EN BANC

G.R. No. 207257 – HON. RAMON JESUS P. PAJE, in his capacity as SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, *petitioner* v. HON. TEODORO A. CASIÑO, ET AL., *respondents.*

G.R. No. 207276 – REDONDO PENINSULA ENERGY, *petitioner, v.* HON. TEODORO A. CASIÑO, ET AL., *respondents.*

G.R. NO. 207282 – HON. TEODORO A. CASIÑO, ET AL., *petitioners, v.* RAMON JESUS P. PAJE, in his capacity as SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, SUBIC BAY METROPOLITAN AUTHORITY, AND REDONDO PENINSULA ENERGY, INC.

Promulgated:
February 3, 2015

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CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur that the petition for the Issuance of a Writ of Kalikasan should be dismissed.

A Writ of Kalikasan is an extraordinary and equitable writ that lies only to prevent an actual or imminent threat "of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces."[1] It is not the proper remedy to stop a project that has not yet been built. It is not the proper remedy for proposed projects whose environmental compliance certificates (ECC) are yet to be issued or may still be questioned through the proper administrative and legal review processes. In other words, the petition for a Writ of Kalikasan does not subsume and is not a replacement for all remedies that can contribute to the protection of communities and their environment.

I dissent from the majority's ruling regarding the validity of the amended ECCs. Aside from this case being the wrong forum for such issues, Presidential Decree Nos. 1151[2] and 1586[3] instituting the Environmental Impact Statement System grants no power to the Department of Environment and Natural Resources to exempt environmentally critical projects from this requirement in the guise of amended project

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1 RULES OF PROCEDURE FOR ENVIRONMENTAL CASE, Rule 7, sec. 1.

2 Pres. Decree No. 1151 (1979), Philippine Environmental Policy.

3 Pres. Decree No. 1586 (1978), Establishing an Environmental Impact System, Including Other Environmental Management Related Measures and for Other Purposes.

specifications. Besides, even assuming without granting that the Department of Environment and Natural Resources Administrative Order No. 2003-30[4] was validly issued, the changes in the project design were substantial. Its impact on the ecology would have been different from how the project was initially presented. The Court of Appeals committed grave abuse of discretion in considering this issue because the procedure for a Writ of Kalikasan is not designed to evaluate the propriety of the ECCs.

Compliance with Sections 26[5] and 27[6] of the Local Government Code and the provisions of the Indigenous Peoples' Rights Act (IPRA)[7] is not a matter that relates to environmental protection directly. The absence of compliance with these laws forms causes of action that cannot also be brought through a petition for the issuance of a Writ of Kalikasan.

This case highlights the dangers of abuse of the extraordinary remedy of the Writ of Kalikasan. Petitioners were not able to move forward with substantial evidence. Their attempt to present technical evidence and expert opinion was so woefully inadequate that they put at great risk the remedies of those who they purported to represent in this suit inclusive of generations yet unborn.

I

Furthermore, the original Petition for the issuance of a Writ of Kalikasan that was eventually remanded to the Court of Appeals was not brought by the proper parties.

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4 DENR Adm. Order No. 2003-30 (2003), Implementing Rules and Regulations of Presidential Decree No. 1586.

5 Rep. Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

> **Section 26.** *Duty of National Government Agencies in the Maintenance of Ecological Balance.* - It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

6 Rep. Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

> **Section 27.** *Prior Consultations Required.* - No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

7 Rep. Act No. 8371 (1997), An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes.

Only real parties in interest may prosecute and defend actions.[8] The Rules of Court defines "real party in interest" as a person who would benefit or be injured by the court's judgment. Rule 3, Section 2 of the Rules of Court provides:

> **SEC. 2.** *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

The rule on real parties in interest is incorporated in the Rules of Procedure for Environmental Cases. Rule 2, Section 4 provides:

> **Section 4.** *Who may file.* — Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

A person cannot invoke the court's jurisdiction if he or she has no right or interest to protect.[9] He or she who invokes the court's jurisdiction must be the "owner of the right sought to be enforced."[10] In other words, he or she must have a cause of action. An action may be dismissed on the ground of lack of cause of action if the person who instituted it is not the real party in interest.[11] The term "interest" under the Rules of Court must refer to a material interest that is not merely a curiosity about or an "interest in the question involved."[12] The interest must be present and substantial. It is not a mere expectancy or a future, contingent interest.[13]

A person who is not a real party in interest may institute an action if he or she is suing as representative of a real party in interest. When an action is prosecuted or defended by a representative, that representative is not and does not become the real party in interest. The person represented is deemed the real party in interest. The representative remains to be a third party to the action instituted on behalf of another. Thus:

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8 RULES OF COURT, Rule 3, sec. 2; *See also Stronghold Insurance Company Inc., v. Cuenca,* G.R. No. 173297, March 6, 2013, 692 SCRA 473 [Per J. Bersamin, First Division].

9 *See Consumido v. Ros,* 555 Phil. 652, 658 (2007) [Per J. Tinga, Second Division].

10 *See Stronghold Insurance Company Inc., v. Cuenca,* G.R. No. 173297, March 6, 2013, 692 SCRA 473 [Per J. Bersamin, First Division].

11 Id. *See also De Leon v. Court of Appeals,* 343 Phil. 254 (1997) [Per J. Davide, Jr., Third Division], *citing Columbia Pictures, Inc. v. Court of Appeals,* 329 Phil. 875, 900–902 (1996) [Per J. Regalado, En Banc].

12 *See Consumido v. Ros,* 555 Phil. 652, 658 (2007) [Per J. Tinga, Second Division]; *See also Ang v. Ang,* G.R. No. 186993, August 22, 2012, 678 SCRA 699, 707 [Per J. Reyes, Second Division].

13 *De Leon v. Court of Appeals,* 343 Phil. 254 (1997) [Per J. Davide, Jr., Third Division] *citing* 1 M. MORAN, COMMENTARIES ON THE RULES OF COURT 154 (1979).

> SEC. 3. ***Representatives as parties.*** – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of a case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

To sue under this rule, two elements must be present: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim."[14]

The Rules of Procedure for Environmental Cases allows filing of a citizen's suit. A citizen's suit under this rule allows any Filipino citizen to file an action for the enforcement of environmental law on behalf of minors or generations yet unborn. It is essentially a representative suit that allows persons who are not real parties in interest to institute actions on behalf of the real party in interest. In citizen's suits filed under the Rules of Procedure for Environmental Cases, the real parties in interest are the minors and the generations yet unborn. Section 5 of the Rules of Procedure for Environmental Cases provides:

> SEC. 5. Citizen suit. – Any Filipino citizen in representation of others, including minors or generations yet unborn may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

The expansion of what constitutes "real party in interest" to include minors and generations yet unborn is a recognition of this court's ruling in *Oposa v. Factoran*.[15] This court recognized the capacity of minors (represented by their parents) to file a class suit on behalf of succeeding generations based on the concept of intergenerational responsibility to

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[14] Concurring Opinion of J. Leonen in *Arigo v. Swift*, G.R. No. 206510, September 16, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per J. Villarama, Jr., En Banc].

[15] G.R. No. 101083, July 30, 1993, 224 SCRA 792 [Per J. Davide, Jr., En Banc].

ensure the future generation's access to and enjoyment of country's natural resources.[16]

To allow citizen's suits to enforce environmental rights of others, including future generations, is dangerous for three reasons:

> *First,* they run the risk of foreclosing arguments of others who are unable to take part in the suit, putting into question its representativeness. *Second,* varying interests may potentially result in arguments that are bordering on political issues, the resolutions of which do not fall upon this court. *Third,* automatically allowing a class or citizen's suit on behalf of minors and generations yet unborn may result in the oversimplification of what may be a complex issue, especially in light of the impossibility of determining future generation's true interests on the matter.[17]

In citizen's suits, persons who may have no interest in the case may file suits for others. Uninterested persons will argue for the persons they represent, and the court will decide based on their evidence and arguments. Any decision by the court will be binding upon the beneficiaries, which in this case are the minors and the future generations. The court's decision will be res judicata upon them and conclusive upon the issues presented.

Thus, minors and future generations will be barred from litigating their interests in the future, however different it is from what was approximated for them by the persons who alleged to represent them. This may weaken our future generations' ability to decide and argue for themselves based on the circumstances and concerns that are actually present in their time.

Expanding the scope of who may be real parties in interest in environmental cases to include minors and generations yet unborn "opened a dangerous practice of binding parties who are yet incapable of making choices for themselves, either due to minority or the sheer fact that they do not yet exist."[18]

This court's ruling in *Oposa* should, therefore, be abandoned or at least should be limited to situations when:

(1) "There is a clear legal basis for the representative suit;

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16 Id. at 802-803.

17 Concurring Opinion of J. Leonen in *Arigo v. Swift*, G.R. No. 206510, September 16, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per J. Villarama, Jr., En Banc].

18 Id.

(2) There are actual concerns based squarely upon an existing legal right;

(3) There is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and

(4) There is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary."[19]

Representative suits are different from class suits. Rule 3, Section 12 of the Rules of Court provides:

> **SEC. 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 protect his individual interest.

Thus, class suits may be filed when the following are present:

a) When the subject matter of the controversy is of common or general interest to many persons;

b) When such persons are so numerous that it is impracticable to join them all as parties; and

c) When such persons are sufficiently numerous as to represent and protect fully the interests of all concerned.

A class suit is a representative suit insofar as the persons who institute it represent the entire class of persons who have the same interest or who suffered the same injury. However, unlike representative suits, the persons instituting a class suit are not suing merely as representatives. They themselves are real parties in interest directly injured by the acts or omissions complained of. There is a common cause of action in a class. The group collectively — not individually — enjoys the right sought to be enforced.

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[19] Id.

The same concern in representative suits regarding res judicata applies in class suits. The persons bringing the suit may not be truly representative of all the interests of the class they purport to represent, but any decision issued will bind all members of the class.

However, environmental damage or injury is experienced by each person differently in degree and in nature depending on the circumstances. Therefore, injuries suffered by the persons brought as party to the class suit may not actually be common to all. The representation of the persons instituting the class suit ostensibly on behalf of others becomes doubtful. Hence, courts should ensure that the persons bringing the class suit are truly representative of the interests of the persons they purport to represent.

In addition, since environmental cases are technical in nature, persons who assert environment-related rights must be able to show that they are capable of bringing "reasonably cogent, rational, scientific, well-founded arguments" as a matter of fairness to those they say they represent. Their beneficiaries would expect that they would argue for their interests in the best possible way.[20]

The court should examine the cogency of a petitioner's or complainant's cause by looking at the allegations and arguments in the complaint or petition. Their allegations and arguments must show at the minimum the scientific cause and effect relationship between the act complained of and the environmental effects alleged. The threat to the environment must be clear and imminent and "of such magnitude"[21] such that inaction will certainly redound to ecological damage.

Casiño, et al. argued that they were entitled to the issuance of a Writ of Kalikasan because they alleged that environmental damage would affect the residents of Bataan and Zambales if the power plant were allowed to operate. They based their allegations on documents stating that coal combustion would produce acid rain and that exposure to coal power plant emissions would have adverse health effects.

However, Casiño, et al. did not present an expert witness whose statements and opinion can be relied on regarding matters relating to coal technology and other environmental matters. Instead, they presented a partylist representative, a member of an environmental organization, and a vice governor. These witnesses possess no technical qualifications that

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[20] Concurring Opinion of J. Leonen in *Arigo v. Swift*, G.R. No. 206510, September 16, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per J. Villarama, Jr., En Banc].

[21] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, sec.1.

would render their conclusions sufficient as basis for the grant of an environmental relief.

The scientific nature of environmental cases requires that scientific conclusions be taken from experts or persons with "special knowledge, skill, experience or training."[22]

Expert opinions are presumed valid though such presumption is disputable. In the proper actions, courts may evaluate the expert's credibility. Credibility, when it comes to environmental cases, is not limited to good reputation within their scientific community. With the tools of science as their guide, courts should also examine the internal and external coherence of the hypothesis presented by the experts, recognize their assumptions, and examine whether the conclusions of cause and effect are based on reasonable inferences from scientifically sound experimentation. Refereed academic scientific publications may assist to evaluate claims made by expert witnesses. With the tools present within the scientific community, those whose positions based on hysteria or unsupported professional opinion will become obvious.

Casiño, et al.'s witnesses admit that they are not experts on the matter at hand. None of them conducted a study to support their statements of cause and effect. It appears that they did not even bother to educate themselves as to the intricacies of the science that would support their claim.

Casiño, et al. only presented documents and articles taken from the internet to support their allegations on the environmental effects of coal power plants. They also relied on a "final report" on Subic Bay Metropolitan Authority's social acceptability policy considerations. There were statements in the report purportedly coming from Dr. Rex Cruz, U.P. Chancellor, Los Baños, Dr. Visitacion Antonio, a toxicologist, and Andre Jon Uychianco, a marine biologist, stating that "conditions were not present to merit the operation of a coal-fired power plant." The report also stated that the "coal plant project would pose a wide range of negative impacts on the environment." Casiño, et al., however, did not present the authors of these documents so their authenticity can be verified and the context of these statements could be properly understood. There was no chance to cross-examine their experts because they could not be cross-examined. In other words, their case was filed with their allegations only being supported by hearsay evidence that did not have the proper context. Their evidence could not have any probative value.

In contrast, RP Energy presented expert witnesses answering detail by detail Casiño, et al.'s allegations. They categorically stated that the

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[22] RULES OF COURT, Rule 130, sec. 49.

predicted temperature changes would have only minimal impact.[23] Their witnesses also testified on the results of the tests conducted to predict the emissions that would be produced by the power plant. They concluded that the emissions would be less than the upper limit set in the Clean Air Act.[24] They also testified that the gas emissions would not produce acid rain because they were dilute.[25]

There was no rebuttal from petitioners. The strength of their claim was limited only to assertions and allegations. They did not have the evidence to support their claims or to rebut the arguments of the project proponents.

This case quintessentially reveals the dangers of unrestricted standing to bring environmental cases as class suits. The lack of preparation and skill by petitioners endangered the parties they sought to represent and even foreclosed the remedies of generations yet unborn.

In my view, the standing of the parties filing a Petition for the Issuance of a Writ of Kalikasan may be granted when there is adequate showing that: (a) the suing party has a direct and substantial interest; (b) there is a cogent legal basis for the allegations and arguments; and (3) the person suing has sufficient knowledge and is capable of presenting all the facts that are involved including the scientific basis.[26]

II

The issuance of the ECCs was irregular. Substantial amendments to applications for ECCs require a new environmental impact statement.

However, a Petition for the Issuance of a Writ of Kalikasan is not the proper remedy to raise this defect in courts. ECCs issued by the Department of Environment and Natural Resources may be the subject of a motion for reconsideration with the Office of the Secretary. The Office of the Secretary may inform himself or herself of the science necessary to evaluate the grant or denial of an ECC by commissioning scientific advisers or creating a technical panel of experts. The same can be done at the level of the Office of the President where the actions of the Office of the Secretary of the DENR may be questioned. It is only after this exhaustion of administrative remedies which embeds the possibility of recruiting technical advice that

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23 Decision, pages 29-30.

24 Id. at 32-33.

25 Id. at 38.

26 Concurring Opinion of J. Leonen in *Arigo v. Swift*, G.R. No. 206510, September 16, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per J. Villarama, Jr., En Banc].

judicial review can be had of the legally cogent standards and processes that were used.

A Petition for a Writ of Kalikasan filed directly with this court raising issues relating to the Environmental Compliance Certificate or compliance with the Environmental Impact Assessment Process denies the parties the benefit of a fuller technical and scientific review of the premises and conditions imposed on a proposed project. If given due course, this remedy prematurely compels the court to exercise its power to review the standards used without exhausting all the administrative forums that will allow the parties to bring forward their best science. Rather than finding the cogent and reasonable balance to protect our ecologies, courts will only rely on our own best guess of cause and effect. We substitute our judgement for the science of environmental protection prematurely.

Besides, the extraordinary procedural remedy of a Writ of Kalikasan cannot supplant the substantive rights involved in the Environmental Impact Assessment Process.

Presidential Decree No. 1151 provides for our environmental policy to primarily create, develop, and maintain harmonious conditions under which persons and nature can exist.[27]

Pursuant to this policy, it was recognized that the general welfare may be promoted by achieving a balance between environmental protection, and production and development.[28] Exploitation of the environment may be permitted, but always with consideration of its degrading effects to the environment and the adverse conditions that it may cause to the safety of the present and future generations.[29] The Environmental Impact Assessment System compels those who would propose an environmentally critical project or conduct activities in an environmentally critical area to consider ecological impact as part of their decision-making processes. By law and regulation, it is not only the costs and profit margins that should matter.

Presidential Decree No. 1151 established a duty for government agencies and instrumentalities, and private entities to submit a detailed environmental impact statement for every proposed action, project, or undertaking affecting the quality of the environment. Section 4 of Presidential Decree No. 1151 provides:

> **Section 4.** *Environmental Impact Statements.* Pursuant to the above enunciated policies and goals, all agencies and

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[27] Pres. Decree No. 1151 (1977), sec. 1.
[28] Pres. Decree No. 1151 (1977), sec. 2.
[29] Pres. Decree No. 1151 (1977), sec. 2.

> instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations firms and entities shall prepare, file and include in every action, project or undertaking which significantly affects the quality of the environment a detail statement on
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> (a) the environmental impact of the proposed action, project or undertaking[;]
>
> (b) any adverse environmental effect which cannot be avoided should the proposal be implemented;
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> (c) alternative to the proposed action;
>
> (d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and (e) whenever a proposal involve[s] the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.
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> Before an environmental impact statement is issued by a lead agency, all agencies having jurisdiction over, or special expertise on, the subject matter involved shall comment on the draft environmental impact statement made by the lead agency within thirty (30) days from receipt of the same.

Based on the required environmental impact statement under Presidential Decree No. 1151, Presidential Decree No. 1586 was promulgated establishing the Environmental Impact Statement System.[30]

Under this system, the President may proclaim certain projects as environmentally critical.[31] An environmentally critical project is a "project or program that has high potential for significant negative environmental impact."[32] Proposals for environmentally critical projects require an environmental impact statement.[33]

On December 14, 1981, the President of the Philippines issued Proclamation No. 2146 declaring fossil-fueled power plants as environmentally-critical projects. This placed fossil-fueled power plants among the projects that require an environmental impact statement prior to the issuance of an ECC.

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30 Pres. Decree No. 1586 (1978), sec. 2.
31 Pres. Decree No. 1586 (1978), sec. 4.
32 DENR Adm. Order No. 2003-30 (2003), sec. 3(f).
33 Pres. Decree No. 1586 (1978), sec. 5.

In this case, the Department of Environment and Natural Resources issued an Environmental Compliance Certificate to RP Energy after it had submitted an environmental impact statement for its proposed 2 x 150 MW coal-fired power plant.[34]

However, when RP Energy requested for amendments of its application to the Department of Environmental and Natural Resources at least twice, amended ECCs were issued without requiring the submission of new environmental impact statements.

RP Energy's first request for amendment was due to its decision to change the project design to include "a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel improvement, and a 230kV double-circuit transmission line".[35] RP Energy submitted only an Environmental Performance Report and Management Plan (EPRMP) to support its request.[36]

RP Energy's second request for amendment was due to its desire to construct a 1 x 300 MW coal-fired power plant instead of a 2 x 150 MW coal-fired power plant.[37] For this request, RP Energy submitted a Project Description Report (PDR).[38]

Later, RP Energy changed the proposal to 2 x 300 MW coal-fired power plant.[39] It submitted an EPRMP to support its proposal.[40]

Department of Environment and Natural Resources and RP Energy argued that the ECC was valid because it was issued in accordance with the DAO 2003-30 or the Implementing Rules and Regulations for the Philippine environmental impact statement system (IRR).[41] Department of Environment and Natural Resources also argued that since the environmental impact statement submitted by RP Energy was still valid, there was no need for the submission of a new environmental impact statement.[42] Further, a change in the configuration of the proposed coal-fired power plant from 2 x 150 MW to 1 x 150 MW was not substantial to warrant the submission of a new environmental impact statement.[43]

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34 Ponencia, pp. 5-6.
35 Id. at p. 6.
36 Id.
37 Id.
38 Id.
39 Id.
40 Id. at 7.
41 Id. at 14 and 16.
42 Id. at 14.
43 Id.

The Department of Environment and Natural Resources' and RP Energy's arguments are not tenable.

The issuance of an ECC without a corresponding environmental impact statement is not valid. Section 4 of Presidential Decree No. 1151 specifically requires the filing of environmental impact statements for every action that significantly affects environmental quality. Presidential Decree No. 1586, the law being implemented by the IRR, recognizes and is enacted based on this requirement.[44]

Presidential Decree Nos. 1151 and 1586 do not authorize the Department of Environment and Natural Resources to allow exemptions to this requirement in the guise of amended project specifications.

The only exception to the environmental impact statement requirement is when the project is not declared as environmentally critical, as provided later in Presidential Decree No. 1586, thus:

> **Section 5.** ***Environmentally Non-Critical Projects.*** **–** All other projects, undertakings and areas not declared by the Presidents as environmentally critical shall be considered as non-critical and shall not be required to submit an environmental impact statement. The Environmental Protection Council, thru the Ministry of Human Settlements may however require non-critical projects and undertakings to provide additional environmental safeguards as it may deem necessary.

Since fossil-fuelled power plants are already declared as environmentally critical projects in Proclamation No. 2146,[45] an environmental impact statement is required. An EPMRP or a project description is not enough.

An EPMRP and a project description are different from an environmental impact statement. The IRR itself describes the differences between the features of each documentation, as well as each's appropriate uses. The most detailed among the three is the environmental impact statement, which is required under the law for all environmentally critical projects.

An environmental impact statement is a document of scientific opinion "that serves as an application for an ECC. It is a comprehensive

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[44] DENR Adm. Order No. 2003-30 (2003), sec. 2.

[45] Proc. No. 2146 (1981), Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement System Established under Presidential Decree No. 1586.

study of the significant impacts of a project on the environment."[46] It is predictive to an acceptable degree of certainty. It is an assurance that the proponent has understood all of the environmental impacts and that the measures it proposed to mitigate are both effective and efficient.

Section 4 of Presidential Decree No. 1151 requires the following detailed information in the environmental impact statement:

> **Section 4.** *Environmental Impact Statements. . . .*
>
> (a) the environmental impact of the proposed action, project or undertaking[;]
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> (b) any adverse environmental effect which cannot be avoided should the proposal be implemented;
>
> (c) alternative to the proposed action;
>
> (d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and
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> (e) whenever a proposal involve the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

The IRR was more specific as to what details should be included in the environmental impact statement:

> **5.2.1 Environmental Impact Statement (EIS).**
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> **The EIS should contain at least the following:**
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> a. EIS Executive Summary;
> b. Project Description;
> c. Matrix of the scoping agreement identifying critical issues and concerns, as validated by EMB;
> d. Baseline environmental conditions focusing on the sectors (and resources) most significantly affected by the proposed action;
> e. Impact assessment focused on significant environmental impacts (in relation to project construction/commissioning, operation and decommissioning), taking into account cumulative impacts;
> f. Environmental Risk Assessment if determined by EMB as necessary during scoping;
> g. Environmental Management Program/Plan;

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[46] DENR Adm. Order No. 2003-30 (2003), sec. 3(k).

> h. Supporting documents, including technical/socio-economic data used/generated; certificate of zoning viability and municipal land use plan; and proof of consultation with stakeholders;
> i. Proposals for Environmental Monitoring and Guarantee Funds including justification of amount, when required;
> j. Accountability statement of EIA consultants and the project proponent; and
> k. Other clearances and documents that may be determined and agreed upon during scoping.

Not all the details required in an environmental impact statement can be found in an EPRMP. An EPRMP only requires:

> **5.2.5 Environmental Performance Report and Management Plan (EPRMP).**
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> The EPRMP shall contain the following:
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> a. Project Description;
> b. Baseline conditions for critical environmental parameters;
> c. Documentation of the environmental performance based on the current/past environmental management measures implemented;
> d. Detailed comparative description of the proposed project expansion and/or process modification with corresponding material and energy balances in the case of process industries; and
> e. EMP based on an environmental management system framework and standard set by EMB.

An EPRMP is not a comprehensive study of environmental impacts, unlike an environmental impact statement. It is, in essence, a description of the project and documentation of environmental performance. Based on Section 5.2.5 of the IRR, it contains no identification of critical issues. There is also no assessment of the environmental impact and risks that the project may cause.

The ponencia finds that the EIS requirement was complied with. According to the ponencia, the law does not expressly state that applications for amendments of ECCs require an EIS. Therefore, the EIS submitted prior to the amendment of the project's features was sufficient compliance with the EIS requirement under our laws.

Presidential Decree Nos. 1151 and 1586 require an EIS for every project that will substantially affect our environment. These laws do not exempt amended projects from the EIS requirement. The ponencia's finding presumes that for purposes of compliance with this EIS requirement, the

project as originally described was identical with the project after the amendment such that no new EIS was necessary to determine if the environmental impact would be different after the amendment. This is a dangerous and premature conclusion.

Any finding that the original project and the modified project are the same or different from each other in terms of environmental impact is itself a conclusion that must have scientific basis. Thus, to determine the environmental impact of projects, a different EIS should be submitted to reflect substantial modifications.

Our law requires the EIS for a purpose. It ensures that business proponents are sufficiently committed to mitigate the full environmental impacts of their proposed projects. It also ensures that the proposed mitigating measures to be applied are appropriate for the operations of an environmentally critical project. Dispensing with the appropriate EIS encourages businesses to treat the EIS requirement as a mere formality that may be obtained and later conveniently amend without the need to conduct the appropriate studies. It discourages full responsibility and encourages businesses to resort to expedient measures to secure the proper environmental clearances.

The ponencia ruled that a holistic reading of the IRR shows that the environmental impact assessment process allows for flexibility in the determination of the appropriate documentary requirements. The ponencia cites Section 8.3 of the IRR which states that the processing requirements for ECC amendments are focused only on necessary information. Thus:

> **8.3 Amending an ECC**
>
> Requirements for processing ECC amendments shall depend on the nature of the request but shall be focused on the information necessary to assess the environmental impact of such changes.
>
> 8.3.1. Requests for minor changes to ECCs such as extension of deadlines for submission of post-ECC requirements shall be decided upon by the endorsing authority.
>
> 8.3.2. Requests for major changes to ECCs shall be decided upon by the deciding authority.
>
> 8.3.3. For ECC's issued pursuant to an IEE or IEE checklist, the processing of the amendment application shall not exceed thirty (30) working days; and for ECC's issued pursuant to an EIS,

> the processing shall not exceed sixty (60) working days. Provisions on automatic approval related to prescribed timeframes under AO 42 shall also apply for the processing of applications to amend ECC's.

The ponencia also cites the Revised Procedural Manual for DAO 03-30's (Revised Manual) "Flowchart on Request for ECC Amendments" (flowchart) and the "Decision Chart for Determination of Requirements for Project Modification" (decision chart).[47]

The first step in the flowchart states that "[w]ithin three (3) years from ECC issuance (for projects not started) OR at any time during project implementation, the Proponent prepares and submits to the ECC-endorsing DENR-EMB office a LETTER-REQUEST for ECC amendments including data information, reports or documents to substantiate the requested revisions."

Meanwhile, the decision chart states that an EPRMP will be required for "[i]ncrease in capacity or auxiliary component of the original project which will either exceed PDR (non-covered project) thresholds, or EMP & ERA cannot address impacts and risks arising from modification."[48]

According to the ponencia, these portions of the flowchart and the decision chart show that the ECC amendment process also applies to non-operating projects, and that the Department of Environment and Natural Resources correctly required an EPRMP to support the first of RP Energy's requested amendment.

However, to interpret the rules in a manner that would give the Department of Environment and Natural Resources the discretion whether to require or not to require an environmental impact statement renders the rules void. As an administrative agency, the Department of Environment and Natural Resources' power to promulgate rules is limited by the provisions of the law it implements. It has no power to modify the law, or reduce or expand its provisions. The provisions of the law prevail if there is inconsistency between the law and the rules promulgated by the administrative agency.

In *United BF Homeowner's Association v. BF Homes, Inc.*:[49]

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47 Ponencia, 66-671.
48 *Ponencia,* p. 70.
49 369 Phil. 568 (1999) [Per J. Pardo, First Division].

> As early as 1970, in the case of Teoxon vs. Members of the Board of Administrators (PVA), we ruled that the power to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment. Its terms must be followed for an administrative agency cannot amend an Act of Congress. "The rule-making power must be confined to details for regulating the mode or proceedings to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute." If a discrepancy occurs between the basic law and an implementing rule or regulation, it is the former that prevails.
> . . . .
>
> The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat the purpose of a statute.
>
> Moreover, where the legislature has delegated to an executive or administrative officers and boards authority to promulgate rules to carry out an express legislative purpose, the rules of administrative officers and boards, which have the effect of extending, or which conflict with the authority-granting statute, do not represent a valid exercise of the rule-making power but constitute an attempt by an administrative body to legislate. "A statutory grant of powers should not be extended by implication beyond what may be necessary for their just and reasonable execution." It is axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid.[50]

In this case, the IRR implements Presidential Decree No. 1586 which in turn is based on Presidential Decree No. 1151. In Presidential Decree No. 1151, an environmental impact statement is required for all projects that have a significant impact on the environment. The IRR cannot provide for exemptions from the requirement of environmental impact statement for all environment-related actions or projects more than those covered by the exception provided in Presidential Decree No. 1586.

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[50] Id. at 579–580.

Thus, a project description also does not supplant the requirement of an environmental impact statement. RP Energy only submitted a project description to support its request for second amendment of the ECC to change the design of the coal plant from 2 x 150 MW to 1 x 300 MW.

A project description is described in the IRR as follows:

> x. Project Description (PD) - document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the pre-construction, construction, operation and abandonment phases. It is to be used for reviewing co-located and single projects under Category C, as well as for Category D projects.

It shall contain the following information:

> **5.2.6. Project Description (PD)**
>
> The PD shall be guided by the definition of terms and shall contain the following:
>
> a. Description of the project;
> b. Location and area covered;
> c. Capitalization and manpower requirement;
> d. For process industries, a listing of raw materials to be used, description of the process or manufacturing technology, type and volume of products and discharges;
> e. For Category C projects, a detailed description on how environmental efficiency and overall performance improvement will be attained, or how an existing environmental problem will be effectively solved or mitigated by the project;
> f. A detailed location map of the impacted site showing relevant features (e.g. slope, topography, human settlements); [and]
> g. Timelines for construction and commissioning

Based on the IRR, therefore, the project description also does not contain the features of an environmental impact statement. It is merely a descriptive of the project's nature and use of resources. It does not contain details of the project's environmental impact, critical issues, and risks.

We usually defer to the findings of fact and technical conclusions of administrative agencies because of their specialized knowledge in their fields. However, such findings and conclusions must always be based on substantial evidence, which is the "relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[51] Because of the risks involved in environmental cases, the evidence requirement may be more than substantial. The court has more leeway to examine the evidence's substantiality.

Judicial review of administrative findings or decisions is justified if the conclusions are not supported by the required standard of evidence. It is also justified in the following instances as enumerated in *Atlas Consolidated Mining v. Factoran, Jr.*:[52]

> . . . findings of fact in such decision should not be disturbed if supported by substantial evidence, but review is justified *when there has been a denial of due process, or mistake of law or fraud, collusion or arbitrary action in the administrative proceeding. . . where the procedure which led to factual findings is irregular; when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest.*[53] (Emphasis supplied)

Thus, when there are procedural irregularities that lead to the conclusions or factual findings, the court may exercise their power of judicial review. In this case, the Department of Environment and Natural Resources issued an amended ECC based on an environmental impact assessment that does not correspond to the new design of the project.

An environmental impact statement is a comprehensive assessment of the possible environmental effects of a project. The study and its conclusions are based on project's components, features, and design. Design changes may alter conclusions. It may also have an effect on the cumulative impact of the project as a whole. Design changes may also have an effect on the results of an environmental impact assessment.

For these reasons, the amended ECCs issued without a corresponding environmental impact statement is void. A new ECC should be issued based on an environmental impact statement that covers the new design proposed by RP Energy.

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51 *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642-645 (1940) [Per J. Laurel, En Banc].
52 238 Phil. 48 (1987) [Per J. Paras, First Division].
53 Id. at 57.

However, a Writ of Kalikasan is not the proper remedy to question the irregularities in the issuance of an ECC. Casiño, et al. should have first exhausted administrative remedies in the Department of Environment and Natural Resources and the Office of the President before it could file a Petition for certiorari with our courts. Essentially, it could not have been an issue ripe for litigation in a remanded Petition for Issuance of a Writ of Kalikasan. Thus, the Court of Appeals committed grave abuse of discretion in acting on the nullification of the ECC. More so, it is improper for us to make any declaration on the validity of the amended ECCs in this action.

III

Local government consent under Sections 26 and 27 of the Local Government Code is not a requisite for the issuance of an ECC. The issuance of an ECC and the consent requirement under the Local Government Code involve different considerations.

The Department of Environment and Natural Resources issues an ECC in accordance with Presidential Decree Nos. 1151 and 1586. It is issued after a proposed project's projected environmental impact is sufficiently assessed and found to be in accordance with the applicable environmental standards. A Department of Environment and Natural Resources' valid finding that the project complies with environmental standards under the law may result in the issuance of the ECC. In other words, an ECC is issued solely for environmental considerations.

Although Section 26 of the Local Government Code requires "prior consultation" with local government units, organizations, and sectors, it does not state that such consultation is a requisite for the issuance of an ECC. Section 27 of the Local Government Code provides instead that consultation, together with the consent of the local government is a requisite for the **implementation** of the project. This shows that the issuance of the ECC is independent from the consultation and consent requirements under the Local Government Code. Sections 26 and 27 of the Local Government Code provide:

> **Section 26.** *Duty of National Government Agencies in the Maintenance of Ecological Balance.* - It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, **to consult** with the local government units, nongovernmental organizations, and other sectors concerned and **explain the goals and objectives of the project or program, its impact upon**

> **the people and the community in terms of environmental or ecological balance,** and the measures that will be undertaken to prevent or minimize the adverse effects thereof.
>
> **Section 27.** *Prior Consultations Required.* – No project or program shall be implemented by government authorities unless **the consultations mentioned in Sections 2 (c) and 26 hereof are complied with**, and **prior approval of the sanggunian concerned is obtained**: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution. (Emphases supplied)

Further, the results of the consultations under Sections 26 and 27 do not preclude the local government from taking into consideration concerns other than compliance with the environmental standards. Section 27 does not provide that the local government's prior approval must be based only on environmental concerns. It may be issued in light of its political role and based on its determination of what is economically beneficial for the local government unit.

The issuance of the ECC, therefore, does not guarantee that all other permits for a project will be granted. It does not bind the local government unit to give its consent for the project. Both are necessary prior to a project's implementation.

Similarly, the requirement of certificate of non-overlap under Section 59 of the Indigenous Peoples' Rights Act[54] is independent from the issuance of an ECC. This requirement is a property issue. It is not related to environmental concerns under the Department of Environment and Natural Resources' jurisdiction.

IV

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[54] Rep. Act No. 8371 (1997), An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating an National Commission on Indigenous Peoples, Establishing Mechanisms, Appropriating Funds Therefor, and for Other Purposes. Indigenous Peoples Rights Act.

> Section 59 – Certification Precondition. All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

The question relating to the validity of the agreement between the SBMA and RP Energy is independent from the questions relating to whether the proper permits have been issued as well as whether the consent of the local government units have been properly secured.

The ponencia makes the claim that the SBMA's power to approve or disapprove projects in territories covered by the SBMA is superior over the local government units'. This is based on Section 14 of Republic Act No. 7227,[55] which provides:

> Sec. 14. *Relationship with the Conversion Authority and tthe Local Government Units.*
>
> (a) The provisions of existing laws, rules and regulations to the contrary notwithstanding, the Subic Authority shall exercise administrative powers, rule-making and disbursement of funds over the Subic Special Economic Zone in conformity with the oversight function of the Conversion Authority.
> (b) In case of conflict between Subic Authority and the local government units concerned on matters affecting the Subic Special Economic Zone other than defense and security, the decision of the Subic Authority shall prevail.

I disagree.

Interpreted this way, this provision may not be in accordance with our Constitution. It violates the provisions relating to the President's supervision over local governments and the principle of local government autonomy.

It is our basic policy to ensure the local autonomy of our local government units.[56] Under the Constitution, these local government units include only provinces, cities, municipalities, barangays, and the autonomous regions of Muslim Mindanao and the Cordilleras.[57] Provinces, cities, municipalities, and political subdivisions are created by law based on indicators such as income, population, and land area.[58] Barangays are

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55 Rep. Act No. 7227 (1992), An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes.

56 CONST. (1987), art. II, sec. 25. The State shall ensure the autonomy of local governments; art. X, sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

57 CONST. (1987), art. X, sec. 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

58 Rep. Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

created through ordinances.[59] Aside from the law or ordinance creating them, a local government unit cannot be created without the "approval by a majority of the votes case in a plebiscite in the political units directly affected."[60]

The Subic Bay Metropolitan Authority is not a local government unit. It is a corporate body created by a law.[61] No plebiscite or income, land area, and population requirements need to be reached for its creation. SBMA is merely the implementing arm of the Bases Conversion Development Authority, which is under the President's control and supervision.[62] It does not substitute for the President. It is not even the alter ego of the Chief Executive.

Article X, Section 4 of the Constitution provides that the President's power over our local government units is limited to general supervision, thus:

> **Section 4.** The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

Section 6. *Authority to Create Local Government Units.* - A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

Section 7. *Creation and Conversion.* - As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income. - It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;
(b) Population. - It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and
(c) Land Area. - It must be contiguous, unless it comprises two or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).

59 Rep. Act No. 7160 (1991), sec. 6.

60 CONST. (1987), art. X, sec. 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

61 Rep. Act No. 7227(1992), sec. 13.

62 Rep. Act No. 7227(1992), sec. 13 and 17.

In *The National Liga ng mga Barangay v. Paredes*,[63] this court differentiated between "control" and "supervision":

> In the early case of Mondano v. Silvosa, et al., this Court defined supervision as "overseeing, or the power or authority of an officer to see that subordinate officers perform their duties, and to take such action as prescribed by law to compel his subordinates to perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. In Taule v. Santos, the Court held that the Constitution permits the President to wield no more authority than that of checking whether a local government or its officers perform their duties as provided by statutory enactments. Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body.[64]

Section 14 of Republic Act No. 7227 cannot be interpreted so as to grant the Subic Bay Metropolitan Authority the prerogative to supplant the powers of the local government units.

Local autonomy ensures that local government units can fully developed as self-reliant communities. The evolution of their capabilities to respond to the needs of their communities is constitutionally guaranteed. In its implementation and as a statutory policy, national agencies must consult the local government units regarding projects or programs to be implemented in their jurisdictions. Article X, Section 2 of the Local Government Code provides:

> **Section 2.** *Declaration of Policy.* –
>
> (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

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63 482 Phil. 331 [Per J. Tinga, En Banc].
64 Id. at 355–356.

> (b) It is also the policy of the State to ensure the accountability of local government units through the institution of effective mechanisms of recall, initiative and referendum.
>
> (c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

In *San Juan v. Civil Service Commission*,[65] this court emphasized that laws should be interpreted in favor of local autonomy:

> Where a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy.
>
> . . . .
>
> The exercise by local governments of meaningful power has been a national goal since the turn of the century. And yet, inspite of constitutional provisions and, as in this case, legislation mandating greater autonomy for local officials, national officers cannot seem to let go of centralized powers. They deny or water down what little grants of autonomy have so far been given to municipal corporations.
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> . . . .
>
> In his classic work "Philippine Political Law" Dean Vicente G. Sinco stated that the value of local governments as institutions of democracy is measured by the degree of autonomy that they enjoy. Citing Tocqueville, he stated that "local assemblies of citizens constitute the strength of free nations. x x x A people may establish a system of free government but without the spirit of municipal institutions, it cannot have the spirit of liberty." (Sinco, Philippine Political Law, Eleventh Edition, pp. 705-706).
>
> Our national officials should not only comply with the constitutional provisions on local autonomy but should also appreciate the spirit of liberty upon which these provisions are based.[66]

Thus, Republic Act No. 7227 has not granted the SBMA with powers superior to those of local government units. The power of local

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65 G.R. No. 92299, April 19, 1991, 196 SCRA 69 [Per J. Gutierrez, Jr., En Banc].
66 Id. at 75–80.

governments that give consent to national government projects has not been supplanted.

Final note

The state's duty to "protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature"[67] can be accomplished in many ways. Before an environmentally critical project can be implemented or prior to an activity in an environmentally critical area, the law requires that the proponents undergo environmental impact assessments and produce environmental impact statements. On this basis, the proponents must secure an ECC which may outline the conditions under which the activity or project with ecological impact can be undertaken. Prior to a national government project, local government units, representing communities affected, can weigh in and ensure that the proponents take into consideration all local concerns including mitigating and remedial measures for any future ecological damage. Should a project be ongoing, our legal order is not lacking in causes of actions that could result in preventive injunctions or damages arising from all sorts of environmental torts.

The function of the extraordinary and equitable remedy of a Writ of Kalikasan should not supplant other available remedies and the nature of the forums that they provide. The Writ of Kalikasan is a highly prerogative writ that issues only when there is a showing of actual or imminent threat and when there is such inaction on the part of the relevant administrative bodies that will make an environmental catastrophe inevitable. It is not a remedy that is availing when there is no actual threat or when imminence of danger is not demonstrable. The Writ of Kalikasan thus is not an excuse to invoke judicial remedies when there still remain administrative forums to properly address the common concern to protect and advance ecological rights. After all, we cannot presume that only the Supreme Court can conscientiously fulfill the ecological duties required of the entire state.

Environmental advocacy is primarily motivated by care and compassion for communities and the environment. It can rightly be a passionately held mission. It is founded on faith that the world as it is now can be different. It implies the belief that the longer view of protecting our ecology should never be sacrificed for short-term convenience.

However, environmental advocacy is not only about passion. It is also about responsibility. There are communities with almost no resources and are at a disadvantage against large projects that might impact on their livelihoods. Those that take the cudgels lead them as they assert their

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[67] CONST. (1987), art. II, sec. 16.

ecological rights must show that they have both the professionalism and the capability to carry their cause forward. When they file a case to protect the interests of those who they represent, they should be able to make both allegation and proof. The dangers from an improperly managed environmental case are as real to the communities sought to be represented as the dangers from a project by proponents who do not consider their interests.

The records of this case painfully chronicle the embarrassingly inadequate evidence marshalled by those that initially filed the Petition for a Writ of Kalikasan. Even with the most conscientious perusal of the records and with the most sympathetic view for the interests of the community and the environment, the obvious conclusion that there was not much thought or preparation in substantiating the allegations made in the Petition cannot be hidden. Legal advocacy for the environment deserves much more.

ACCORDINGLY, I vote to **DENY** the Petition in G.R. No. 207282. I also vote to **DENY** the Petitions in G.R. No. 207257 and 207276 insofar as the issue of the validity of the ECCs is concerned.

MARVIC M.V.F. LEONEN
Associate Justice