



**Republic of the Philippines
Supreme Court
Manila**

EN BANC

**METROPOLITAN WATERWORKS
AND SEWERAGE SYSTEM,**
represented by its Administrator,
DIOSDADO JOSE M. ALLADO,

Petitioner,

G.R. No. 185184

Present:

**GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,*
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,**
MARQUEZ,
KHO, JR.,
SINGH, JJ.**

- versus -

**PROVINCIAL GOVERNMENT OF
BULACAN, represented by GOV.
JOSEFINA M. DELA CRUZ,**

Respondent.

Promulgated:

October 3, 2023

X

DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ assailing the Decision² dated May 30, 2008 of the Court of Appeals (CA) in CA-

* On official business.

** On official business.

¹ *Rollo*, pp. 12-48.

² *Id.* at 51-68. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Amelita G. Tolentino and Lucenito N. Tagle.

G.R. CV No. 86701 which affirmed with modification the Decision³ dated June 3, 2005 and the Order⁴ dated January 31, 2006 of Branch 82, Regional Trial Court (RTC), City of Malolos, Bulacan in Civil Case No. 410-M-2003. Also assailed is the CA Resolution⁵ dated October 24, 2008 denying the motion for reconsideration.

The Antecedents

The case emanated from a Complaint⁶ for *Specific Performance/Payment of National Wealth Share* filed by the Provincial Government of Bulacan (respondent), represented by its then Provincial Governor, Josefina M. Dela Cruz, against the Metropolitan Waterworks and Sewerage System (petitioner), represented by its then Administrator, Orlando C. Hondrade.⁷

According to respondent, Angat Dam, which is located within its territorial jurisdiction, is the primary source of water supply of Metro Manila. It averred that petitioner has been deriving proceeds from the water resource of Angat Dam such that it should pay respondent a share arising from the utilization and development of national wealth.⁸ Respondent stressed that petitioner's duty to pay is sanctioned by Section 7,⁹ Article X of the 1987 Constitution in relation to Sections 289,¹⁰ 291,¹¹

³ *Id.* at 74-79. Penned by Acting Presiding Judge Herminia V. Pasamba.

⁴ *Id.* at 80-90.

⁵ *Id.* at 69-73. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Amelita G. Tolentino.

⁶ *Id.* at 118-122.

⁷ *Id.* at 118.

⁸ *Id.* at 119.

⁹ Section 7, Article X, 1987 CONSTITUTION:

Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

¹⁰ Section 289 of the Local Government Code (LGC) provides:

SECTION 289. *Share in the Proceeds from the Development and Utilization of the National Wealth.* — Local government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

¹¹ Section 291 of the LGC provides:

SECTION 291. *Share of the Local Governments from any Government Agency or Government-Owned or -Controlled Corporation.* — Local government units shall have a share based on the preceding fiscal year from the proceeds derived by any government agency or government-owned or -controlled corporation engaged in the utilization and development of the national wealth based on the following formula whichever will produce a higher share for the local government unit

(a) One percent (1%) of the gross sales or receipts of the preceding calendar year; or

(b) Forty percent (40%) of the mining taxes, royalties, forestry and fishery charges and such other taxes, fees or charges, including related surcharges, interests, or fines the government agency or government-owned or -controlled corporation would have paid

and 292¹² of the Local Government Code of 1991¹³ (LGC).¹⁴

Respondent also alleged that since 1992, it has been demanding petitioner to pay its national wealth share but to no avail; it asked petitioner to furnish it with the latter's financial statements from the year 1992 which could be the basis for the determination of respondent's share; and because the request remained unheeded, it filed the complaint against petitioner.¹⁵

On the other hand, petitioner raised in its Answer¹⁶ that respondent has no cause of action against it, there being no privity of contract between them.¹⁷

Petitioner further contended that it is a non-profit service utility which aimed to provide reliable water supply and wastewater disposal system to Metro Manila and its neighboring provinces; and it has been exercising regulatory functions in view of its agreements with various concessionaires, which were granted the right to manage the facilities and collect fees for water and sewerage services supplied to clients.¹⁸

Although it admitted that Angat Dam is located within the territory of respondent, petitioner argued that it is not engaged in the utilization and development of national wealth.¹⁹ For petitioner, the water stored in Angat

if it were not otherwise exempt.

¹² Section 292 of the LGC provides:

SECTION 292. *Allocation of Shares.* — The share in the preceding section shall be distributed in the following manner:

(a) Where the natural resources are located in the province:

- (1) Province — Twenty percent (20%);
- (2) Component City/Municipality — Forty-five percent (45%); and
- (3) Barangay — Thirty-five percent (35%)

Provided, however, That where the natural resources are located in two (2) or more provinces, or in two (2) or more component cities or municipalities or in two (2) or more barangays, their respective shares shall be computed on the basis of:

- (1) Population — Seventy percent (70%); and
- (2) Land area — Thirty percent (30%)

(b) Where the natural resources are located in a highly urbanized or independent component city:

- (1) City — Sixty-five percent (65%); and
- (2) Barangay — Thirty-five percent (35%)

Provided, however, That where the natural resources are located in such two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in paragraph (a) of this section.

¹³ Republic Act No. 7160, approved on October 10, 1991.

¹⁴ *Rollo*, pp. 119-120.

¹⁵ *Id.* at 120-121.

¹⁶ *Id.* at 128-132.

¹⁷ *Id.* at 129.

¹⁸ *Id.* at 129-131.

¹⁹ *Id.* at 129-131.

Dam did not necessarily come from Bulacan but was simply stored in it. Petitioner further countered that because a dam is a man-made structure, it does not fall within the purview of national wealth that would entitle a local government unit (LGU) to an equitable share in the proceeds derived from its utilization and development.²⁰

The Ruling of the RTC

In its Decision²¹ dated June 3, 2005, the RTC granted respondent's complaint, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered resolving the two (2) legal issues presented, as follows:

1. Ordering defendant MWSS [petitioner] to submit and/or furnish plaintiff [respondent] of its financial statement or any financial document showing the income of MWSS from 1992 to present; and
2. Ordering defendant MWSS to remit to the Provincial Treasurer of the Province of Bulacan the latter's share for the utilization of water resource derived from Angat Dam based on the earnings of MWSS from 1992 computed in accordance with Section 27 (a) (b) of the Local Government Code of 1991 and in the amount of 40% of the concession fee MWSS is and will be receiving by virtue of the concession agreement it had entered with private entities[,] with legal interest.
3. Without costs.

SO ORDERED.²²

The RTC ruled in this wise:

First, the 1987 Constitution provides that water, *per se*, is a natural resource. The term "water" encompasses all kinds of water which form part of national wealth, as defined under Article 386(b)²³ of the

²⁰ *Id.* at 129-130.

²¹ *Id.* at 74-79.

²² *Id.* at 79.

²³ Article 386(b) of the Implementing Rules and Regulations of RA 7160 provides:

Article 386. Share in the Proceeds from the Development and Utilization of the National Wealth. — x x x

(b) The term national wealth shall mean all natural resources situated within the Philippine territorial jurisdiction including lands of public domain, waters, minerals, coal,

Implementing Rules and Regulations (IRR) of the LGC.²⁴

Second, the substantial portion of the water stored in Angat Dam is sourced from respondent. In fact, the National Mapping and Resource Information Authority (NAMRIA) Topographic Map, as certified by the National Power Corporation (NPC),²⁵ indicated that 88.5% (without the Umiray River Basin), or 71.9% (with the Umiray River Basin) of the water in the Angat Dam is sourced exclusively from respondent.²⁶

Third, in the maintenance of dams and water reservoirs, petitioner is engaged in the utilization and development of water. Thus, the fact that dams and reservoirs are man-made does not remove the water stored in them from being characterized as national wealth.²⁷

Fourth and last, the maintenance and operation of dams are for the purpose of providing proper usage of water and for making it profitable. As it derives profit from the utilization and development of dam water, petitioner is liable to pay respondent its national wealth share as provided for under the LGC.²⁸

In its Order²⁹ dated January 31, 2006, the RTC denied petitioner's motion for reconsideration with clarification as to the share of respondent in the earnings of petitioner:

WHEREFORE, the foregoing considered, the subject motion is hereby DENIED. The assailed Decision stands subject to the qualification that the prayed for relief of the plaintiff commencing from the claimed fiscal year is limited to 1% of its equitable share in the proceeds derived from the utilization and development of the waters in Angat Dam exclusively sourced from Bulacan based on the revenues for Concession.

SO ORDERED.³⁰

Aggrieved, petitioner interposed an appeal with the CA.

petroleum, mineral oils, potential energy forces, gas and oil deposits, forest products, wildlife, flora and fauna, fishery and aquatic resources, and all quarry products.

²⁴ *Rollo*, p. 75.

²⁵ *Id.* at 139-141.

²⁶ *Id.* at 77.

²⁷ *Id.* at 76.

²⁸ *Id.*

²⁹ *Id.* at 80-90.

³⁰ *Id.* at 90.

The Ruling of the CA

On May 30, 2008, the CA rendered the assailed Decision³¹ affirming the RTC ruling with modification in that the computation of the share of respondent from the utilization and development of the water in Angat Dam should be in accordance with Section 291 of the LGC.³²

Like the RTC, the CA elucidated that based on the definition under the IRR of the LGC, “national wealth” pertained to natural resources and water is unquestionably part of the national wealth of the State. Because water is a natural resource and 71.9% (with the Umiray River Basin) or 88.5% (without the Umiray River Basin) of the water in the Angat Dam is sourced from Bulacan, then respondent is entitled to a share in the proceeds of the utilization and development of the water found in Angat Dam.³³ It stressed that under the LGC, it is not necessary that an LGU owned the natural resource; what is simply required is for the natural resource to be found in the territory of the concerned LGU.³⁴

The CA also ruled that petitioner is engaged in the utilization and development of national wealth because it has been supplying water for the use of the consuming public; and pursuant to Section 291 of the LGC, the share of the LGU in the proceeds of the natural resource within its area shall be the gross receipts of the amount received by petitioner before any deductions for expenses or loan payments.³⁵

With the denial of its motion for reconsideration, petitioner filed the present petition raising the following grounds:

A.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT’S FACTUAL FINDING ON THE SOURCE OF THE WATER FROM THE ANGAT DAM, DESPITE THE COURT A QUO’S OWN ORDER THAT ONLY LEGAL ISSUES WERE TO BE DECIDED.

B.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING

³¹ *Id.* at 51-68.

³² *Id.* at 67.

³³ *Id.* at 62-63.

³⁴ *Id.* at 63.

³⁵ *Id.* at 65-66.

THE TRIAL COURT'S RELIANCE ON THE 4 APRIL 2005 NPC LETTER-CERTIFICATION (EXH. "L") AND THE NAMRIA TOPOGRAPHICAL MAP.

C.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT [THE] WATER IN ANGAT DAM IS PART OF THE NATIONAL WEALTH WITHIN THE PROVINCE OF BULACAN.

D.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONER IS ENGAGED IN THE UTILIZATION AND DEVELOPMENT OF NATIONAL WEALTH.

E.

THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT SECTION 291 OF THE LGC IS NOT SELF-EXECUTORY. AN ORDINANCE MUST FIRST BE PASSED BY THE LOCAL SANGGUNIAN AUTHORIZING THE IMPOSITION AND COLLECTION OF A TAX.

F.

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT RESPONDENT IS ENTITLED TO COLLECT ITS ALLEGED SHARE FROM THE UTILIZATION AND DEVELOPMENT OF WATER STORED IN ANGAT DAM THROUGH THE CONCESSION FEES BEING PAID TO PETITIONER.

G.

THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT A 1% TAX ON PETITIONER'S GROSS RECEIPTS OF MWSS WOULD BE UNJUST AND INEQUITABLE.³⁶

Petitioner's Arguments

Petitioner faults the RTC for delving into factual matters which were purportedly never included as issues for resolution. It also contends that the RTC and the CA erroneously relied on the NAMRIA Topographic Map in ruling that 71.9% to 88.5% of the water in Angat Dam is sourced from Bulacan. It argues that the document in dispute was not admitted in evidence.³⁷

³⁶ *Id.* at 19-20.

³⁷ *Id.* at 24-26.

Petitioner further posits that while water is a natural resource, it is not part of the national wealth because the water in Angat Dam is not exclusively within or sourced from Bulacan; and the location of Angat Dam being in Bulacan only proves the place of storage of water, but under no circumstance would this show that water is naturally sourced from Bulacan.³⁸

Relying on its Charter, petitioner asserts that it was created for the sole and exclusive purpose of ensuring the uninterrupted and sufficient supply and distribution of potable water to its clients; petitioner was not created to generate income and its functions do not involve the utilization and development of a natural resource as dams and reservoirs are not natural resources; and petitioner does not derive profit from the concession agreements it enters with private entities because the amount it receives is only used to pay off loans and utilized as the budget of its office.³⁹

Petitioner finally argues that the *Sangguniang Panlalawigan* of respondent has not passed any ordinance such that respondent is not authorized to impose any tax on petitioner. It also insists that the 1% tax on its gross receipts is unjust and inequitable.⁴⁰

Respondent's Arguments

For its part, respondent maintains that the RTC and the CA properly relied on the NAMRIA Topographic Map because: (1) the parties agreed during the preliminary conference that no witnesses would be presented, and they would instead submit position papers before the RTC; and (2) the subject document is an official document issued by the NPC.⁴¹

Respondent likewise asserts that the water used by petitioner emanates from Angat Dam which is located in Bulacan; that as established by the NAMRIA Topographic Map, substantial portion of the water stored in Angat Dam is sourced, located, and found in the Province of Bulacan; and that because petitioner utilizes, develops, and supplies water, it must give respondent an equitable share in the utilization and development of

³⁸ *Id.* at 29-31.

³⁹ *Id.* at 38 and 40.

⁴⁰ *Id.* at 40-41 and 43.

⁴¹ See Comment dated March 26, 2009, *id.* at 152-153.

such national wealth.⁴²

At the same time, respondent posits that petitioner is covered by the obligation to remit a share of the proceeds from its utilization and development of national wealth because Section 293 of the LGC used the word “shall” which implies that the remittance is mandatory. It adds that even if petitioner insists that it is a non-profit institution, it is still required to give respondent a national wealth share because Section 291 of the LGC did not distinguish as to which government agency, or government-owned and -controlled corporation (GOCC) must give a share to the LGUs as regards the utilization and development of national wealth.⁴³

Proceedings Before the Court

In the Resolution⁴⁴ dated December 7, 2021, the Court stated that central to the resolution of the petition is the determination of the exact nature of water in the Angat Dam. Thus, the Court found it necessary to require the NPC, the National Irrigation Authority (NIA), and the National Water Resources Board (NWRB) to comment on the petition. In the same Resolution, the Court required the parties to inform the Court of supervening event, if any, which may assist it in the immediate disposition of the case.

On March 21, 2022, the NPC, through the Office of the Solicitor General (OSG), submitted its Comment/Compliance⁴⁵ on the petition. It stressed that the NPC previously managed the Angat Hydro Electric Power Plant (AHEPP) but in 2014, the AHEPP was privatized.⁴⁶ It confirmed nonetheless that while the AHEPP was still under its management, the NPC had paid the national wealth tax to respondent.⁴⁷ The pertinent portions of the comment of the NPC read:

... [T]he Angat Hydro Electric Power Plant (AH[E]PP) was one of the dams that were previously under the management of herein NPC. However, pursuant to Republic Act No. 9136 (EPIRA), said [AHEPP] was designated as one of the generating assets to be privatized by the Power Sector Assets and Liabilities Management Corporation (PSALM).

⁴² *Id.* at 154-158.

⁴³ *Id.* at 161-163.

⁴⁴ *Id.* at 378-382.

⁴⁵ *Id.* at 389-392.

⁴⁶ *Id.* at 390.

⁴⁷ *Id.*

[S]ometime in 2014, the [AHEPP] was finally privatized and sold to the Korean Water Resources Corporation (KWRC), which sale has been declared as valid and legal by the Honorable Court in “Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. vs. Power Sector Assets and Liabilities Management Corporation (PSALM).”

[D]ue to said privatization, the management and ownership of the [AHEPP] was subsequently transferred to KWRC. The sale of the [AHEPP] included all its machineries and equipment. On the other hand, the main dam, spill way and diversion tunnel were excluded from the sale and remain[ing] under PSALM’s ownership.

[W]hile the [AHEPP] was still under NPC’s management, herein NPC confirms that based on its records, the corporation has been paying the National Wealth Tax to the Provincial Government of Bulacan pursuant to Section 291 of Republic Act No. 7160, also known as the Local Government Code, until its privatization in 2014.⁴⁸

On May 17, 2022, petitioner, through the Office of the Government Corporate Counsel, filed its Compliance with Motion to Admit.⁴⁹ Petitioner manifested that there are no on-going negotiations, contracts, or House or Senate Bills affecting the rights and interests of the parties in the case.⁵⁰

On July 11, 2022, the NWRB, through the OSG, submitted its Comment⁵¹ on the petition. It stated that “[a]s to the nature of the utilization of the water of the Angat Dam, the NWRB does not issue water permits with Angat Dam as the source. The Angat Dam is merely a reservoir where water from different sources is collected, allocated, and diverted to different water permit holders.”⁵² It further stressed that based on its records, “it has issued Water Permits for the appropriation of water from the Angat River, not the Angat Dam.”⁵³

Meanwhile, in the Resolution⁵⁴ dated July 19, 2022, the Court noted that the concerned government bodies in this case are now under new administration. Accordingly, pursuant to Section 17,⁵⁵ Rule III of the

⁴⁸ *Id.* at 390.

⁴⁹ *Id.* at 396-397.

⁵⁰ *Id.*

⁵¹ *Id.* at 541-547.

⁵² *Id.* at 542.

⁵³ *Id.*

⁵⁴ *Id.* at 563-564.

⁵⁵ Section 17, Rule III of the Rules of Court provides:

Rules of Court,⁵⁶ it directed the parties as well as the NPC and the NIA to inform the Court, whether these government entities or their concerned officers would continue, maintain, or adopt the action of the predecessors in their respective offices. In the same Resolution, the Court noted the comment dated July 11, 2022 filed by the NWRB under the present administration.

In its Compliance⁵⁷ dated September 6, 2022, the NPC manifested that it maintains and continues to adopt its earlier Comment/Compliance of March 21, 2022. In similar regard, petitioner manifested in its Compliance⁵⁸ dated September 7, 2022 that petitioner and its officers continue, maintain, or adopt the actions of their predecessors-in-interest in this case.

On December 20, 2022, the NIA stated in its Manifestation⁵⁹ that upon a perusal of the petition, there is no mention of any factual or legal issue that requires its comment. It adds that the NIA has no privity over the issue of this case and the relief sought by petitioner will neither be detrimental to the NIA, nor will it affect the NIA in any way.

On May 22, 2023, respondent filed its Reply⁶⁰ to the respective Comments filed by the NPC and the NWRB. Respondent maintains that it is entitled to a just share of the utilization of national wealth sourced from the Province of Bulacan. It reiterates that the water utilized from Angat Dam was sourced from Bulacan, and while the Angat Dam is a reservoir, the water stored in the dam is from the Province of Bulacan.

The Court's Ruling

The petition has merit.

SECTION 17. Death or Separation of a Party Who is a Public Officer. — When a public officer is a party in an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor if, within thirty (30) days after the successor takes office or such time as may be granted by the court, it is satisfactorily shown to the court by any party that there is a substantial need for continuing or maintaining it and that the successor adopts or continues or threatens to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to be heard. (18a)

⁵⁶ As amended by A.M. No. 19-10-20-SC, approved on October 15, 2019.

⁵⁷ *Rollo*, pp. 572-574.

⁵⁸ *Id.* at 582-585.

⁵⁹ *Id.* at 624-628.

⁶⁰ *Id.* at 641-645. Erroneously delineated as Comment and Manifestation.

Under Section 25, Article II of the 1987 Constitution, the State guarantees the autonomy of LGUs.⁶¹ In turn, local autonomy grants LGUs with specific functions and powers for them *not* to be exceedingly reliant on the National Government. Alongside the local autonomy of LGUs is the necessity of decentralization.⁶²

In *Mandanas v. Ochoa*,⁶³ the Court specified four categories of decentralization: (1) political decentralization or devolution of powers whereby the central government transfers responsibilities, powers and resources to the LGUs for the performance of specific tasks; (2) administrative decentralization or deconcentration which involves the delegation of authority or functions from national offices to the regional and local offices (reflected in the creation of local schools, health and development boards/councils); (3) policy or decision-making decentralization which relates to the authority given to LGUs to make decisions on certain policy issues; and (4) fiscal decentralization which is reflected in the power of the LGUs to create their own sources of revenue aside from their just share in the national taxes.⁶⁴

Under the last category, *i.e.*, fiscal decentralization, LGUs are empowered to create their own sources of revenue; and LGUs are guaranteed a share in national taxes and in the utilization and development of national wealth within their corresponding areas, pursuant to Sections 5, 6, and 7 of Article X of the 1987 Constitution as follows:⁶⁵

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner

⁶¹ Section 25, Article II, 1987 CONSTITUTION:

Section 25. The State shall ensure the autonomy of local governments.

⁶² See *Congressman Mandanas v. Exec. Sec. Ochoa, Jr.*, 835 Phil. 97, 140 (2018).

⁶³ *Id.*

⁶⁴ *Id.* at 146-148.

⁶⁵ *Id.* at 147.



provided by law, including sharing the same with the inhabitants by way of direct benefits.

Primarily, the present controversy centers on the application of Section 7, Article X of the 1987 Constitution, in relation to Section 289⁶⁶ of the LGC. Thus, to ascertain whether an LGU is entitled to a share in the proceeds of the utilization and development of national wealth, there must be concurrence of the following requisites: *First*, there must exist a national wealth forming part of a natural resource. *Second*, the national wealth must be located within the LGU's territory. And *third*, the proceeds must have been generated from the utilization and development of national wealth.

These requisites, however, were not established here.

Dam water is appropriated water that is already removed from natural resource and therefore, can no longer be subject to national wealth tax.

During its deliberations, the Constitutional Commission discussed national wealth alongside "natural resources," viz.:

MR. OPLE: . . .

In association with Commissioner Davide, I propose the amendment which reads as follows: "Local governments shall be entitled to share in the proceeds of the exploitation and development of the national wealth within their respective areas . . ." In view of the significance of this new section, may I ask the Committee's leave to give a brief explanation, Madam President.

. . . .

In the hinterland regions of the Philippines, most municipalities receive an annual income of only about P200,000 so that after paying the salaries of local officials and employees, nothing is left to fund any local development project. This is a prescription for a self-perpetuating stagnation and backwardness, and numbing community frustrations, as well as a chronic disillusionment with the central government. The thrust towards local autonomy in this entire Article on Local

⁶⁶ Section 289 of Republic Act No. (RA) 7160:

SECTION 289. Share in the Proceeds from the Development and Utilization of the National Wealth. — Local government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

Governments may suffer the fate of earlier heroic efforts of decentralization which, without innovative features for local income generation, remained a pious hope and a source of discontent. To prevent this, this amendment which Commissioner Davide and I jointly propose will open up a whole new source of local financial self-reliance by establishing a constitutional principle of local governments, and their populations, sharing in the proceeds of national wealth in their areas of jurisdiction. The sharing with the national government can be in the form of shares from revenues, fees and charges levied on the exploitation or *development and utilization of natural resources* such as mines, hydroelectric and geothermal facilities, timber, including rattan, fisheries, and processing industries based on indigenous raw materials.

But the sharing, Madam President, can also take the form of direct benefits to the population in terms of price advantages to the people where, say, cheaper electric power is sourced from a local hydroelectric or geothermal facility. For example, in the provinces reached by the power from the Maria Cristina hydroelectric facility in Mindanao, the direct benefits to the population cited in this section can take the form of lower prices of electricity. The same benefit can be extended to the people of Albay, for example, where volcanic steam in Tiwi provides 55 megawatts of cheap power to the Luzon Grid.

....

MR. ALONTO: Commissioner Ople has stated in his explanation that the population or inhabitants of the area should also benefit from the *exploitation and development of the natural wealth and resources*.

MR. OPLE: Yes.

MR. ALONTO: Will that also include the hiring and the employing of the local inhabitants who are qualified for the work and process of exploitation and development of this national wealth?

MR. OPLE: Yes, Madam President. In the broader contemplation of the sharing in the *proceeds of natural resources* and direct benefits to the population, a priority for the employment of local people is among the direct benefits to the population contemplated in this amendment.⁶⁷ (Italics supplied.)

Based on the foregoing, the framers of the Constitution referred national wealth interchangeably with or in conjunction with "natural resources." Along this line, natural resources are specified under Section 2, Article XII of the 1987 Constitution to include "lands of the public

⁶⁷ Records of the Constitutional Commission No. 060, August 19, 1986; Emphases supplied.



domain, *waters*, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources.”

That national wealth refers to “natural resources” is echoed in Article 386(b) of the Implementing Rules and Regulations of the LGC as follows:

Article 386(b) of the Implementing Rules and Regulations of RA 7160 provides:

Article 386. Share in the Proceeds from the Development and Utilization of the National Wealth. —

....

(b) The term national wealth shall mean all natural resources situated within the Philippine territorial jurisdiction including lands of public domain, waters, minerals, coal, petroleum, mineral oils, potential energy forces, gas and oil deposits, forest products, wildlife, flora and fauna, fishery and aquatic resources, and all quarry products.

There is therefore no question that water, being a natural resource, is national wealth. *However*, water is deemed as already appropriated when taken or diverted from a natural resource. This is as explicitly provided under Presidential Decree No. 1067⁶⁸ or The Water Code of the Philippines, as amended (Water Code) that appropriation of water is “the acquisition of rights over the use of waters or the taking or diverting of waters from [natural resources]”, which natural resources are enumerated under Articles 5 and 6 of the Water Code:

ARTICLE 5. The following belong to the State:

- a. Rivers and their natural beds;
- b. Continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves;
- c. Natural lakes and lagoons;
- d. All other categories of surface waters such as water flowing over lands, water from rainfall whether natural or artificial, and water from agriculture runoff, seepage and drainage;
- e. Atmospheric water;
- f. Subterranean or ground waters; and
- g. Seawater.

ARTICLE 6. The following waters found on private lands also belong to the State:

⁶⁸ Approved on December 31, 1976.

- a. Continuous or intermittent waters rising on such lands;
 - b. Lakes and lagoons naturally occurring on such lands;
 - c. Rain water falling on such lands;
 - d. Subterranean or ground waters; and
 - e. Water in swamps and marshes.
-

To be sure, when water is already taken or diverted from a natural source, it is considered appropriated water – as in the case of dam water or water already impounded in an artificial receptacle. The fact of appropriation is crucial in determining the point within which necessary tax is to be imposed on the utilization and development of water. Article 13⁶⁹ of the Water Code provides that a water permit must be issued for the appropriation of water from a natural source. In this connection, the NWRB confirmed in its Comment to the Petition that it issues water permit for the appropriation of water *from the Angat River, not the Angat Dam* because Angat Dam is a mere reservoir.⁷⁰ Verily, the usage of water *not* directly from a natural source but that which originates from the facilities of a man-made structure, like Angat Dam, does *not* involve utilization and development of water by reason of the fact that it involves water that is already appropriated.

The moment that water from Angat River is already appropriated and impounded into the Angat Dam, it ceases to form part of natural resource. Water already collected through a dam system is separated from its source. “Every diversion of water from a stream is artificial — a disturbance of the natural order of things.”⁷¹ A dam or a ditch, such as Angat Dam, is an artificial mechanism because it alters the natural conditions of the river by directing the waters into a catchment and preventing its natural flow.⁷²

Significantly, in *IDEALS, Inc. v. PSALM*⁷³ (*IDEALS*), the Court, echoing the opinion of the Department of Justice, ruled that water ceases to form part of a natural resource once removed therefrom.⁷⁴ The Court discussed that power generation, through the use of water already

⁶⁹ Article 13 of Presidential Decree No. 1067 reads:

ARTICLE 13. Except as otherwise herein provided, no person, including government instrumentalities or government-owned or controlled corporations, shall appropriate water without a water right, which shall be evidenced by a document known as a water permit.

⁷⁰ *Rollo*, p. 542.

⁷¹ *Charnock v. Higuerra*, 111 Cal. 473, 481 (Cal. 1896).

⁷² *Id.* at 480-81.

⁷³ 696 Phil. 486 (2012).

⁷⁴ *Id.* at 542.

impounded in the Angat Dam, does not involve utilization and development of national wealth because dam water is not part of the State's natural resource.

In addition, the Court outlined in *IDEALS* the intricacies surrounding the operation and maintenance of the Angat Dam Complex. It explained that the Angat Reservoir and Dam has been in operation since 1968, with multi-purpose design (a) to supply irrigation to certain municipalities; (b) to provide domestic and industrial water for Metro Manila residents; (c) to generate hydroelectric power; and (d) to minimize flooding to downstream areas. In his Dissenting Opinion in *IDEALS*,⁷⁵ then Associate Justice Presbitero J. Velasco, Jr. noted that different government agencies jointly operate within the Angat Dam Complex, and petitioner, for instance, makes use of water coming from the outflow of the AHEPP:

First, NWRB controls the exploitation, development, and conservation of the waters. It regulates the water from Angat River and allocates them to the three water permit holders, NPC, MWSS, and NIA.

Second, NIA appropriates the water coming from the outflow of the main units of AHEPP to Bustos Dam, for use in its irrigation systems.

Third, MWSS appropriates water coming from the outflow of the auxiliary units of AHEPP, for domestic and other purposes through its two concessionaires, Manila Water Company, Inc. and Maynilad Water Services, Inc.

Fourth, PAGASA uses its facilities located within the Angat Complex to forecast weather in the area, forecasts which are vital to the operation of the complex itself.

Fifth, the Flood Forecasting and Warning System for Dam Operations (NPC-FFWSDO) is responsible for the opening of the spillway gates during the rainy season. It has sole authority to disseminate flood warning and notifies the public, particularly those residing along the riverbanks, during spilling operation.

Sixth, the NPC-Watershed is responsible for preserving and conserving the forest of Angat Watershed, vital to the maintenance of water storage in the Dam.⁷⁶ (Italics supplied.)

⁷⁵ *Id.* at 553-560.

⁷⁶ See Dissenting Opinion of Associate Justice Presbitero J. Velasco, Jr. in *IDEALS, Inc. v. PSALM*, *id.* at 597-598.

The Court further pointed out in *IDEALS* that the NPC exercises *complete* jurisdiction and full supervision over dams and power plants, including the Angat Dam and Reservoir, its watershed and the AHEPP.⁷⁷ It decreed that *NPC has the effective control over all elements of the extraction process, including the amount and timing thereof [and] retains full supervision and control over the extraction and diversion of waters from the Angat River.*⁷⁸ This finding is in consonance with Republic Act No. (RA) 6395,⁷⁹ or the Revised Charter of the NPC, which categorically states the NPC's full control over the extraction and diversion of water from the natural source:

(f) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines, for the purposes specified in this Act; to intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, upon payment of just compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof: *Provided*, That just compensation shall be paid to any person or persons whose property is, directly or indirectly, adversely affected or damaged thereby[.]

As above-stated, NPC made use of water coming from the Angat River. Notably, the NPC in its Comment to the Petition confirmed that while under its management and prior to the privatization of the AHEPP in 2014, *the NPC had been paying the national wealth tax in favor of respondent.*⁸⁰ More, while it did not categorically indicate that respondent is the recipient of payment, the publicly available Audited Financial Statement of the NPC indicates that indeed the NPC has been paying national wealth tax as late as 2021.⁸¹

To the Court's mind, it would be highly unreasonable if national wealth tax were to be imposed on dam water *given that it is already appropriated water, and, as confirmed by the NPC, the water from the Angat River is subjected to appropriate tax upon its extraction and prior to its impounding.*

⁷⁷ *Id.* at 528.

⁷⁸ *Id.* at 543 and 551.

⁷⁹ Approved on September 10, 1971.

⁸⁰ *Rollo*, p. 390.

⁸¹ See 2021 Annual Report of the National Power Corporation, <https://www.napocor.gov.ph/images/Reports/annual_reports/2021_NPC_Annual_Report.pdf>, p. 61 (Last accessed on July 26, 2023.)

The foregoing conclusion also finds support in the opinions of the Department of Justice which were likewise duly considered by the Court in *IDEALS*:

Opinion No. 173, 1984

....

... while the Water Code imposes a nationality requirement for the grant of water permits, the same refers to the privilege "to appropriate and use water." This should be interpreted to mean the extraction of water from its natural source (Art. 9, P.D. No. 1067). *Once removed therefrom, they cease to be a part of the natural resources of the country and are the subject of ordinary commerce*

Opinion No. 14, S. 1995

The nationality requirement imposed by the Water Code refers to the privilege "*to appropriate and use water.*" *This, we have consistently interpreted to mean the extraction of water directly from its natural source. Once removed from its natural source the water ceases to be a part of the natural resources of the country and may be subject of ordinary commerce and may even be acquired by foreigners.* (Secretary of Justice Op. No. 173, s. 1984; No. 24, s. 1989; No. 100, s. 1994)

....

Opinion No. 122, s. 1998

....

... "Natural" is defined as that which is produced without aid of stop, valves, slides, or other supplementary means (see *Webster's New International Dictionary, Second Edition, p. 1630*). *The water that is used by the power plant could not enter the intake gate without the dam, which is a man-made structure. Such being the case, the source of the water that enters the power plant is of artificial character rather than natural.* This Department is consistent in ruling, that once water is removed from its natural source, it ceases to be a part of the natural resources of the country and may be the subject of ordinary commerce and may even be acquired by foreigners. . . .

....

The latest executive interpretation is stated in DOJ Opinion No. 52, s. 2005 . . .

....

... as ruled in one case by a U.S. court:

Where the State of New York took its natural resources consisting of Saratoga Spring and, through a bottling process, put those resources into preserved condition where they could be sold to the public in competition with private waters, the state agencies were not immune from federal taxes imposed upon bottled waters on the theory that state was engaged in the sale of "natural resources."

Applied to the instant case, and construed in relation to the earlier-mentioned constitutional inhibition, it would appear clear that while both waters and geothermal steam are, undoubtedly "natural resources", within the meaning of Section 2 Article XII of the present Constitution, hence, their exploitation, development and utilization should be limited to Filipino citizens or corporations or associations at least sixty per centum of the capital of which is owned by Filipino citizens, the utilization thereof can be opened even to foreign nationals, after the same have been extracted from the source by qualified persons or entities. The rationale is because, since they no longer form part of the natural resources of the country, they become subject to ordinary commerce. . . .⁸² (Italics supplied.)

Associate Justice Alfredo Benjamin S. Caguioa shared the same view that dam water is appropriated water, already collected, and no longer part of a natural resource. He expounds:

Following the Court's ruling in the *IDEALS* case, the water, flowing into Angat Dam, is deemed appropriated once collected, that is, at the point it flows into the man-made structure through artificial means. At this point, the water ceases to be a "natural resource" within the contemplation of the Water Code. Simply stated, once water is diverted and captured through the use of man-made structures or other artificial means, it ceases to become a natural resource. Necessarily, the use of water stored in Angat Dam, whether for the purpose of power generation[,] or distribution (in the case of MWSS through its concessionaires), no longer constitutes the "utilization and development of national wealth", as the source of water is artificial, rather than natural in character.⁸³

In sum, *IDEALS* definitively characterizes dam water as appropriated water that is already removed from a natural source. *Hence, for purposes of claiming national wealth tax, dam water is beyond the reach of respondent's entitlement under Section 7, Article X of the 1987 Constitution.*

⁸² *Id.* at 542-545.

⁸³ See Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, p. 18.

Petitioner is not engaged in the utilization and development of water.

Aside from the fact that dam water is appropriated water already removed from natural resource, petitioner cannot be held liable for national wealth tax because respondent failed to prove that petitioner is engaged in utilization and development of water.

As specified in its Charter, petitioner is tasked with the operation and maintenance of waterworks system to ensure an uninterrupted and sufficient supply and distribution of potable water for the consuming public.⁸⁴ Its attributes, powers, and functions include:

- (f) To construct, maintain, and operate dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pipes, fire hydrants, pumping stations, machineries and other waterworks for the purpose of supplying water to the inhabitants of its territory, for domestic and other purposes; and to purify, regulate and control the use, as well as prevent the wastage of water;
- (g) To construct, maintain, and operate such sanitary sewerages as may be necessary for the proper sanitation and other uses of the cities and towns comprising the System;
- (h) To fix periodically water rates and sewerage service fees as the System may deem just and equitable in accordance with the standards outlined in Section 12 of this Act;
- (i) To construct, develop, maintain and operate such artesian wells and springs as may be needed in its operation within its territory;
- (j) To acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property, including rights and franchises, consistent with the purpose for which the System is created and reasonably required for the transaction of the lawful business of the same;
- (k) To construct works across, over, through and/or alongside, any stream, water-course, canal, ditch, flume, street, avenue, highway or railway, whether public or private, as the location of said works may require . . .;

⁸⁴ Section 1, RA 6234 provides:

SECTION 1. *Declaration of Policy.* — The proper operation and maintenance of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems are essential public services because they are vital to public health and safety. It is therefore declared a policy of the state that the establishment, operation and maintenance of such systems must be supervised and controlled by the state.



-
- (n) To approve, regulate, and supervise the establishment, operation and maintenance of waterworks and deepwells within its jurisdiction operated for commercial, industrial and governmental purposes and to fix just and equitable rates or fees that may be charged to customers thereof;
 - (o) To assist in the establishment, operation and maintenance of waterworks and sewerage systems within its jurisdiction under cooperative basis;
 - (p) To approve and regulate the establishment and construction of waterworks and sewerage systems in privately owned subdivisions within its jurisdiction;
 - (q) To have exclusive and sole right to test, mount, dismount and remount water meters within its jurisdiction[.]⁸⁵

The enumeration above readily shows that petitioner was created for regulatory functions. It does not make use of the water in Angat Dam to gain profit, and from which profit an LGU may share. While petitioner converts to good use the water in Angat Dam, it is solely for the purpose of operating and maintaining waterworks system for the supply and distribution of potable water to the consuming public. To give respondent a share in the proceeds from the utilization and development of dam water is illogical because petitioner does not derive proceeds by the mere operation of the dam.

Further, in *Metropolitan Waterworks and Sewerage System v. Central Board of Assessment Appeals*,⁸⁶ the Court ruled that petitioner is created to render public service and that petitioner is a government instrumentality vested with corporate powers pursuant to Executive Order No. 596⁸⁷ and RA 10149.⁸⁸

[EO No. 596]

Section 1. The Office of the Government Corporate Counsel

⁸⁵ Section 3, RA 6234.

⁸⁶ G.R. No. 215955, January 13, 2021.

⁸⁷ Entitled, "Defining and including 'Government Instrumentality Vested with Corporate Powers' or 'Government Corporate Entities' under the Jurisdiction of the Office of the Government Corporate Counsel (OGCC) as Principal Law Office of Government-Owned or -Controlled Corporations (GOCCs) and for Other Purposes," dated December 29, 2006.

⁸⁸ Entitled, "An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or Controlled Corporations and to Strengthen the Role of the State In its Governance and Management to Make Them More Responsive to the Needs Of Public Interest And For Other Purposes," approved on June 6, 2011.

(OGCC) shall be the principal law office of all GOCCs, except as may otherwise be provided by their respective charter or authorized by the President, their subsidiaries, corporate offsprings, and government acquired asset corporations. The OGCC shall likewise be the principal law office of "government instrumentality vested with corporate powers" or "government corporate entity[,"] as defined by the Supreme Court in the case of "*MIAA vs. Court of Appeals, City of Parañaque, et al.*["] [supra], notable examples of which are: Manila International Airport Authority (MIAA), Mactan International Airport Authority, the Philippine Ports Authority (PPA), Philippine Deposit Insurance Corporation (PDIC), *Metropolitan Water and Sewerage Services (MWSS)*, Philippine Rice Research Institute (PRRI), Laguna Lake Development Authority (LLDA), Fisheries Development Authority (FDA), Bases Conversion Development Authority (BCDA), Cebu Port Authority (CPA), Cagayan de Oro Port Authority, and San Fernando Port Authority.

[RA No. 10149]

Section 3. Definition of Terms – . . .

(n) *Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE)* refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the *Metropolitan Waterworks and Sewerage System (MWSS)*, the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).

Further, in *Republic v. City of Parañaque*,⁸⁹ the Court differentiated a government instrumentality vested with corporate powers from a GOCC in that a government instrumentality vested with corporate powers is created in order to perform essential governmental or public functions and does not need to be economically viable:

[T]he government-owned or controlled corporations created through special charters are those that meet the two conditions prescribed in Section 16, Article XII of the Constitution. The first condition is that

⁸⁹ 691 Phil. 476 (2012).

the government-owned or controlled corporation must be established for the common good. The second condition is that the government-owned or controlled corporation must meet the test of economic viability. . . .

. . . .

. . . The test of economic viability applies only to government-owned or controlled corporations that perform economic or commercial activities and need to compete in the market place. Being essentially economic vehicles of the State for the common good — meaning for economic development purposes — these government-owned or controlled corporations with special charters are usually organized as stock corporations just like ordinary private corporations.

In contrast, *government instrumentalities vested with corporate powers and performing governmental or public functions need not meet the test of economic viability. These instrumentalities perform essential public services for the common good, services that every modern State must provide its citizens. These instrumentalities need not be economically viable since the government may even subsidize their entire operations.* These instrumentalities are not the “government-owned or controlled corporations” referred to in Section 16, Article XII of the 1987 Constitution.

Thus, the Constitution imposes no limitation when the legislature creates government instrumentalities vested with corporate powers but performing essential governmental or public functions. Congress has plenary authority to create government instrumentalities vested with corporate powers provided these instrumentalities perform essential government functions or public services. . . .⁹⁰

The powers and functions of petitioner are for public use and welfare rather than profit, and are governmental and not commercial in nature.⁹¹ Associate Justice Alfredo Benjamin S. Caguioa explained that the maintenance, and operation of the Angat Dam and reservoir are being undertaken by [petitioner] (through its concessionaires) in furtherance of its mandate to provide an essential public service within its jurisdiction. *The provision of essential public services does not constitute exploration and development of national wealth* so as to entitle [respondent] to a portion of proceeds resulting therefrom.⁹² At the same time, Chief Justice Alexander G. Gesmundo underscored that the petitioner’s powers and functions relate to public needs and that its operation and maintenance of waterworks and sewerage systems are essential public services vital to public health and safety. Meanwhile, “utilization and development of

⁹⁰ *Id.* at 487-488, citing *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181 (2006).

⁹¹ See *Philippine Heart Center v. Local Government of Quezon City*, 872 Phil. 930, 955 (2020).

⁹² See Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, pp. 12-18.

national wealth” contemplates a commercial undertaking which generates income which is *not* the undertaking of petitioner given that it is not a profit-oriented entity.⁹³

Petitioner’s Charter also specifies the manner on how it shall dispose of its “income.” While termed as income, Section 13 of RA 6234 reveals that the money being referred therein is that which petitioner receives and which it shall use for its operation, expansion and maintenance:

SECTION 13. *Disposition of Income.* — The income of the System shall be dispose of according to the following priorities:

First, to pay its contractual and statutory obligations and to meet its essential current operating expenses;

Second, to serve at least fifty per cent (50%) of the balance exclusively for the expansion, development and improvement of the System; and

Third, to allocate the residue enhancing the efficient operation and maintenance of the System which include increases of administrative expenses or increases or adjustment of salaries and other benefits of the employees.

Further, a careful examination of the concession agreements⁹⁴ presently in effect between petitioner and its private concessionaires (Manila Water Services, Inc.⁹⁵ and Manila Water, Inc.⁹⁶) also lends veracity to petitioner’s averment that it does not derive profit from the concession agreements.

Primarily, the concession fees payable to petitioner represent, among others: (a) portions of the outstanding balances of petitioner’s loan obligations and (b) annual budget requirement for petitioner’s operating expenses.

That monies flowed *into* (cash inflows) an entity does not automatically characterize such proceeds as *revenues* or *income*. To be sure, petitioner did not *earn* these amounts in exchange for a sale of goods

⁹³ Concurring Opinion of Chief Justice Alexander G. Gesmundo, p. 5.

⁹⁴ Available at <https://ro.mwss.gov.ph/transparency-seal-2/> Last accessed: August 22, 2022.

⁹⁵ Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ro.mwss.gov.ph/wp-content/uploads/2022/01/REVISED-CA-FOR-MAYNILAD-18-MAY-2021.pdf> (Last accessed: August 22, 2022).

⁹⁶ Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ro.mwss.gov.ph/wp-content/uploads/2013/02/CA-MWCI.pdf> (Last accessed on August 22, 2022).

or services. The concession fees have been intended to approximate the amounts needed by petitioner to meet its financial obligations and defray the costs of operations. In other words, petitioner's cash receipts are *capital* and not revenue in nature or, much less, income. In this light, the concession fees are *not gross receipts* or *proceeds* in the hands of petitioner within the meaning of Section 291 of the LGC, to which the LGU is entitled to a share.

Conclusion

Water in a natural resource is national wealth. When water is utilized and developed *directly* from a natural source, the concerned government entity must abide by the constitutional requirement to give the concerned LGU its equitable share in the proceeds of the utilization and development of national wealth. However, such circumstance is wanting here because respondent asserts entitlement to a share arising from the use of dam water which is appropriated water already impounded in the Angat Dam, and no longer part of a natural resource. Being already appropriated, dam water is no longer subject of national wealth tax because appropriate tax is to be determined and imposed upon the extraction of water from a natural resource and accordingly, prior to the impounding and appropriation of water. More, petitioner is not liable to pay respondent a share in its use of dam water because petitioner is created for its regulatory governmental functions. It does not generate income and derives no profit from which respondent may share arising from the utilization and development of dam water.

All told, the Court finds that the CA erred in affirming the RTC Decision which found petitioner liable to pay respondent a share in the utilization and development of national wealth.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 30, 2008 and the Resolution dated October 24, 2008 of the Court of Appeals in CA-G.R. CV No. 86701 are **REVERSED** and **SET ASIDE**. Accordingly, the Complaint for Specific Performance/Payment of National Wealth Share is **DISMISSED** for lack of merit.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

See concurring opinion

[Signature]
ALEXANDER G. GESMUNDO
Chief Justice

Concur. see separate opinion

[Signature]
MARVIC M.V.F. LEONEN
Associate Justice

[Signature]

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

See Concurring Opinion

[Signature]
RAMON PAUL L. HERNANDO
Associate Justice

(On official business but left her vote)

As. see - Concurring opinion & Dissent

[Signature]
AMY C. LAZARO JAVIER
Associate Justice

[Signature]
RODIL V. ZALAMEDA
Associate Justice

[Signature]
MARIO V. LOPEZ
Associate Justice

[Signature]
SAMUEL H. GAERLAN
Associate Justice

[Signature]
RICARDO R. ROSARIO
Associate Justice

(On official business)

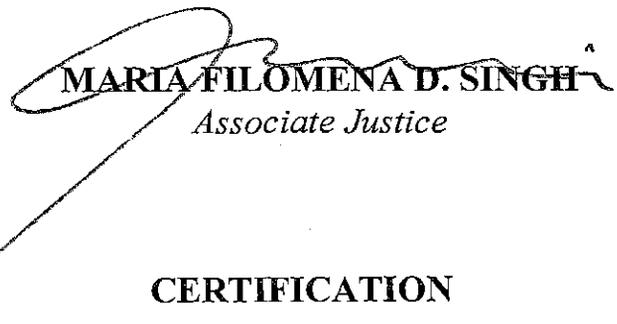
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JHOSEP V. LOPEZ
Associate Justice

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JAPAR B. DIMAAMPÃO
Associate Justice

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JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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

