

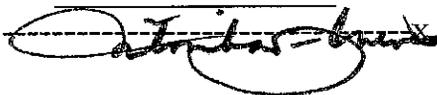
EN BANC

G.R. No. 185184 – METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, represented by its administrator, DIOSDADO JOSE M. ALLADO, Petitioner, v. PROVINCIAL GOVERNMENT OF BULACAN, represented by GOV. JOSEFINA M. DELA CRUZ, Respondent.

Promulgated:

October 3, 2023

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SEPARATE OPINION

LEONEN, J.:

I concur in the *ponencia*.

This case originated from a Complaint filed by the Provincial Government of Bulacan, seeking to collect its national wealth share from the Metropolitan Waterworks and Sewerage System (MWSS) for its use and development of the waters of Angat Dam, citing Article X, Section 7 of the Constitution in relation to Section 289 of the Local Government Code. It argues that Angat Dam is within its territorial jurisdiction.¹

MWSS contended that it was not liable for the national wealth share since Angat Dam is an artificial structure, thus excluding its waters from the national wealth. Furthermore, the dam water did not originate from the Provincial Government of Bulacan but is only stored there. MWSS also contended that it was not engaged in developing and using the dam water.²

The Regional Trial Court and the Court of Appeals ruled in favor of the Provincial Government of Bulacan.³

In reversing the Court of Appeals' ruling, the *ponencia* found that petitioner MWSS is not liable to pay the demanded amounts to respondent Provincial Government of Bulacan.⁴

The *ponencia* held that not all the requisites are present for respondent to collect a share in the proceeds of the utilization and development of the

¹ *Ponencia*, p. 2.

² *Id.* at 3–4.

³ *Id.* at 4–6.

⁴ *Id.* at 9.



national wealth.⁵ It ruled that a resource must originate from a natural source to be part of the national wealth.⁶ Since dam water is water impounded in an artificial receptacle, diverted from its natural source, the *ponencia* declared that it is not part of the national wealth.⁷

The *ponencia* also found that petitioner is not engaged in the utilization and development of the national wealth because such activities contemplate a commercial undertaking that generates income.⁸ Since petitioner is created for regulatory functions, not for profit,⁹ and is intended to perform governmental functions for public welfare, it does not earn proceeds in which respondent may share.¹⁰ Furthermore, the amounts that petitioner receives, while termed as income, is mandated for its operations, expansion, and maintenance.¹¹ Its fees from its concession agreements are not from sales of goods or services, but are intended to meet its financial obligations and defray the costs of operations.¹² Its cash receipts are capital in nature, not revenue.¹³

Finally, the *ponencia* noted that the National Power Corporation has confirmed that it has been paying national wealth tax to respondent for the extraction and diversion of the waters from the Angat River to the Angat Dam.¹⁴

I concur in the *ponencia*. Nonetheless, I emphasize the right of local government units to an equitable share in the proceeds of the utilization and development of the national wealth.

Article XII, Section 2 of the Constitution provides for the State's ownership of and authority over its waters:

SECTION 2. All lands of the public 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 are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The *exploration, development, and utilization of natural resources shall be under the full control and supervision of the State*. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions

⁵ *Id.* at 13.

⁶ *Id.* at 14, 16.

⁷ *Id.* at 13, 16.

⁸ *Id.* at 24-25.

⁹ *Id.* at 21.

¹⁰ *Id.* at 22-24.

¹¹ *Id.* at 25.

¹² *Id.* at 25-26.

¹³ *Id.* at 26.

¹⁴ *Id.* at 18.

as may be provided by law. In cases of water rights for irrigation, *water supply*, fisheries, or industrial uses other than the development of water power, *beneficial use may be the measure and limit of the grant*.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

In this regard, the State has both dominium and imperium over its waters. It has ownership or proprietary rights, and it has governmental authority of regulation and control over it. It has the capacity, therefore, to control the exploration, development, and utilization of natural resources. However, it is still limited by other rights provided under the Constitution.

One of these rights is the right of local government units to an equitable share in the proceeds from the utilization and development of the national wealth. Article X, Section 7 of the Constitution reads:

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.

This is echoed in Section 289 of the Local Government Code:

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.

This right is one of the ways local government units enjoy local autonomy. It is also a recognition of how the State holds its natural resources, not purely as an owner, but in trust for and for the benefit of its people.

In *Maynilad Water Services, Inc. v. The Secretary of the Department of Environment and Natural Resources*,¹⁵ this Court discussed the public trust doctrine in relation to the duty of the water industry:

Protruding from the basic tenet that water is a vital part of human existence, this Court introduces the Public Trust Doctrine. It aims to put an additional strain upon the duty of the water industry to comply with the laws and regulations of the land.

A number of doctrines already protect and sanctify public welfare and highlight the State's various roles relative thereto. Article XII, Section 2, of the 1987 Philippine Constitution elaborates on the ownership of the State over the nation's natural resources and its right and duty to regulate the same:

All lands of the public 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 are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

....

The Public Trust Doctrine, while derived from English common law and American jurisprudence, has firm Constitutional and statutory moorings in our jurisdiction. The doctrine speaks of an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water. Thus, “[p]arties who acquired rights in trust property [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust.” In *National Audubon Society v. Superior Court of Alpine County*, a California Supreme Court decision, it worded the doctrine as that which —

[T]he state had the power to reconsider past allocation decisions even though an agency had made those decisions after due consideration of their effect on the public trust.

¹⁵ 858 Phil. 765 (2019) [Per J. Hernando, *En Banc*].

This conclusion reflected the view that water users could not acquire a vested property right in the water itself; they merely obtained a usufructuary right to the water.

Academic literature further imparts that “[p]art of this consciousness involves restoring the view of public and state ownership of certain natural resources that benefit all. [. . .]” The “doctrine further holds that certain natural resources belong to all and cannot be privately owned or controlled because of their inherent importance to each individual and society as a whole. A clear declaration of public ownership, the doctrine reaffirms the superiority of public rights over private rights for critical resources. It impresses upon states the affirmative duties of a trustee to manage these natural resources for the benefit of present and future generations and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability.”

In this framework, a relationship is formed — “the [S]tate is the trustee, which manages specific natural resources — the trust principal — for the trust principal — for the benefit of the current and future generations — the beneficiaries.” “[T]he [S]tate has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” But with the birth of privatization of many basic utilities, including the supply of water, this has proved to be quite challenging. The State is in a continuing battle against lurking evils that has afflicted even itself, such as the excessive pursuit of profit rather than purely the public’s interest.

These exigencies forced the public trust doctrine to evolve from a mere principle to a resource management term and tool flexible enough to adapt to changing social priorities and address the correlative and consequent dangers thereof. The public is regarded as the beneficial owner of trust resources, and courts can enforce the public trust doctrine even against the government itself.¹⁶ (Citations omitted)

Under the public trust doctrine, the State has a duty to hold and manage its natural resources for the good of the current and succeeding generations, as if the former is a trustee and the latter are the beneficiaries. As stated, it embodies the key principles of environmental protection: stewardship, communal responsibility, and sustainability.

In my separate concurring opinion in that case, I discussed that the concept of a trust in favor of the people is constitutionally recognized:

The concept of trust in a limited government is already real and implicit in the most fundamental concept articulated in Article II, Section 1 of the Constitution:

SECTION 1. The Philippines is a democratic and republican State. *Sovereignty resides in the people and all government authority emanates from them.*

¹⁶ *Id.* at 808–813.

.....

While the State's relationship with its natural resources is not as expressly stated to be a public trust, it also flows from the fundamental nature of a constitutional republican state.

The constitutional provisions on national economy and patrimony, as found in Article XII of the 1987 Constitution, emphasizes that the State's power is always subject to the common good, public welfare, and public interest or benefit. Many of its provisions put primacy in favor of the State's citizens:

.....

These constitutional provisions on the State's national patrimony and economy, on which the public trust doctrine is anchored, highlight that the common good, public interest, public welfare — the people — are of primary consideration.¹⁷

In relation to natural resources, Article XII, Sections 1 and 2 of the Constitution state:

SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation *for the benefit of the people*; and an expanding productivity as the key to *raising the quality of life for all, especially the underprivileged*.

.....

SECTION 2. All lands of the public 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 are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. *The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State*. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of *water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use* may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its *use and enjoyment exclusively to Filipino citizens*.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with

¹⁷ J. Leonen Separate Concurring Opinion in *Maynilad Water Services, Inc. v. The Secretary of the Department of Environment and Natural Resources*, 858 Phil. 765, 851–856 (2019) [Per J. Hernandez, *En Banc*].

priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and *general welfare of the country*. In such agreements, the State shall promote the development and use of local scientific and technical resources. (Emphasis supplied)

These provisions affirm the public trust doctrine—that the natural resources, though owned by the State, are ultimately meant to be managed to benefit the people:

The regalian doctrine emphasizes the State's ownership of all lands, irrespective of their ecology and the people who occupy them. The State acts as owner, exercising all rights of ownership over it, including the *jus possidendi* (right to possess), *jus utendi* (right to use), *jus fruendi* (right to its fruits), *jus abutendi* (right to consume), and *jus disponendi* (right to dispose). *Cariño* clarified, however, that after the Spanish occupation, all properties and rights of the State are now “to be administered for the benefit of the inhabitants[.]”

This shift in perspective — from unquestionable State ownership to the consideration of the inhabitants' rights — is affirmed by the application of the public trust doctrine. Under the regalian doctrine, the natural resources simply belong to the State, no qualifications. Under the public trust doctrine, the State's resources exist and are tempered for the benefit of the community.

....

Finally, as in police power, the public trust doctrine acknowledges that the people, as a community, hold an independent right that may be superior to private individual rights. Its objective may be to prevent widespread public harm and injury. Thus, while it may be used to regulate private rights, all still benefit from its application:

The public trust doctrine, viewed in this light, is a communitarian doctrine, protecting the broader and longer-term community interests against private exploitation that eventually can destroy *both* the community *and* the exploiters. . . . [U]nder the public trust doctrine . . . individual members of a community may have to endure shorter-term pain in order to ensure that both they and, more importantly, the community as a whole avoid long-term diminishment or disaster.

Nothing in the public trust doctrine sets the government apart from communities or individuals to be the sole repository of that trust. Indeed, as a democracy, and in recognition of the reality that we are all beings that depend on each other and on the web of life in this pale blue dot in a vast

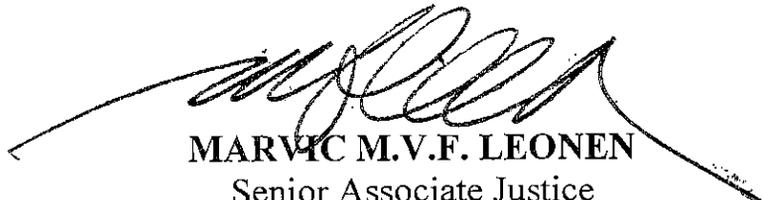


universe, we are all both trustees and beneficiaries of all natural resources, especially its waters — without which we will cease to exist.¹⁸

The public trust doctrine is thus anchored on social justice and equity. It prioritizes the people, the community, and in relation to natural resources, their ecologies. It acknowledges that natural resources “are part of a community and an ecosystem, interdependent with each other.”¹⁹ The State, therefore, cannot dispose of its lands and waters arbitrarily or willfully without these considerations.

The local government units’ share in the proceeds from the utilization and development of the national wealth must be viewed in this light. Aside from encouraging local autonomy, it also recognizes that natural resources are expected to be managed and cared for so that their inhabitants benefit from them. While the State may derive proceeds from its use and development, its rights as “owner” are limited by the rights of the people to their ecologies. Thus, local government units—the communities in which the natural resources are found—are given a share in the proceeds earned by the State. The Constitution and the Local Government Code acknowledge that the benefit should redound to the community from which the natural resource was derived. It is yet again a constitutional recognition of the public trust between the State and the people.

ACCORDINGLY, I vote to **GRANT** the Petition.



MARVIC M.V.F. LEONEN
Senior Associate Justice

¹⁸ *Id.* at 863–864.

¹⁹ *Id.* at 856. (Citation omitted)