Therefore, Manila Water and Maynilad cannot argue that they are not public utilities since they do not hold any legislative franchise to operate Metropolitan Waterworks and Sewerage System's facilities.

Even if we assume that Manila Water and Maynilad are not public utilities, the rates they charge are nevertheless "subject to the limitation of Section 12 of the Metropolitan Waterworks and Sewerage System Charter[,]" i.e., the 12% limit on the rate of return per Section 9.1 of the Concession Agreements, thus:

ARTICLE 9. RATES AND CONNECTION CHARGES

9.1 **Standard Rates/CERA Fee**

Subject to the limitation of Section 12 of the Charter, Standard Rates may be adjusted from time to time in accordance with the rate adjustment provisions set forth in Sections 9.2, 9.3 and 9.4 below. In the event that the Standard Rates chargeable under this Agreement during any period would exceed the limitation of Section 12 of the Charter applicable to that period, the Charter limitation shall be observed but the Regulatory Office shall treat the excess amount (and interest accrued thereon at the Appropriate Discount Rate) as an Expiration Payment; provided, however, that the Concessionaire may agree to forgo such Expiration Payment in exchange for some other benefit, such as an adjustment to one or more of the coverage targets, that the Regulatory Office may at the time offer to the Concessionaire. Without

> prejudice to the obligation of MWSS to pay any such Expiration Payment on the Expiration Date, it is the intention of MWSS, should it choose to solicit bids from private parties for the right to operate the system following the Expiration Date, to obtain a lump-sum cash payment from such parties as part of the consideration for the awarding of such rights and to fund any Expiration Payment required by this Section from the proceeds of such cash payment.
>
> The Concessionaire may charge Customers a CERA payment of one Peso per cubic meter of water consumed above the Standard Rates. Although CERA has historically been used by MWSS to adjust for exchange rate movements, that function will be performed through the operation of Section 9.3.1 (vi) of this Agreement. (Underscoring provided)

The concessionaires are therefore bound by the 12% limit on the rate of their returns within their respective service areas.

Considering that Manila Water and Maynilad operate the waterworks and sewerage system, they are public utilities which are expressly prohibited from passing on to consumers their corporate income taxes as operating expenses per *MERALCO*,[237] thus:

> *[I]ncome tax should not be included in the computation of operating expenses of a public utility.* Income tax paid by a public utility is inconsistent with the nature of operating expenses. In general, operating expenses are those which are reasonably incurred in connection with business operations to yield revenue or income. They are items of expenses which contribute or are attributable to the production of income or revenue. . . [O]perating expenses "should be a requisite of or necessary in the operation of a utility, recurring, and that it redounds to the service or benefit of customers.
>
> Income tax, it should be stressed, is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income. In exchange for the protection extended by the State to the taxpayer, the government collects taxes as a source of revenue to finance its activities. Clearly, by its nature, income tax payments of a public utility are not expenses which contribute to or are incurred in connection with the production of profit of a public utility. Income tax should be borne by the taxpayer alone as they are payments made in exchange for benefits received by the taxpayer from the State. No benefit is derived by the customers of a public utility for the taxes paid by such entity and no direct contribution is made by the payment of income tax to the operation of a public utility for purposes of generating revenue or profit. *Accordingly, the burden of paying income tax should be Meralco's alone and should not be shifted to the consumers by including the same in the computation of its operating expenses.*
>
> The principle behind the inclusion of operating expenses in the determination of a just and reasonable rate is to allow the public utility to recoup the reasonable amount of expenses it has incurred in connection with

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[237] 440 Phil. 389 (2002) [Per J. Puno, Third Division].

> the services it provides. It does not give the public utility the license to indiscriminately charge any and all types of expenses incurred without regard to the nature thereof, *i.e.*, whether or not the expense is attributable to the production of services by the public utility. To charge consumers for expenses incurred by a public utility which are not related to the service or benefit derived by the customers from the public utility which are not related to the service or benefit derived by the customers from the public utility is unjustified and inequitable.[238] (Emphasis in the original)

Even before the promulgation of *MERALCO* in 2002, public utilities have been prohibited from passing on to consumers the income taxes they paid as operating expenses. Thus, the Commission on Audit, under the 1985 State Audit Manual, considered income tax as a common disallowance because the privilege of earning income is enjoyed by the public utility, not the consumers. Consequently, the tax on the privilege should be shouldered by the public utility. Section 32.7 of the 1985 State Audit Manual provides:

> Section 32.7. *Common Disallowances*. – The following are the common disallowances in the rate audit:
>
> . . . .
>
> Income tax, since this is tax on the net profit of operators who are the recipient of the income tax or profits realized by the utility and therefore should not be passed on to the ratepayers in the form of operating expenses.

It is true that under Section 9.3.4 of the Concession Agreements, Manila Water and Maynilad are allowed to recover over the life of the concession "Philippine business taxes" and to earn a rate of return, termed "appropriate discount rate" on these taxes and other expenditures. For ease of reference, Section 9.3.4 is reproduced below:

> 9.3.4 General Rates Setting Policy/Rate Rebasing Determination
>
> The maximum rates chargeable by the Concessionaire for water and sewage services hereunder applicable to the period through the Second Rate Rebasing Date (subject to interim adjustments as described in this Article 9) are set out in Schedule 5 to this Agreement. It is the intention of the parties that, from and after the second Rate Rebasing Date, the rates for water and sewerage services provided by the Concessionaire shall be set at a level that will permit the Concessionaire to recover over the 25-year term of the Concession (net of any grants from third parties and any possible Expiration Payment) operating, capital maintenance and investment expenditures efficiently and prudently incurred, Philippine business taxes and payments corresponding to debt service on the MWSS Loans and Concessionaire Loans incurred to finance such expenditures, and to earn a rate of return (referred to herein as the "Appropriate Discount Rate") on these expenditures for the remaining term of the Concession in line with the rates of return being allowed from time to time to operators of long-term infrastructure concession agreements in other countries having a credit

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[238] Id. at 401–402.

> standing similar to that of the Philippines. The parties further agree that the maximum rates chargeable for such water and sewerage services shall be subject to general adjustment at five-year intervals commencing on the second Rate Rebasing Date; provided that the Regulatory Office may exercise its discretion to make a general adjustment of such rates on the First Rate Rebasing Date, but, if it does not do so, the Regulatory Office shall implement the assumptions set out in paragraph 2 of Exhibit E on the fifth anniversary of the Commencement Date. It is understood that the determination of the appropriate rate of return will be made separately at the time of each generalized rate rebasing.
>
> It is also the intention of the parties that rates be set in such a way as to provide appropriate efficiency incentives to the Concessionaire, with a view toward benefiting both the Customers and the Concessionaire.
>
> The Regulatory Office shall determine the Rebasing Adjustment to be used for the purposes of calculating the Rates Limit for each of the five Charging Years of each Rebasing Period, in accordance with the provisions set forth below.

Nevertheless, under Philippine law, which governs the Concession Agreements,[239] income taxes are *not* business taxes.

In *Commissioner of Internal Revenue v. Solidbank*,[240] Solidbank filed its Quarterly Tax Returns in 1995, indicating as gross receipts a sum that included the total amount that have been subjected to 20% final withholding tax on interest income. The Court of Tax Appeals then promulgated *Asian Bank Corporation v. Commissioner of Internal Revenue* (*Asian Bank Corporation*),[241] where it held that final withholding tax on a bank's interest income should not form part of taxable gross receipts for purposes of computing gross receipts tax. Based on *Asian Bank Corporation,* Solidbank filed a claim for refund or issuance of tax credit certificate corresponding to the amount representing the allegedly overpaid gross receipts.

This Court held that Solidbank was not entitled to a refund, ruling that the amount of taxable gross receipts should include the 20% portion of a bank's passive income withheld. The reason is that the 20% portion, though withheld, was constructively received by the bank if not for the withholding tax system. This Court went on to differentiate the final withholding tax from the gross receipts tax, characterizing the former as income tax, while the latter as business tax. The two taxes being of different nature, there is no double taxation when a bank's passive income is subjected to the final withholding tax and its gross receipts is subjected to the gross receipts tax. This Court held:

> The 5% [gross receipts tax] is included under "Title V. Other

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239 Concession Agreements, sec. 16.3.
240 462 Phil. 96 (2003) [Per J. Panganiban, First Division].
241 CTA Case No. 4720.

Percentage Taxes" of the Tax Code and is not subject to withholding. The banks and non-bank financial intermediaries liable therefor shall, under Section 125(a)(1), file quarterly returns on the amount of gross receipts and pay the taxes due thereon within twenty (20) days after the end of each taxable quarter.

The 20% [final withholding tax], on the other hand, falls under Section 24(e)(1) of "Title II. Tax on Income." It is a tax on passive income, deducted and withheld at source by the payor-corporation and/or person as withholding agent pursuant to Section 50, and paid in the same manner and subject to the same conditions as provided for in Section 51.

A perusal of these provisions clearly shows that two types of taxes are involved in the present controversy: (1) the [gross receipts tax], which is a percentage tax; and (2) the [final withholding tax], which is an income tax. As a bank, petitioner is covered by both taxes.

A *percentage* tax is a national tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services. It is not subject to withholding.

An *income* tax, on the other hand, is a national tax imposed on the net or the gross income realized in a taxable year. It is subject to withholding.[242]

This Court continued:

Looking again into Sections 24(e)(1) and 119 of the Tax Code, we find that the first imposes an income tax; the second, a percentage tax. The legislature clearly intended two different taxes. The [final withholding tax] is a tax on passive income, while the [gross receipts tax] is on business. The withholding of one is not equivalent to the payment of the other.[243]

. . . .

[T]he taxes herein are imposed on two different subject matters. The subject matter of the [final withholding tax] is the passive income generated in the form of interest on deposits and yield on deposit substitutes, while the subject matter of the [gross receipts tax] is the privilege of engaging in the business of banking.

A tax based on receipts is a tax on business rather than on the property; hence, it is an excise rather than a property tax. It is not an income tax, unlike the [final withholding tax]. In fact, we have already held that one can be taxed for engaging in business and further taxed differently for the income derived therefrom. Akin to our ruling in *Velilla v. Posadas*, these two taxes are entirely distinct and are assessed under different provisions.[244] (Citations omitted)

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242 Id. at 112–113.
243 Id. at 127.
244 Id. at 133–134.

In *Mobil Philippines, Inc. v. The City Treasurer of Makati* (*Mobil*),[245] Mobil Philippines, Inc. conducted its business of manufacturing, importing, exporting, and wholesaling of petroleum products in the City of Makati. In 1998, it filed an application for retirement of business because it had moved its principal place of business to Pasig City.

However, before it could retire its business, Mobil was assessed by the City of Makati business taxes covering two periods: (1) for the fourth quarter of 1998 which, under the Makati Revenue Code, is computed based on the previous year's gross sales; and (2) for the gross sales made in 1998. Mobil paid the assessed business taxes under protest then filed a claim for refund before the Regional Trial Court of Makati City, contending that it was no longer liable for local business taxes based on its gross sales from January 1998 until its retirement in August 1998.

The trial court denied Mobil's claim for refund. It found that under the Makati Revenue Code, business taxes accrue on the first day of January and are computed based on the gross receipts of the preceding quarter. Considering that Mobil retired its business in August 1998, its business taxes for that year became immediately payable before the City could approve its application for retirement. Thus, the trial court found that Mobil was correctly assessed business taxes based on its gross receipts from January to August 1998.

Reversing the trial court, this Court first distinguished a business tax from an income tax, signifying that the two are mutually exclusive. To wit:

> Business taxes imposed in the exercise of police power for regulatory purposes are paid for the privilege of carrying on a business in the year the tax was paid. It is paid at the beginning of the year as a fee to allow the business to operate for the rest of the year. It is deemed a prerequisite to the conduct of business.
>
> Income tax, on the other hand, is a tax on all yearly profits arising from property, professions, trades or offices, or a tax on a person's income, emoluments, profits and the like. It is a tax on income, whether net or gross realized in one taxable year. It is due on or before the 15th day of the 4th month following the close of the taxpayer's taxable year and is generally regarded as an excise tax, levied upon the right of a person or entity to receive income or profits.[246]

This Court then held that the trial court erred in assessing Mobil business taxes based on Mobil's gross receipts from January to August 1998. As defined, a business tax is paid as "a prerequisite to the conduct of business."[247] Thus, under the Makati Revenue Code, business taxes payable

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245 501 Phil. 666 (2005) [Per J. Quisumbing, First Division].
246 Id. at 672.
247 Id.

by a newly started business is based on its capital investment. It is only in the succeeding quarters and years that the tax is computed based on the gross receipts.

In assessing Mobil business taxes based on its gross receipts from 1997 *and* from January to August 1998, this Court held that the City of Makati erroneously treated the assessment and collection of business taxes from Mobil as if they were income tax. The correct base for computing Mobil's business taxes for 1998, therefore, was the amount of its gross receipts in 1997.

Similarly, this Court held in *Maceda v. Macaraig* (*Maceda*)[248] that income taxes are direct taxes that must be shouldered by the person direct liable for it, i.e., the income earner. On the other hand, indirect taxes were defined as those "where the tax is imposed upon goods before reaching the consumer who ultimately pays for it, not as a tax, but as a part of the purchase price." These are the business taxes initially shouldered by the producer but may be passed on to the consumer. To wit:

> Classifications or Kinds of Taxes:
>
> According to Persons who pay or who bear the burden:
>
> a. Direct Tax — that where the person supposed to pay the tax really pays it, WITHOUT transferring the burden to someone else.
>
> Examples: Individual income tax, corporate income tax, transfer taxes (estate tax, donor's tax), residence tax, immigration tax
>
> b. Indirect Tax — that where the tax is imposed upon goods BEFORE reaching the consumer who ultimately pays for it, not as a tax, but as a part of the purchase price.
>
> Examples: The internal revenue indirect taxes (specific tax, percentage taxes, VAT) and the tariff and customs indirect taxes (import duties, special import tax and other dues)[249] (Citation omitted)

Solidbank, *Mobil,* and *Maceda* all illustrate that corporate income taxes are not business taxes under Philippine law. To reiterate, income taxes are excise taxes paid for by the person who enjoys the privilege protected by the State, specifically, the privilege to earn income. Consequently, income taxes must be shouldered by the income earner who receives the benefit or protection of the State. It cannot be unduly passed on to consumers, by way of tariff, because the income tax was paid not for their benefit but for the benefit of the business entity earning the income.

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[248] 295 Phil. 252 (1993) [Per J. Nocon, *En Banc*].
[249] Id. at 272.

Here, in sum, Manila Water and Maynilad may not recover their corporate income taxes as operating expenses during the lifetime of the concession agreements considering that they are public utilities. Even assuming that they are not public utilities, they cannot recover income taxes because they are not business taxes under Philippine law.

Notwithstanding this Court's ruling that Manila Water and Maynilad are public utilities, the income taxes passed on to consumers may no longer be recovered as the right to a refund had long prescribed. Under Section 12 of Republic Act No. 6234, actions to contest the water rates may be brought only within 30 days after the effectivity of such rates. No such actions were brought before the National Water Resources Board after the rates became effective after the past rate rebasing exercises. Therefore, no refund can be ordered by the National Water Resources Board.

The present case should be differentiated from the oft-cited *MERALCO*,[250] where the rates were contested before the Energy Regulatory Board, the administrative agency with jurisdiction to fix the rates charged by electric companies. In that case, this Court had jurisdiction to order the adjustment of rates.

No such administrative recourse was made here since the parties invoked this Court's jurisdiction on the first instance without contesting the rates before the National Water Resources Board. This Court, therefore, has no jurisdiction to order an adjustment of the rates charged after the past rate rebasing exercises.

II (F)

As to the eighth issue, petitioners in G.R. Nos. 207444, 208207, 210147, 213227, and 219362 contend that the waterworks and sewerage system in Metro Manila is under a state of regulatory capture, or one where the regulatory agency is dominated by the very industry it is supposed to regulate.

Petitioners allege that the Metropolitan Waterworks and Sewerage System Regulatory Office is captured by Manila Water and Maynilad, primarily because the Metropolitan Waterworks and Sewerage System Regulatory Office is funded by the concession fees paid by them. They also raise that the Metropolitan Waterworks and Sewerage System Regulatory Office owes its existence to the Concession Agreements, specifically, Article 11. Finally, respondent Metropolitan Waterworks and Sewerage System and the concessionaires have interlocking directors, with Oscar Garcia being in the payrolls of both Metropolitan Waterworks and Sewerage System and

[250] 449 Phil. 118 (2003) [Per J. Puno, Third Division].

Maynilad, and Ramon B. Alikpala, the former Executive Director of the National Water Resources Board, which regulates the Metropolitan Waterworks and Sewerage System, and Chair of the Board of Trustees of the Metropolitan Waterworks and Sewerage System from September 2010 to September 2013.[251]

Manila Water counters that while the annual budget of the MWSS Regulatory Office is funded by the concession fees, the concessionaires have no hand in the amount allocated to the Regulatory Office as it is the Metropolitan Waterworks and Sewerage System that does the allocating as provided in Section 11.2 of the Concession Agreements.[252] As for Maynilad, it first argues that whether the waterworks system in Metro Manila is under regulatory capture is a question of fact not proper in the present Petitions. In any case, petitioners' claim of regulatory capture is negated by the disallowance of its Petition for upward adjustment.[253]

We find that the allegation of regulatory capture is belied by the denial of the concessionaire's petition for upward adjustment of rates. Furthermore, whether the concession system is in a state of regulatory capture is a question of fact that cannot be resolved in the present Petitions.

II (G)

As to the ninth issue, petitioners in G.R. Nos. 207444, 208207, 210147, 213227, and 219362 argue that the dispute between the Metropolitan Waterworks and Sewerage System and concessionaires Manila Water and Maynilad is not arbitrable. First, the dispute supposedly allows an arbitral panel to potentially override the regulatory powers of the Metropolitan Waterworks and Sewerage System over the concessionaires, depriving the State of its regulatory powers over public utilities. Second, it deprives the public of the right to participate in the confidential arbitration proceedings, which will ultimately affect them.[254]

Petitioners add that the arbitration clause in the Concession Agreements "illegally stripped" the Metropolitan Waterworks and Sewerage System of its power of regulation over Manila Water and Maynilad, to the effect that the concessionaires may choose not to implement the rates fixed by submitting the dispute to arbitration. Worse, the arbitration clause allegedly strips this Court of its power of judicial review.

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251 *Rollo* (G.R. No. 207444), pp. 31–38, 4105–4109; *rollo* (G.R. No. 210147), pp. 76–83; *rollo* (G.R. No. 213227), pp. 50–54.

252 *Rollo* (G.R. No. 207444), pp. 3682–3684.

253 Id. at 3754 and 3900–3908.

254 *Rollo* (G.R. No. 210147), pp. 71–76; *rollo* (G.R. No. 213227), pp. 54–56; *rollo* (G.R. No. 219362), pp. 32–45.

Manila Water and Maynilad counter that the dispute was submitted to arbitration in accordance with the State policy of encouraging and actively promoting the use of alternative dispute resolution mechanisms. Contrary to petitioners' claim, arbitration does not deprive the courts judicial power as arbitral decisions may be confirmed or set aside by the courts on any of the grounds provided for by law. Respondents add that, strictly, it is not the Metropolitan Waterworks and Sewerage System that regulates the utilization, exploitation, development, and conservation of water, but the National Water Resources Board. As such, nothing prohibits the Metropolitan Waterworks and Sewerage System from entering into concession and arbitration agreements with private entities. Lastly, arbitration does not deprive the public of their right to dispute water rates as they have the recourse of a petition to question the water rates before the National Water Resources Board.[255]

Petitioners are mistaken.

It is the State's declared policy to actively promote party autonomy in the resolution of disputes. It encourages and actively promotes the use of alternative modes of dispute resolution as a means to achieve speedy and impartial justice and unclog court dockets. Section 2 of Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004, provides:

> SECTION 2. *Declaration of Policy.* — It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from the time to time.

The same State policy of actively promoting the use of alternative dispute resolution mechanisms is declared in Rule 2.1 of A.M. No. 07-11-08-SC, or the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules):

> RULE 2.1. *General Policies.* — It is the policy of the State to actively promote the use of various modes of ADR and to respect party

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[255] *Rollo* (G.R. No. 207444), pp. 3707–3713; 3915–3919; *rollo* (G.R. No. 219362), pp. 1548–1553; *rollo* (G.R. No. 219362), pp. 694–717; *rollo* (G.R. No. 219362), pp. 1649–1661.

> autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts. To this end, the objectives of the Special ADR Rules are to encourage and promote the use of ADR, particularly arbitration and mediation, as an important means to achieve speedy and efficient resolution of disputes, impartial justice, curb a litigious culture and to de-clog court dockets.
>
> The court shall exercise the power of judicial review as provided by these Special ADR Rules. Courts shall intervene only in the cases allowed by law or these Special ADR Rules.

Section 3(a) of Republic Act No. 9285 further defines "alternative dispute resolution system," to wit:

> SECTION 3. *Definition of Terms*. . . .
>
> (a) "Alternative Dispute System" means any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, as defined in this Act, in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof[.]

Arbitration—the chosen mode of alternative dispute resolution by the Metropolitan Waterworks and Sewerage System and concessionaires Manila Water and Maynilad—is defined under Section 3(d) as a "voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or rules promulgated pursuant to this Act, resolve a dispute by rendering an award."

However, despite the State policy of party autonomy in resolving disputes, Section 6 of Republic Act No. 9285 enumerates those which cannot be the resolved through alternative dispute resolution:

> SECTION 6. *Exception to the Application of this Act.* — The provisions of this Act shall not apply to resolution or settlement of the following: (a) labor disputes covered by Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended and its Implementing Rules and Regulations; (b) the civil status of persons; (c) the validity of a marriage; (d) any ground for legal separation; (e) the jurisdiction of courts; (f) future legitime; (g) criminal liability; and (h) those which by law cannot be compromised.

None of these exceptions as listed in Section 6 apply here. The disputes submitted for arbitration are the propriety of the downward adjustment of the water rates respectively chargeable by Manila Water and Maynilad and the propriety of claiming on the Letters of Undertaking issued by the Republic. These disputes are not labor disputes. Neither do they involve the civil status

of persons, the validity of marriage, any ground for legal separation, the jurisdiction of courts, future legitime, criminal liability, or those which cannot be compromised.[256] The disputes, therefore, were validly submitted for arbitration.

No regulatory powers were "stripped" in submitting the downward adjustment of water rates for arbitration since the decisions of the Appeals Panel are still subject to judicial review. Under Republic Act No. 876, or the Domestic Arbitration Law, arbitral awards may be confirmed, vacated, or modified by courts:

> SECTION 23. *Confirmation of Award.* — At any time within one month after the award is made, any party to the controversy which was arbitrated may apply to the court having jurisdiction, as provided in section twenty-eight, for an order confirming the award; and thereupon the court must grant such order unless the award is vacated, modified or corrected, as prescribed herein. Notice of such motion must be served upon the adverse party or his attorney as prescribed by law for the service of such notice upon an attorney in action in the same court.
>
> SECTION 24. *Grounds for Vacating Award.* — In any one of the following cases, the court must make an order vacating the award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:
>
> (a) The award was procured by corruption, fraud, or other undue means; or
>
> (b) That there was evident partiality or corruption in the arbitrators or any of them; or
>
> (c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or
>
> (d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.
>
> Where an award is vacated, the court, in its discretion, may direct a new hearing either before the same arbitrators or before a new arbitrator or

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[256] CIVIL CODE, art. 2035 provides:
Article 2035. No compromise upon the following questions shall be valid:
(1) The civil status of persons;
(2) The validity of a marriage or a legal separation;
(3) Any ground for legal separation;
(4) Future support;
(5) The jurisdiction of courts;
(6) Future legitime.

arbitrators to be chosen in the manner provided in the submission or contract for the selection of the original arbitrator or arbitrators, and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

Where the court vacates an award, costs, not exceeding fifty pesos and disbursements may be awarded to the prevailing party and the payment thereof may be enforced in like manner as the payment of costs upon the motion in an action.

SECTION 25. *Grounds for Modifying or Correcting Award.* — In any one of the following cases, the court must make an order modifying or correcting the award, upon the application of any party to the controversy which was arbitrated:

(a) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award; or

(b) Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or

(c) Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.

The order may modify and correct the award so as to effect the intent thereof and promote justice between the parties.

SECTION 26. *Motion to Vacate, Modify or Correct Award: When Made.* — Notice of a motion to vacate, modify or correct the award must be served upon the adverse party or his counsel within thirty days after the award is filed or delivered, as prescribed by law for the service upon an attorney in an action.

Chapter 7 of Republic Act No. 9285 provides for the judicial review of arbitral awards:

CHAPTER 7
Judicial Review of Arbitral Awards

A. DOMESTIC AWARDS

SECTION 40. *Confirmation of Award.* — The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. No. 876.

A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.

The recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law.

The confirmation of a domestic award shall be made by the Regional Trial Court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.

A CIAC arbitral award need not be confirmed by the Regional Trial Court to be executory as provided under E.O. No. 1008.

SECTION 41. *Vacation Award.* — A party to a domestic arbitration may question the arbitral award with the appropriate Regional Trial Court in accordance with rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the Regional Trial Court.

B. FOREIGN ARBITRAL AWARDS

SECTION 42. *Application of the New York Convention.* — The New York Convention shall govern the recognition and enforcement of arbitral awards covered by said Convention.

The recognition and enforcement of such arbitral awards shall be filed with the Regional Trial Court in accordance with the rules of procedure to be promulgated by the Supreme Court. Said procedural rules shall provide that the party relying on the award or applying for its enforcement shall file with the court the original or authenticated copy of the award and the arbitration agreement. If the award or agreement is not made in any of the official languages, the party shall supply a duly certified translation thereof into any of such languages.

The applicant shall establish that the country in which foreign arbitration award was made is a party to the New York Convention.

If the application for rejection or suspension of enforcement of an award has been made, the Regional Trial Court may, if considers it proper, vacate its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the party to provide appropriate security.

SECTION 43. *Recognition and Enforcement of Foreign Arbitral Awards Not Covered by the New York Convention.* — The recognition and enforcement of foreign arbitral awards not covered by the New York Convention shall be done in accordance with procedural rules to be promulgated by the Supreme Court. The Court may, on grounds of comity and reciprocity, recognize and enforce a non-convention award as a convention award.

SECTION 44. *Foreign Arbitral Award Not Foreign Judgment.* — A foreign arbitral award when confirmed by a court of a foreign country, shall be recognized and enforced as a foreign arbitral award and not as a judgment of a foreign court.

A foreign arbitral award, when confirmed by the Regional Trial Court, shall be enforced in the same manner as final and executory decisions of courts of law of the Philippines.

SECTION 45. *Rejection of a Foreign Arbitral Award.* — A party to a foreign arbitration proceeding may oppose an application for recognition

and enforcement of the arbitral award in accordance with the procedural rules to be promulgated by the Supreme Court only on those grounds enumerated under Article V of the New York Convention. Any other ground raised shall be disregarded by the Regional Trial Court.

SECTION 46. *Appeal from Court Decisions on Arbitral Awards.* — A decision of the Regional Trial Court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

The losing party who appeals from the judgment of the court confirming an arbitral award shall be required by the appellate court to post a counterbond executed in favor of the prevailing party equal to the amount of the award in accordance with the rules to be promulgated by the Supreme Court.

The Special ADR Rules likewise grants regional trial courts the authority to either recognize and enforce or refuse recognition of arbitral awards:

RULE 13
Recognition and Enforcement of a Foreign Arbitral Award

. . . .

RULE 13.2. *When to Petition.* — At any time after receipt of a foreign arbitral award, any party to arbitration may petition the proper Regional Trial Court to recognize and enforce such award.

RULE 13.3. *Venue.* — The petition to recognize and enforce a foreign arbitral award shall be filed, at the option of the petitioner, with the Regional Trial Court (a) where the assets to be attached or levied upon is located, (b) where the act to be enjoined is being performed, (c) in the principal place of business in the Philippines of any of the parties, (d) if any of the parties is an individual, where any of those individuals resides, or (e) in the National Capital Judicial Region.

RULE 13.4. *Governing Law and Grounds to Refuse Recognition and Enforcement.* — The recognition and enforcement of a foreign arbitral award shall be governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") and this Rule. The court may, upon grounds of comity and reciprocity, recognize and enforce a foreign arbitral award made in a country that is not a signatory to the New York Convention as if it were a Convention Award.

A Philippine court shall not set aside a foreign arbitral award but may refuse it recognition and enforcement on any or all of the following grounds:

a. The party making the application to refuse recognition and enforcement of the award furnishes proof that:

(i). A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereof, under the law of the country where the award was made; or

(ii). The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii). The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv). The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where arbitration took place; or

(v). The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which that award was made; or

b. The court finds that:

(i). The subject-matter of the dispute is not capable of settlement or resolution by arbitration under Philippine law; or

(ii). The recognition or enforcement of the award would be contrary to public policy.

The court shall disregard any ground for opposing the recognition and enforcement of a foreign arbitral award other than those enumerated above.

All these provisions show that despite party autonomy, courts are not divested of their power to judicially review arbitral awards if warranted.

It is false that the public has no participation in the arbitration because it is the State, through the Metropolitan Waterworks and Sewerage System, that represents the public. Further, it is false that the public is left with no remedy against the rates chargeable to them. A remedy to question the rates with the National Water Resources Board is available. Section 12 of Republic Act No. 6234 provides:

SECTION 12. *Review of Rates by the Public Service Commission.*

> — The rates and fees fixed by the Board of Trustees for the System and by the local governments for the local systems shall be of such magnitude that the System's rate of net return shall not exceed twelve per centum (12%), on a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital. Such rates and fees shall be effective and enforceable fifteen (15) days after publication in a newspaper of general circulation within the territory defined in Section 2 (c) of this Act. *The Public Service Commission shall have exclusive original jurisdiction over all cases contesting said rates or fees. Any complaint against such rates or fees shall be filed with the Public Service Commission within thirty (30) days after the effectivity of such rates, but the filing of such complaint or action shall not stay the effectivity of said rates or fees.* The Public Service Commission shall verify the rate base, and the rate of return computed therefrom, in accordance with the standards above outlined. The Public Service Commission shall finish, within sixty (60) calendar days, any and all proceedings necessary and/or incidental to the case, and shall render its findings or decisions thereon within thirty (30) calendar days after said case is submitted for decision.
>
> In cases where the decision is against the fixed rates or fees, excess payments shall be reimbursed and/or credited to future payments, in the discretion of the Commission. (Emphasis supplied)

Apart from their blanket statements of deprivation of regulatory powers, petitioners miserably failed to establish how the disputes between the Metropolitan Waterworks and Sewerage System and the concessionaires are not arbitrable. As such, the arbitration proceedings between the Metropolitan Waterworks and Sewerage System and the concessionaires are presumed valid.

II (H)

As to the tenth issue, petitioners in G.R. No. 219362 contend that the Republic's issuance of sovereign guarantees in the form of Letters of Undertaking is unconstitutional and illegal because it effectively invalidates the State's regulatory powers over the concessionaires. By allowing the concessionaires to claim on the Letters of Undertaking, any limits on water rates that the Metropolitan Waterworks and Sewerage System may impose are rendered illusory and can easily be overridden. There would be as if there is no regulation.[257]

Manila Water counters that petitioners' allegations as to whether the Republic would allow the concessionaires to claim on the sovereign guarantee are based on surmises and speculations, which cannot give rise to an actual case or controversy.[258] It argues that deciding on the constitutionality of the issuance of the Letters of Undertaking will require this Court to decide on the constitutionality of the National Water Crisis Act and Executive Orders No.

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[257] *Rollo* (G.R. No. 219362), pp. 45–47.
[258] Id. at 717–721.

286 and 311, matters which are already beyond this Court's jurisdiction for they are matters of wisdom, justice, or expediency of legislation.[259]

As for Maynilad, it emphasizes that petitioners in G.R. No. 219362 failed to point to a specific provision of law that may be violated should the concessionaires claim on the Letters of Undertaking. At any rate, it alleges that it has already commenced arbitration pursuant to the Letters of Undertaking and, therefore, the courts may no longer take cognizance of the issue while the arbitration is ongoing so as not to preempt any decision by the Appeals Panel.[260]

The allegations of Representatives Colmenares and Zarate in their Petition in G.R. No. 219362 are reproduced below:

> 59. In said 20 February 2015 Disclosure, Maynilad claimed that the deferment of the implementation of the rate adjustment has caused significant amounts in lost revenues.
>
> 60. On the same date, 20 February 2015, Secretary Purisima, *according to information*, wrote the President, apprising him of the letter from Maynilad. Secretary Purisima stated that "a call on the Undertaking Letter may potentially result in the National Government having to pay Maynilad over P5 Billion for the period 1 January 2013 to 31 January 2015 and P208 Million for every suspended month of delay."
>
> . . . .
>
> 63. On 4 March 2015, Secretary Purisima submitted to the President, *according to information*, the Department of Finance's position regarding the obligations of the Republic in light of Maynilad's call on the Government's guarantees. Secretary Purisima maintained that deferment of the implementation of the Arbitral Award by MWSS and MWSS-Ro may result in the payment of approximately P5 Billion for the period 1 January 2013 to 31 January 2015 and P208 Million for every month of delay.
>
> 64. Contrary to MWSS's position and determination as the utility regulator, Secretary Purisima, who should rely on MWSS on issues such as this, in said 4 March 2015 letter to the President, favourably endorsed Maynilad's claims[.] (Emphasis supplied)

These allegations are all conjectures, hypothetical facts not established by evidence. These allegations are not even substantiated as shown by the use of the phrase "according to information[.]" With no actual facts, there can be no actual case or controversy, and this Court cannot decide on the propriety of the concessionaire's claim on the Republic's Letter of Undertaking. We will not rule based on these hypothetical facts so as not to render an advisory opinion on the matter.

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259 Id. at 721.
260 Id. at 1661–1667.

Besides, Maynilad admitted that it has already submitted its claim on the Republic's Letter of Undertaking for arbitration considering the Metropolitan Waterworks and Sewerage System's refusal to implement the Arbitral Award in its favor.[261] Pursuant to the principle of party autonomy and there being no showing of allowable grounds to intervene, this Court shall not restrain the arbitration proceedings.

III

We grant the Petition in G.R. No. 239938.

III (A)

As to the first issue raised in this Petition, the Metropolitan Waterworks and Sewerage System contends that the trial court and the Court of Appeals erred in confirming the Final Award in UNC 141/CYK considering that the Petition for Confirmation was filed beyond the 30-day period provided in Section 23 of Republic Act No. 876, or the Arbitration Law.

On the contrary, Maynilad has not abandoned its claim under the Final Award in UNC 141/CYK, which is the subject of G.R. No. 239938.

The terms of the Release from and Waiver of Claim on Arbitral Award executed by Maynilad in favor of the Republic is reproduced below:

> **RELEASE FROM WAIVER OF CLAIM ON ARBITRAL AWARD**
>
> This Release from and Waiver of Claim on Arbitral Award (this "**Waiver**") is made on 2 January 2020 by:
>
> **MAYNILAD WATER SERVICES, INC.** a corporation organized under Philippine laws, with office address at MWSS Engineering Building, MWSS Complex, Katipunan Avenue, Balara Quezon City, represented herein by its President and Chief Executive, **Ramoncito S. Fernandez**, hereinafter referred to as "**MAYNILAD**";
>
> in favor of:
>
> The **Republic of the** Philippines, represented herein by the Department of Finance, through its Secretary, the **Hon. Carlos G. Dominguez III**, hereinafter referred to as the "**Republic**";
>
> (collectively, the "**Parties**").

[261] Id. at 1605–1606.

Recitals:

A. An arbitral award was issued on 24 July 2017 in favor of Maynilad against the Republic in Permanent Court of Arbitration (PCA) Case No. 2015-37 between MAYNILAD as Claimant, and the Republic as Respondent, (the "**Arbitral Award**");

B. In a letter dated 11 February 2019, MAYNILAD informed the Republic, through the Department of Finance, that its actual losses for which the Republic is liable, amount to Php6,655,450,000.00 (the "**Actual Losses**");

C. After due consideration of the impact of enforcing the Arbitral Award against the Republic, MAYNILAD states the following:

1. MAYNILAD, particularly its shareholders, Metro Pacific Investments Corporation and DMCI Holdings, Inc. which, together, own almost 80% interest therein, hereby unconditionally waives its claim against the Republic for the payment of the Actual Losses and hereby releases and discharges the Republic, including the Metropolitan Waterworks and Sewerage System, from any liability or obligation with respect thereto.

2. This Waiver does not constitute an admission of any unlawful act or liability of any kind on the part of any of the Parties, and may not be used or introduced as evidence in any legal proceeding except to enforce or challenge its terms.

3. This Waiver shall inure to the benefit of the successors, assigns and other entities representing the interest of the Republic.

4. This Waiver becomes effective as of the date of its execution.[262]

As clearly provided in the Release from and Waiver of Claim on Arbitral Award, the waiver only refers to the arbitral award issued in Permanent Court of Arbitration (PCA) Case No. 2015-37. This is not the UNC 141/CYK case subject of G.R. No. 239938.

Consequently, Maynilad cannot be deemed to have waived or abandoned its claim in G.R. No. 239938.

The Metropolitan Waterworks and Sewerage System is also mistaken in arguing that Maynilad belatedly filed the Petition for Confirmation.

It is true that Section 23 of Republic Act No. 876 provides for a 30-day period for applying for an order confirming an arbitral award:

SECTION 23. *Confirmation of Award. — At any time within one*

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[262] *Rollo* (G.R. No. 239938), pp. 544–545.

> *month after the award is made, any party to the controversy which was arbitrated may apply to the court having jurisdiction, as provided in section twenty-eight, for an order confirming the award*; and thereupon the court must grant such order unless the award is vacated, modified or corrected, as prescribed herein. Notice of such motion must be served upon the adverse party or his attorney as prescribed by law for the service of such notice upon an attorney in action in the same court. (Emphasis supplied)

Nevertheless, Section 23 of Republic Act No. 876 is deemed superseded by Rule 11.2(A) of the Special ADR Rules on the reglementary period for filing petitions for confirmation of arbitral awards. While Republic Act No. 9285 declares that domestic arbitration shall continue to be governed by Republic Act No. 876,[263] Republic Act No. 9285 likewise provides that its provisions are "without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from the time to time."[264]

Consequently, the Special ADR Rules, in Rule 11.2(A), now governs the filing of petitions for confirmation, thus:

> RULE 11
> Confirmation, Correction or Vacation of Award in Domestic Arbitration
>
> . . . .
>
> RULE 11.2. When to Request Confirmation, Correction/Modification or Vacation. —
>
> (A) Confirmation. — At any time after the lapse of thirty (30) days from receipt by the petitioner of the arbitral award, he may petition the court to confirm that award.

Considering that Maynilad filed its Petition for Confirmation after the lapse of 30 days from receipt of the Arbitral Award, the Court of Appeals did not err in taking cognizance of the Petition.

III (B)

Finally, the Metropolitan Waterworks and Sewerage System argues that implementing the Final Award in UNC 141/CYK will violate public policy. The Appeals Panel in UNC 141/CYK held that Maynilad may recover its corporate income taxes as business expense. On the other hand, the Appeals Panel in UNC 136/CYK, albeit composed of different members, held that Manila Water cannot recover their corporate income taxes from consumers.

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263 Republic Act No. 9285 (2004), sec. 32.
264 Republic Act No. 9285 (2004), sec. 2.

These contrasting arbitral awards, the Metropolitan Waterworks and Sewerage System argues, would result in discriminatory water rates between the Service Area West and Service Area East, contrary to the mandate of the Metropolitan Waterworks and Sewerage System to provide just, equitable, and non-discriminatory rates.

Despite the timely filing of the Petition for Confirmation, the final award in *Maynilad Water Services, Inc. v. Metropolitan Waterworks and Sewerage System and Regulatory Office*[265] cannot be confirmed.

Under Republic Act No. 9285, "[t]he confirmation of a domestic award shall be made by the Regional Trial Court in accordance with the Rules of Procedure to be promulgated by the Supreme Court."[266] In turn, the Special ADR Rules provides in Rule 19.10 that a court may set aside an arbitral award, *whether domestic or international*, if recognizing the award will amount to a violation of public policy. Rule 19.10 of the Special ADR is reproduced in full, thus:

> RULE 19.10. *Rule on Judicial Review on Arbitration in the Philippines.* – As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.
>
> *If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than that provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.*
>
> The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal. (Emphasis supplied)

The public policy ground under Rule 19.10 is similar to that found in Article V of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, otherwise known as the New York Convention. Article V of the New York Convention provides:

> Article V
>
> 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the

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[265] Docketed as Case No. UNC 141/CYK.
[266] Republic Act No. 9285 (2004), sec. 40.

competent authority where the recognition and enforcement is sought, proof that:

> (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
>
> (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
>
> (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
>
> (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
>
> (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if *the competent authority in the country where recognition and enforcement is sought finds that*:

> (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
>
> (b) *The recognition or enforcement of the award would be contrary to the public policy of that country.* (Emphasis supplied)

The Philippines acceded to the New York Convention in 1967.[267] Notably, under Section 45 of Republic Act No. 9285, an application for recognition and enforcement of a foreign arbitral award may be opposed only on the grounds provided in Article V of the New York Convention.

What constitutes "a violation of public policy" that renders an arbitral award incapable of being recognized was discussed in *Mabuhay Holdings Corporation v. Sembcorp Logistics Limited*.[268] In that case, Mabuhay Holdings Corporation and Infrastructure Development & Holdings, Inc. incorporated two corporations in which Sembcorp Logistics Limited

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[267] *Mabuhay Holdings Corporation v. Sembcorp Logistics Limited*, 844 Phil. 813 (2018) [Per J. Tijam, First Division].

[268] Id.

(Sembcorp) invested. Mabuhay Holdings, Infrastructure Development, and Sembcorp then entered into a Shareholders' Agreement, where Mabuhay Holdings and Infrastructure Development jointly guaranteed that Sembcorp will receive a minimum accounting return of US$929,875.50, the guaranteed return, two years after Sembcorp had fully paid its equity investment.

It had almost been three years after Sembcorp had fully paid its equity investment, but it was still not yet paid the guaranteed return. It thus demanded payment both from Mabuhay Holdings and Infrastructure Development. Mabuhay Holdings admitted liability but only as to half of the guaranteed return, contending that its obligation to Sembcorp was only joint and several. When Mabuhay Holdings failed to pay the full amount of the guaranteed return despite Sembcorp's final demand, Sembcorp commenced arbitration pursuant to the arbitration clause contained in the Shareholders' Agreement.

The sole arbitrator in the case rendered a Final Award in favor of Sembcorp, ordering Mabuhay Holdings to pay half of the amount of the guaranteed return. With the Final Award having been rendered in Singapore, the Final Award is therefore a foreign arbitral award; hence, Sembcorp filed a Petition for Recognition and Enforcement of Foreign Arbitral Award before the Regional Trial Court of Makati.

Mabuhay Holdings opposed the Petition, arguing, among others, that recognizing or enforcing the Final Award would be contrary to the public policy of the Philippines.

The Makati trial court dismissed the Petition because the controversy was allegedly an intra-corporate matter and that the sole arbitrator who decided the case allegedly lacked expertise. However, the Court of Appeals reversed the trial court and recognized the Final Award, noting that the trial court attacked the merits of the Final Award which is prohibited under our arbitration laws.

Mabuhay Holdings appealed to this Court, but this Court denied the petition for review on certiorari. This Court first noted that most jurisdictions follow a "narrow and restrictive approach in defining public policy" given that the New York Convention, which governs foreign arbitral awards, follows a pro-enforcement policy. This Court then observed that Philippine jurisprudence had yet to define which arbitral awards are deemed contrary to public policy. Taking guidance from cases which defined contracts contrary to public policy, this Court held that arbitral awards contrary to public policy are those that, when enforced, "would be against Our State's fundamental tenets of justice and morality, or would blatantly be injurious to the public, or the interests of the society." This Court emphasized that "[m]ere errors in the interpretation of the law or factual findings would not suffice to warrant

refusal of enforcement under the public policy ground."

This Court then examined the arguments raised by Mabuhay Holdings. Mabuhay Holdings assailed the Final Award because: first, the payment of a guaranteed return to Sembcorp is allegedly contrary to Article 1799 of the Civil Code, which provides that "[a] stipulation which excludes one or more partners from any share in the profits or losses is void"; and, second, the 12% interest rate imposed in the Final Award is contrary to Philippine law.

These errors, according to this Court, were insufficient to set aside the Final Award on public policy grounds. Firstly, Article 1799 of the Civil Code did not apply because the entities involved in the joint venture were all corporations. As such, the limited liability rule governing corporations, not Article 1799 on partnerships, applied. Secondly, the 12% annual interest on the payment of the guaranteed return was not, said the Court, of a level to make it unconscionable. In *Mabuhay*:

> Under Article V (2) (b) of the New York Convention, a court may refuse to enforce an award if doing so would be contrary to the public policy of the State in which enforcement is sought. Neither the New York Convention nor the mirroring provisions on public policy in the Model Law and Our arbitration laws provide a definition of "public policy" or a standard for determining what is contrary to public policy. Due to divergent approaches in defining public policy in the realm of international arbitration, public policy has become one of the most controversial bases for refusing enforcement of foreign arbitral awards.
>
> Most arbitral jurisdictions adopt a narrow and restrictive approach in defining public policy pursuant to the pro-enforcement policy of the New York Convention. The public policy exception, thus, is "a safety valve to be used in those exceptional circumstances when it would be impossible for a legal system to recognize an award and enforce it without abandoning the very fundaments on which it is based." An example of a narrow approach adopted by several jurisdictions is that the public policy defense may only be invoked "where enforcement [of the award] would violate the forum state's most basic notions of morality and justice." Thus, in Hong Kong, an award obtained by fraud was denied enforcement by the court on the ground that fraud is contrary to Hong Kong's "fundamental notions of morality and justice." In Singapore, also a Model Law country, the public policy ground is entertained by courts only in instances where upholding the award is "clearly injurious to the public good or . . . wholly offensive to the ordinary reasonable and fully informed member of the public."
>
> In Our jurisdiction, the Court has yet to define public policy and what is deemed contrary to public policy in an arbitration case. However, in an old case, the Court, through Justice Laurel, elucidated on the term "public policy" for purposes of declaring a contract void:
>
> > x x x At any rate, courts should not rashly extend the rule which holds that a contract is void as against public policy. **The term "public policy" is vague and uncertain in meaning, floating and changeable in connotation.** It may

> be said, however, that, in general, a contract which is neither prohibited by law nor condemned by judicial decision, nor contrary to public morals, contravenes no public policy. In the absence of express legislation or constitutional prohibition, a court, in order to declare a contract void as against public policy, must find that the contract as to the consideration or thing to be done, **has a tendency to injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property.** (Emphasis ours)

An older case, *Ferrazzini v. Gsell*, defined public policy for purposes of determining whether that part of the contract under consideration is against public policy:

> By "public policy," as defined by the courts in the United States and England, is intended **that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good**, which may be termed the "policy of the law," or "public policy in relation to the administration of the law." Public policy is the principle under which freedom of contract or private dealing is restricted by law for the good of the public. In determining whether a contract is contrary to public policy the nature of the subject matter determines the source from which such question is to be solved. (Emphasis ours and citation omitted)

In light of the foregoing and pursuant to the State's policy in favor of arbitration and enforcement of arbitral awards, the Court adopts the majority and narrow approach in determining whether enforcement of an award is contrary to Our public policy. Mere errors in the interpretation of the law or factual findings would not suffice to warrant refusal of enforcement under the public policy ground. The illegality or immorality of the award must reach a certain threshold such that, enforcement of the same would be against Our State's fundamental tenets of justice and morality, or would blatantly be injurious to the public, or the interests of the society.[269] (Emphases in the original)

Indeed, recognizing and enforcing the arbitral award in *Mabuhay Holdings* will have no injurious effect to the public, unlike confirming the arbitral award in this case. The arbitral award in *Mabuhay Holdings* adversely affected a private entity. On the other hand, the arbitral award, which allowed Maynilad to include its corporate income taxes in the computation of water rates, will adversely affect the public at large, specifically, the water consumers in Service Area West served by Maynilad.

Not only will confirming the arbitral award in favor of Maynilad be injurious to the public; it will result in unequal protection of water consumers Service Area East under Manila Water and those in Service Area West under

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[269] Id.

Maynilad.

In the arbitration commenced by Manila Water against the Republic, the arbitral tribunal therein held that Manila Water cannot include its corporate income taxes in the computation of rates chargeable to water consumers in Service Area East. If the arbitral award in favor of Maynilad is confirmed, this will result in a disproportionate price difference between the water rates in Service Area West and Service Area East. Note that there is no substantial distinction between the water consumers in the respective service areas. This is contrary to the equal protection clause guaranteed by the Constitution.[270]

Even confirming the arbitral award in favor of Maynilad will be illegal. Under Sections 3(h) and 3(m) of Republic Act No. 6234, the Manila Waterworks and Sewerage System is mandated to fix "just and equitable rates."

Certainly, allowing Maynilad to include its corporate income taxes in the rates chargeable to water consumers – taxes which, to repeat, do not inure to the benefit of water consumers – will result not only in unjust but also inequitable rates. A large segment of the water consuming public will be made to pay for something that has no direct benefit to them, while some will enjoy water services without the shouldering the same burden. This cannot be allowed.

All told, confirming the Final Award in *Maynilad Water Services, Inc. v. Metropolitan Waterworks and Sewerage System and Regulatory Office*, which allows Maynilad to include its corporate income tax in the subsequent charging years, will injure the public. The award, therefore cannot be recognized for being contrary to public policy.

WHEREFORE, the Petitions for Review on *Certiorari* in G.R. Nos. 181764 and 187380 are **DENIED**. The May 28, 2007 Decision, February 20, 2008 Omnibus Resolution, and March 9, 2009 Omnibus Resolution in CA-G.R. SP No. 92743 are **AFFIRMED.**

As for the Petitions in G.R. Nos. 207444, 208207, 210147, 213227, and 219362, they are **PARTLY GRANTED**. Respondents Manila Water Company, Inc. and Maynilad Water Services, Inc. are declared as **PUBLIC UTILITIES** subject to public service laws, including the 12% limitation on its rates of return and the prohibition on recovering their corporate income taxes as operating expenses pursuant to this Court's ruling in *Republic v. MERALCO*.

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[270] CONST., art. III, sec. 1.

Finally, the Petition for Review on *Certiorari* in G.R. No. 239938 is **GRANTED**. The May 30, 2018 Decision of the Court of Appeals in CA-G.R. SP No. 153985 is **REVERSED** and **SET ASIDE.** The Petition for Confirmation and Execution of the Final Award dated December 29, 2014 rendered by the Appeals Panel in Arbitration Case No. UNC 141/CYK, entitled *Maynilad Water Services, Inc. vs. Metropolitan Waterworks and Sewerage System and Regulatory Office*, is **DISMISSED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

No part
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

(On Official leave)
JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

ALEXANDER G. GESMUNDO
Chief Justice