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G.R. No. 207257 ***(Hon. Ramon Jesus P. Paje, in his capacity as Secretary of the Department of Environment and Natural Resources vs. Hon. Teodoro A. Casiño, et al.)***; **G.R. No. 207276** ***(Redondo Peninsula Energy, Inc. vs. Hon. Teodoro A. Casiño, et al.)***; **G.R. No. 207282** ***(Hon. Teodoro A. Casiño, et al. vs. 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.);*** **and G.R. No. 207366** ***(Subic Bay Metropolitan Authority vs. Hon. Teodoro A. Casiño, et al.)***

Promulgated:

February 3, 2015

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CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the well-crafted *ponencia* of Justice Mariano C. Del Castillo. I will, however, further elucidate on the procedural issues raised by the indefatigable Justice Marvic M.V.F. Leonen.

Justice Leonen posits that a petition for a writ of *kalikasan* is not the proper remedy in the instant proceedings since what the petitioners in G.R. No. 207282 assail is the propriety of the issuance and subsequent amendment of the ECCs by DENR for a project that has yet to be implemented. He argues that the novel action is inapplicable even more so to projects whose ECCs are yet to be issued or can still be challenged through administrative review processes. He concludes that the extraordinary initiatory petition does not subsume and is not a substitute for "all remedies that can contribute to the protection of communities and their environment." While the good Justice did not specifically mention what the other available remedies are, *certiorari* under Rule 65 easily comes to mind as one such remedy.

I beg to disagree. The special civil action for a writ of *kalikasan* under Rule 7 of the Rules of Procedure for Environmental Cases (RPEC for brevity) is, I submit, the best available and proper remedy for petitioners Casiño, et al.

As distinguished from other available remedies in the ordinary rules of court, the writ of *kalikasan* is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology. As a matter of fact, by explicit directive from the Court, the RPEC are

SPECIAL RULES crafted precisely to govern environmental cases. On the other hand, the "remedies that can contribute to the protection of communities and their environment" alluded to in Justice Leonen's dissent clearly form part of the Rules of Court which by express provision of the special rules for environmental cases "shall apply in a suppletory manner" under Section 2 of Rule 22. Suppletory means "supplying deficiencies." It is apparent that there is no vacuum in the special rules on the legal remedy on unlawful acts or omission concerning environmental damage since precisely Rule 7 on the writ of *kalikasan* encompasses all conceivable situations of this nature.

As a potent and effective tool for environmental protection and preservation, Rule 7, Section l of A.M. No. 09-6-8-SC, or the RPEC, reads:

> SEC. 1. Nature of the writ. – The writ [of *kalikasan*] is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Availment of the *kalikasan* writ would, therefore, be proper if the following requisites concur in a given case:

1. that there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology;
2. the actual or threatened violation is due to an unlawful act or omission of a public official or employee, or private individual or entity;
3. the situation in the ground involves an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Perusing the four corners of the petition in G.R. No. 207282, it can readily be seen that all the requisites are satisfactorily met.

There is, apropos the first requisite, allegations of actual or threatened violation of the constitutional right to a balanced and healthful ecology, as follows:

> **Environmental Impact and Threatened Damage to the Environment and Public Health**
>
> ***Acid Rain***

35. According to RP Energy's Environmental Impact Statement for its proposed 2 x 150 MW Coal-Fired Thermal Power Plant Project, acid rain may occur in the combustion of coal, to wit -

x x x x

During the operation phase, combustion of coal will result in emissions of particulates SOx and NOx. This may contribute to the occurrence of acid rain due to elevated SO2 levels in the atmosphere. High levels of NO2 emissions may give rise to health problems for residents within the impact area.

x x x x

Asthma Attacks

36. The same EPRMP mentioned the incidence of asthma attacks as result of power plant operations, to wit –

x x x x

The incidence of asthma attacks among residents in the vicinity of the project site may increase due to exposure to suspended particulates from plant operations.

x x x x

37. The respondent's witness, Junisse Mercado, the Project Director of GHD, RP Energy's project Consultant engaged to conduct the environmental impact assessments, cannot also make certain that despite the mitigation and the lower emissions of the Proposed Project, no incidence of asthma will occur within the project site.

38. RP Energy has not made a study of the existing level of asthma incidence in the affected area, despite knowledge of secondary data that the leading cause of morbidity in the area are acute respiratory diseases.

Air Impact

39. Air quality impact is (sic) exists not only in the vicinity of the Project Site but to surroundings (sic) areas, particularly contiguous local government units as well.

40. In the air dispersion modeling of the 2012 EPRMP for the expansion of the Coal Fired Power Plant, among those identified as a discrete receptor for the modeling is the Olongapo City Poblacion.

41. The results of the air dispersion modeling study show that upon upset conditions, there exists deviation from normal conditions in relation to the extent of emission and pollution, even in receptors as far as the Olongapo City Poblacion, which is an area and local government unit outside the Project Site.

42. The possibility of upset conditions during plant operations are also likewise not denied, in which increased SOx and NOx emissions may occur.[1] (citations omitted)

x x x x

57. The SBMA Social Acceptability Consultations also included the assessment of different experts in various fields as to the potential effects of the Project. x x x

58. Based on the SBMA Final Report on the above mentioned consultations, the three experts shared the view, to wit –

> x x x x
>
> x x x the conditions were not present to merit the operation of a coal-fired power plant, and to pursue and carry out the project with confidence and assurance that the natural assets and ecosystems within the Freeport area would not be unduly compromised, or that irreversible damage would not occur and that the threats to the flora and fauna within the immediate community and its surroundings would be adequately addressed.
>
> The three experts were also of the same opinion that the proposed coal plant project would pose a wide range of negative impacts on the environment, the ecosystems and human population within the impact zone.
>
> x x x x
>
> The specialists also discussed the potential effects of an operational coal-fired power plant to its environs and the community therein. Primary among these were the following:
>
> i. Formation of acid rain, which would adversely affect the trees and vegetation in the area which, in turn, would diminish forest cover. The acid rain would also apparently worsen the acidity of the soil in the Freeport.
> ii. Warming and acidification of the seawater of the bay, resulting in the bioaccumulation of contaminants and toxic materials which would eventually lead to the overall reduction of marine productivity.
> iii. Discharge of pollutants such as Nitrous Oxide, Sodium Oxide, Ozone and other heavy metals such as mercury and lead to the surrounding region, which would adversely affect the health of the populace in the vicinity.[2]

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[1] *Rollo* (G.R. No. 207282), pp. 21-24.
[2] Id. at 31-33.

The second requisite, i.e., that the actual or threatened violation is due to the unlawful act or omission of a public official or employee or private individual or entity, is deducible from the ensuing allegations:

> a. The environmental compliance certificate was issued and the lease and development agreement was entered upon for the construction and operation of RP Energy's 1x300 MW coal-fired power plant **without satisfying the certification precondition requirement under Sec. 59 of Republic Act No. 8371 or the indigenous peoples rights act and its implementing rules and regulations;**
>
> b. The environmental compliance certificate was issued and the lease and development agreement was entered upon for the construction and operation of the power plant **without the prior approval of the Sanggunian concerned, pursuant to Secs. 26 and 27 of the Local Government Code**;
>
> c. Sec. 8.3 of DENR Administrative Order 2003-30 allowing amendments of environmental compliance certificates is null and void for being enacted ultra vires;
>
> d. **Prescinding from the nullity of Sec. 8.3 of DENR Administrative Order 2003-30,** all amendments to RP Energy's Environmental Compliance Certificate for the construction and operation of a 2 x 150 MW coal-fired power plant are null and void.[3]

Specifically, the unlawful acts or omissions are:

1. Failure to comply with the certification precondition requirement under Sections 9 and 59 of Republic Act No. 8371 or the *Indigenous Peoples Rights Act* and its implementing rules and regulations;

2. Non-compliance with the requisite approval of the *Sanggunian Pambayan* pursuant to Sections 26 and 27 of the Local Government Code; and

3. Violation of Section 8.3 of DENR Administrative Order 2003-30 on environmental compliance certificate.

All the alleged unlawful acts or omissions were averred to be committed by public and private respondents. The petition impleads the DENR, the Subic Bay Metropolitan Authority and the project proponent.

Thus, the second requisite was satisfied.

The estimated range of the feared damage, as clearly set forth in the petition, covers the provinces of Bataan and Zambales, specifically the municipalities and city mentioned therein, and thus addressing the requisite territorial requirement.

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[3] Petition, pp. 17-18.

The petition avers:

> 121. The matter is thus of extreme urgency that, unless immediately restrained, will inevitably cause damage to the environment, the inhabitants of the provinces of Zambales and Bataan, particularly the municipalities of Subic, Zambales, Hermosa and Morong, Bataan and the City of Olongapo, Zambales including the herein Petitioners who will all suffer grave injustice and irreparable injury, particularly in proceeding with construction and operation of the Coal-Fired Power Plant in the absence of compliance with the Local Government Code's consultation and approval requirements under Sec. 26 and 27, Sec. 59 of R.A. No. 8371's requiring an NCIP Certification prior to the issuance of permits or licenses by government agencies and violating the restrictions imposed in its original ECC.[4]

Having satisfied all the requirements under the special rules, then Rule 7 on the writ of *kalikasan* is beyond cavil applicable and presents itself as the best available remedy considering the facts of the case and the circumstances of the parties.

Petition for Issuance of Writ of Kalikasan vis-à-vis Special Civil Action for Certiorari

Anent Justice Leonen's argument that there are other "remedies that can contribute to the protection of communities and their environment" other than Rule 7 of RPEC, doubtless referring to a Rule 65 petition, allow me to state in disagreement that there are instances when the act or omission of a public official or employee complained of will ultimately result in the infringement of the basic right to a healthful and balanced ecology. And said unlawful act or omission would invariably constitute grave abuse of discretion which, ordinarily, could be addressed by the corrective hand of *certiorari* under Rule 65. In those cases, a petition for writ of *kalikasan* would still be the superior remedy as in the present controversy, crafted as it were precisely to address and meet head-on such situations. Put a bit differently, in proceedings involving enforcement or violation of environmental laws, where arbitrariness or caprice is ascribed to a public official, the sharper weapon to correct the wrong would be a suit for the issuance of the *kalikasan* writ.

Prior to the effectivity of the RPEC which, inter alia, introduced the writ of *kalikasan*, this Court entertained cases involving attacks on ECCs via a Rule 65 petition[5] which exacts the exhaustion of administrative remedies as condition sine *qua non* before redress from the courts may be had.

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[4] Petition, p. 46.

[5] Section 1. *Petition for certiorari*.—When a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

Following the ordinary rules eventually led to several procedural difficulties in the litigation of environmental cases, as experienced by practitioners, concerned government agencies, people's organizations, non-governmental organizations, corporations, and public-interest groups,[6] more particularly with respect to *locus standi*, fees and preconditions. These difficulties signalled the pressing need to make accessible a more simple and expeditious relief to parties seeking the protection not only of their right to life but also the protection of the country's remaining and rapidly deteriorating natural resources from further destruction. Hence, the RPEC. With its formulation, the Court sought to address procedural concerns peculiar to environmental cases,[7] taking into consideration the imperative of prompt relief or protection where the impending damage to the environment is of a grave and serious degree. Thus, the birth of the writ of *kalikasan*, an extraordinary remedy especially engineered to deal with environmental damages, or threats thereof, that transcend political and territorial boundaries.[8]

The advent of A.M. No. 09-6-8-SC to be sure brought about significant changes in the procedural rules that apply to environmental cases. The differences on eight (8) areas between a Rule 65 *certiorari* petition and Rule 7 *kalikasan* petition may be stated as follows:

l. **Subject matter**. Since its subject matter is any "unlawful act or omission," a Rule 7 *kalikasan* petition is broad enough to correct any act taken without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction which is the subject matter of a Rule 65 certiorari petition. Any form of abuse of discretion as long as it constitutes an unlawful act or omission involving the environment can be subject of a Rule 7 *kalikasan* petition. A Rule 65 petition, on the other hand, requires the abuse of discretion to be "grave." Ergo, a subject matter which ordinarily cannot properly be subject of a certiorari petition can be the subject of a *kalikasan* petition.

2. **Who may file**. Rule 7 has liberalized the rule on *locus standi*, such that availment of the writ of *kalikasan* is open to a broad range of suitors, to include even an entity authorized by law, people's organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose right to a balanced and healthful ecology is violated or threatened to be violated. Rule 65 allows only the aggrieved person to be the petitioner.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. See *Bangus Fry Fisherfolk, et al. v. Lanzanas*, G.R. No. 131442, July 10, 2003.

[6] *Annotation to the Rules of Procedure for Environmental Cases,* p. 98.

[7] Id.

[8] Id. at 133.

3. **Respondent**. The respondent in a Rule 65 petition is only the government or its officers, unlike in a *kalikasan* petition where the respondent may be a private individual or entity.

4. **Exemption from docket fees**. The *kalikasan* petition is exempt from docket fees, unlike in a Rule 65 petition. Rule 7 of RPEC has pared down the usually burdensome litigation expenses.

5. **Venue**. The certiorari petition can be filed with (a) the RTC exercising jurisdiction over the territory where the act was committed; (b) the Court of Appeals; and (c) the Supreme Court. Given the magnitude of the damage, the *kalikasan* petition can be filed directly with the Court of Appeals or the Supreme Court. The direct filing of a *kalikasan* petition will prune case delay.

6. **Exhaustion of administrative remedies**. This doctrine generally applies to a certiorari petition, unlike in a *kalikasan* petition.

7. **Period to file**. An aggrieved party has 60 days from notice of judgment or denial of a motion for reconsideration to file a certiorari petition, while a *kalikasan* petition is not subject to such limiting time lines.

8. **Discovery measures**. In a *certiorari* petition, discovery measures are not available unlike in a *kalikasan* petition. Resort to these measures will abbreviate proceedings.

It is clear as day that a *kalikasan* petition provides more ample advantages to a suitor than a Rule 65 petition for certiorari.

Taking into consideration the provisions of Rule 65 of the Rules of Court vis-à-vis Rule 7 of the RPEC, it should be at once apparent that in petitions like the instant petition involving unlawful act or omission causing environmental damage of such a magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces, Rule 7 of the RPEC is the applicable remedy. Thus, the vital, pivotal averment is the illegal act or omission involving environmental damage of such a dimension that will prejudice a huge number of inhabitants in at least 2 or more cities and provinces. Without such assertion, then the proper recourse would be a petition under Rule 65, assuming the presence of the essential requirements for a resort to *certiorari*. It is, therefore, possible that subject matter of a suit which ordinarily would fall under Rule 65 is subsumed by the Rule 7 on *kalikasan* as long as such qualifying averment of environmental damage is present. I can say without fear of contradiction that a petition for a writ of *kalikasan* is a special version of a Rule 65 petition, but restricted in scope but providing a more expeditious, simplified and inexpensive remedy to the parties.

The Court must not take a myopic view of the case, but must bear in mind that what is on the table is a case which seeks to avert the occurrence of a disaster which possibly could result in a massive environmental damage and widespread harm to the health of the residents of an area. This is not a simple case of grave abuse of discretion by a government official which does not pose an environmental threat with serious and far-reaching implications and could be adequately and timely resolved using ordinary rules of procedure. To reiterate, the Rules on petitions for writ of *kalikasan* were specifically crafted for the stated purpose of expediting proceedings where immediacy of action is called for owing to the gravity and irreparability of the threatened damage. And this is precisely what is being avoided in the instant case.

Additionally, it must be emphasized that the initial determination of whether a case properly falls under a writ of *kalikasan* petition differs from the question of whether the parties were able to substantiate their claim of a possible adverse effect of the activity to the environment. The former requires only a perfunctory review of the allegations in the petition, without passing on the evidence, while the latter calls for the evaluation and weighing of the parties' respective evidence. And it is in the latter instance that Casiño, et al. miserably fell short. By not presenting even a single expert witness, they were unable to discharge their duty of proving to the Court that the completion and operation of the power plant would bring about the alleged adverse effects to the health of the residents of Bataan and Zambales and would cause serious pollution and environmental degradation thereof. Hence, the denial of their petition.

Oposa ruling should not be abandoned

The dissent proposes the abandonment of the doctrinal pronouncement in *Oposa*[9] bearing on the filing of suits in representation of others and of generations yet unborn, now embodied in Sec. 5 of the Environmental Rules. In the alternative, it is proposed that allowing citizen suits under the same Section 5 of the Environmental Rules be limited only to the following situations: (1) there is a clear legal basis for the representative suit; (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.

I strongly disagree with the proposal.

For one, *Oposa* carries on the tradition to further liberalize the requirement on *locus standi.* For another, the dissent appears to gloss over the fact that there are instances when statutes have yet to regulate an activity or the use and introduction of a novel technology in our jurisdiction and

[9] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

environs, and to provide protection against a violation of the people's right to life. Hence, requiring the existence of an "existing and clear legal right or basis" may only prove to be an imposition of a strict, if impossible, condition upon the parties invoking the protection of their right to life.

And for a third, to require that there should be no possibility of any countervailing interests existing within the population represented or those that are yet to be born would likewise effectively remove the rule on citizens suits from our Environmental Rules or render it superfluous. No party could possibly prove, and no court could calculate, whether there is a possibility that other countervailing interests exist in a given situation. We should not lose sight of the fact that the impact of an activity to the environment, to our flora and fauna, and to the health of each and every citizen will never become an absolute certainty such that it can be predicted or calculated without error, especially if we are talking about generations yet unborn where we would obviously not have a basis for said determination. Each organism, inclusive of the human of the species, reacts differently to a foreign body or a pollutant, thus, the need to address each environmental case on a case-to-case basis. Too, making sure that there are no countervailing interests in existence, especially those of populations yet unborn, would only cause delays in the resolution of an environmental case as this is a gargantuan, if not well-nigh impossible, task.

It is for the same reason that the rule on *res judicata* should not likewise be applied to environmental cases with the same degree of rigidity observed in ordinary civil cases, contrary to the dissent's contention. Suffice it to state that the highly dynamic, generally unpredictable, and unique nature of environmental cases precludes Us from applying the said principle in environmental cases.

Lastly, the dissent's proposition that a "citizen suit should only be allowed when there is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary" is a pointless condition to be latched onto the RPEC. While the existence of an emergency provides a reasonable basis for allowing another person personally unaffected by an environmental accident to secure relief from the courts in representation of the victims thereof, it is my considered view that We need not limit the availability of a citizen's suit to such extreme situation.

The true and full extent of an environmental damage is difficult to fully comprehend, much so to predict. Considering the dynamics of nature, where every aspect thereof is interlinked, directly or indirectly, it can be said that a negative impact on the environment, though at times may appear minuscule at one point, may cause a serious imbalance to our environs in the long run. And it is not always that this imbalance immediately surfaces. In some instances, it may take years before we realize that the deterioration is already serious and possibly irreparable, just as what happened to the Manila

Bay where decades of neglect, if not sheer citizen and bureaucratic neglect, ultimately resulted in the severe pollution of the Bay.[10] To my mind, the imposition of the suggested conditions would virtually render the provisions on citizen's suit a pure jargon, a useless rule, in short.

Anent the substantive issues, I join the *ponencia* in its determination that Casiño, et al. failed to substantiate their claim of an imminent and grave injury to the environment should the power project proceed.

I vote to **DENY** the Petition in G.R. No. 207282, and to **GRANT** the Petitions in G.R. Nos. 207257, 207276 and 207366.

PRESBITERO J. VELASCO, JR.
Associate Justice

[10] See *MMDA v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008.