



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**SPECIAL PEOPLE, INC.
FOUNDATION, REPRESENTED BY
ITS CHAIRMAN, ROBERTO P.
CERICOS,**

Petitioner,

-versus-

**NESTOR M. CANDA, BIENVENIDO
LIPAYON, JULIAN D. AMADOR,
BOHOL PROVINCIAL CHIEF,
REGIONAL DIRECTOR, AND
NATIONAL DIRECTOR,
RESPECTIVELY, ENVIRONMENTAL
MANAGEMENT BUREAU,
DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES, AND
THE SECRETARY OF THE
DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES, ALL
SUED IN BOTH THEIR OFFICIAL
AND PRIVATE CAPACITIES,**

Respondents.

G.R. No. 160932

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

JAN 14 2013

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DECISION

BERSAMIN, J.:

The peremptory writ of *mandamus* is an extraordinary remedy that is issued only in extreme necessity, and the ordinary course of procedure is powerless to afford an adequate and speedy relief to one who has a clear legal right to the performance of the act to be compelled.

Antecedents

The petitioner was a proponent of a water-resource development and utilization project in Barangay Jimilia-an in the Municipality of Loboc, Bohol that would involve the tapping and purifying of water from the Loboc River, and the distribution of the purified water to the residents of Loboc and six other municipalities. The petitioner applied for a Certificate of Non-Coverage (CNC) with the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), Region 7, seeking to be exempt from the requirement of the Environmental Compliance Certificate (ECC) under Section 4 of Presidential Decree No. 1586 on the following justifications, to wit:

- 1) The whole project simply involves tapping of water from the Loboc River, filtering and purifying it, and distributing the same to the consumers in the covered towns;
- 2) From the source to the filtration plant, then to the purifier stations, then finally to the consumers' households, water flows through steel pipes;
- 3) The filtration and purifying process employs the latest technology—"electrocatalytic"—internationally accepted for safety and environment friendliness;
- 4) No waste is generated, as the electrocatalytic process dissolves all impurities in the water;
- 5) The project involves no destruction [n]or harm to the environment. On the other hand, it is environment friendly.¹

Upon evaluating the nature and magnitude of the environmental impact of the project, respondent Nestor M. Canda, then Chief of EMB in Bohol, rendered his findings in a letter dated December 4, 2001, as follows:

- 1) **The project is located within a critical area; hence, Initial Environmental Examination is required.**
- 2) The project is socially and politically sensitive therefore proof of social acceptability should be established. Proper indorsement from the [Protected Area Management Bureau or] PAMB should be secured.² (Emphasis supplied)

¹ *Rollo*, p. 35.

² *Id.* at 39.

On January 11, 2002, the petitioner appealed Canda's findings to respondent EMB Region 7 Director Bienvenido L. Lipayon (RD Lipayon), claiming that it should also be issued a CNC because the project was no different from the Loboc-Loay waterworks project of the Department of Public Works and Highways (DPWH) that had recently been issued a CNC.³

On April 3, 2002, RD Lipayon notified the petitioner that its documents substantially complied with the procedural aspects of the EMB's review, and that the application was assigned EMB-DENR-7 Control No. CNC-02-080 for easy reference in case of follow-up and submission of additional requirements.⁴

Later on, RD Lipayon informed the petitioner that an Initial Environmental Examination document was required for the project due to its significant impact in the area.⁵

On August 26, 2002, RD Lipayon required the petitioner to submit the following documents to enable the EMB to determine whether the project was within an environmentally critical area or not, to wit:

1. Certification from DENR, Provincial Environment and Natural Resources Office (PENRO) that it is not within areas declared by law as national parks, watershed reserves, wildlife preservation area, sanctuaries and not within the purview of Republic Act No. 7586 or the National Integrated Protected Areas System (NIPAS) Act, and other issuances including international commitments and declarations;
2. Certification from the DENR Regional Office/ PENRO [that] the areas within the project do[] not constitute [the habitat] for any endangered or threatened species or indigenous wildlife (Flora and Fauna).
3. Certification from the following:
 - 3.1. Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) that the area is not frequently visited or hard-hit by typhoons. This shall refer to all areas where typhoon signal no. 3 not hoisted for at least twice a year during

³ Id. at 40.

⁴ Id. at 44.

⁵ Id. at 45.

the last five (5) years prior to the year of reckoning. Years to be considered shall be from January 1995 to December 2001.

- 3.2. Philippine Institute of Volcanology and Seismology (PHIVOLCS) that the area was **not subjected to an earthquake of at least intensity VII in the Rossi-Forel scale or its equivalent and hit by tsunamis during the period of 1638 until the year 2001.**
- 3.3. PHIVOLCS that the area was not subjected to earthquakes of at least intensity VII in the Rossi-Forel scale or its equivalent during the period of 1949 until the year 2001.
- 3.4. PAGASA that the area is not storm surge-prone.
- 3.5. Mines and Geosciences Bureau Region 7 (MGB 7) that the area is not located along fault lines or within fault zones and **not located in critical slope.**
- 3.6. City Mayor and/or City Engineers Office that the area is not flood prone.
- 3.7. Network of Protected Areas for Agriculture (NPAA) of the Bureau of Soils and Water Management (BSWM) that the area is not classified as Prime Agricultural Land.
4. Certification from the Provincial Tourism Office or its equivalent office that areas in your project are not set-aside as aesthetic potential tourist spot.
5. Certification from the National Water Resources Board (NWRB) that areas within your project are not recharge[d] areas of aquifer.
6. Certification from DENR regional Office and/or Environmental Management Bureau 7 (EMB 7) that Loboc River is not characterized by one or any combination of the following conditions:
 - a. Tapped for domestic purposes;
 - b. With controlled and/or protected areas declared by appropriate authorities; and
 - c. Which support wildlife and fishery activities.

A Certificate of Non-Coverage will duly be issued to your foundation once all the above mentioned required certifications are complied with.

Projects that are covered by P.D. 1586 or the Environmental Impact System (EIS) Law should not start unless the Project Proponent should secure an Environmental Compliance Certificate (ECC), otherwise penalties shall be imposed.⁶ (Emphases supplied)

⁶ Id. at 52-53.

On January 28, 2003, the petitioner submitted eight certifications,⁷ including the certification issued by the Philippine Institute of Volcanology and Seismology (PHIVOLCS), as follows:

That the project area, Loboc, Bohol was subjected to an earthquake of **Intensity VII** in the adapted Rossi-Forel scale of I-IX last **February 8, 1990**. The magnitude of the earthquake is 6.8 and the highest intensity reported was VIII, based on the Rossi-Forel Intensity Scale. During the said earthquake, the PMI Academy Building collapsed while minor cracks were sustained by the municipal hall, public school, town church and some other houses in the town. There were reports that immediately after the earthquake, the force of the incoming waves from the sea caused Alijuan River in the town of Duero to flow inland. The report also states that the waves affected 10-50 meters of the coastal beach of the towns of Jagna, Duero, Guindulman, Garcia Hernandez and Valencia.⁸ (Emphases supplied)

The petitioner failed to secure a certification from the Regional Office of the Mines and Geosciences Bureau (RO-MGB) to the effect that the project area was not located along a fault line/fault zone or a critical slope because RO-MGB did not have the data and expertise to render such finding, and thus had to forward the petitioner's request to the MGB Central Office.⁹

Upon the MGB's advice, the petitioner sought and obtained the required certification from PHIVOLCS, but the certification did not state whether the project area was within a critical slope. Instead, the certification stated that the project site was approximately 18 kilometers west of the East Bohol Fault.¹⁰

Given the tenor of the certification from PHIVOLCS, RD Lipayon's letter dated February 4, 2003 declared that the project was within an environmentally critical area, and that the petitioner was not entitled to the CNC, *viz*:

After thorough review of your submitted certifications, it was found out that the area was subjected to an earthquake of Intensity VII in

⁷ Id. at 54-64.

⁸ Id. at 58.

⁹ Id. at 59.

¹⁰ Id. at 64.

the adapted Rossi-Forel scale wherein the magnitude of the earthquake is 6.8 with the highest intensity reported of VIII and you fail to support certification that the project area is not within critical slope. And based on the Water Usage and Classification per Department Order (DAO) 34 Series of 1990, subject river system was officially classified as Class B intended for swimming and bathing purposes. Moreover, one component of your project involves opening of roadway connected to the barangay road.

Therefore, we reiterate our previous stand that your project is covered by the EIS System pursuant to P.D. 1586, the Environmental Impact Statement Law.¹¹

On March 27, 2003, the petitioner filed a petition for *mandamus* and damages in the Regional Trial Court (RTC) in Loay, Bohol,¹² alleging that it was now entitled to a CNC as a matter of right after having complied with the certification requirements; and that the EMB had earlier issued a CNC to the DPWH for a similar waterworks project in the same area.

In the decision dated November 18, 2003,¹³ the RTC **dismissed** the petition for *mandamus* upon the following considerations, namely: (1) PHIVOLCS certified that the project site had been subjected to an Intensity VII earthquake in 1990; (2) the CNC issued by the EMB to a similar waterworks project of the DPWH in the same area was only for the construction of a unit spring box intake and pump house, and the DENR issued a cease and desist order relative to the DPWH's additional project to put up a water filtration plant therein; (3) the determination of whether an area was environmentally critical was a task that pertained to the EMB; (4) the assignment of a control number by the EMB to the petitioner's application did not mean that the application was as good as approved; (5) the RTC would not interfere with the primary prerogative of the EMB to review the merits of the petitioner's application for the CNC; and (6) there was already a pending appeal lodged with the DENR Secretary.

¹¹ Id. at 65.

¹² Id. at 16-27

¹³ Id. at 125-134.

Hence, this appeal brought directly to the Court *via* petition for review on *certiorari*.

Issues

The petitioner submits the following issues:

- A. WHETHER OR NOT, AFTER PETITIONER'S DUE COMPLIANCE WITH THE REQUIREMENTS MANDATED BY RESPONDENTS FOR THE ISSUANCE OF THE CERTIFICATE OF NON-COVERAGE (CNC) APPLIED FOR BY PETITIONER, IT IS NOW THE RIPENED DUTY OF RESPONDENTS, THROUGH RESPONDENT EMB REGIONAL DIRECTOR, TO ISSUE SAID DOCUMENT IN FAVOR OF PETITIONER;
- B. WHETHER OR NOT PETITIONER HAS EXHAUSTED AVAILABLE ADMINISTRATIVE REMEDIES THROUGH AN APPEAL TO RESPONDENT DENR SECRETARY WHO HAS SAT ON SAID APPEAL UP TO THE PRESENT;
- C. WHETHER OR NOT PETITIONER IS ENTITLED TO RECOVER DAMAGES FROM RESPONDENTS IN THEIR PERSONAL CAPACITY.¹⁴

The petitioner insists that RD Lipayon already exercised his discretion by finding that the application substantially complied with the procedural aspects for review and by assigning Control No. CNC-02-080 to its application; that after the petitioner complied with the requirements enumerated in the August 26, 2002 letter of RD Lipayon, the EMB became duty-bound to issue the CNC to the petitioner; that the EMB issued a CNC to a similar project of the DPWH in the same area; that it filed an appeal with the DENR Secretary, but the appeal remained unresolved; and that it brought the petition for *mandamus* precisely as a speedier recourse.

In their comment, RD Lipayon and Canda aver that the act complained of against them involved an exercise of discretion that could not be compelled by *mandamus*; that the petitioner's proposed project was located within an environmentally critical area, and the activities to be done

¹⁴ Id. at 6.

were so significant that they would create massive earth movement and environmental degradation; that the petitioner violated the rule against forum shopping; and that the petitioner had no cause of action against them for failure to exhaust administrative remedies.

On his part, the DENR Secretary, through the Solicitor General, contends that the petition raises questions of fact that are not proper in a petition for review; that the petitioner should have appealed to the CA under Rule 41 of the *Rules of Court*; that the grant or denial of a CNC application is discretionary and cannot be compelled by *mandamus*; and that the petitioner failed to exhaust administrative remedies.

Accordingly, the Court is called upon to resolve, *firstly*, whether the appeal directly to this Court from the RTC was proper, and, *secondly*, whether the petition for *mandamus* was the correct recourse.

Ruling

The petition for review is denied for its lack of merit.

1.

Petitioner's appeal is improper under Rule 45, *Rules of Court*

This appeal by *certiorari* is being taken under Rule 45, *Rules of Court*, whose Section 1 expressly requires that the petition shall raise only questions of law which must be distinctly set forth. Yet, the petitioner hereby raises a question of fact whose resolution is decisive in this appeal. That issue of fact concerns whether or not the petitioner established that its project was not located in an environmentally critical area. For this reason, the Court is constrained to deny due course to the petition for review.

It is a settled rule, indeed, that in the exercise of our power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case. The Court relies on the findings of fact of the Court of Appeals or of the trial court, and accepts such findings as conclusive and binding unless any of the following exceptions obtains, namely: (a) when the findings are grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of facts are conflicting; (f) when in making its findings the Court of Appeals or the trial court went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) when the findings are contrary to the trial court; (h) when the findings are conclusions without citation of specific evidence on which they are based; (i) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (j) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (k) when the Court of Appeals or the trial court manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.¹⁵ However, none of the aforementioned exceptions applies herein.

2.

Mandamus was an improper remedy for petitioner

We dismiss the present recourse because the petitioner failed to exhaust the available administrative remedies, and because it failed to show

¹⁵ *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220, 229; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86; *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, G.R. No. L-139437, December 8, 2000, 347 SCRA 542, 549; *Nokom v. National Labor Relations Commission*, G.R. No. 140043, July 18, 2000, 336 SCRA 97, 110; *Sta. Maria v. Court of Appeals*, G.R. No. 127549, January 28, 1998, 285 SCRA 351, 357-358.

that it was legally entitled to demand the performance of the act by the respondents.

It is axiomatic, to begin with, that a party who seeks the intervention of a court of law upon an administrative concern should first avail himself of all the remedies afforded by administrative processes. The issues that an administrative agency is authorized to decide should not be summarily taken away from it and submitted to a court of law without first giving the agency the opportunity to dispose of the issues upon due deliberation.¹⁶ The court of law must allow the administrative agency to carry out its functions and discharge its responsibilities within the specialized areas of its competence.¹⁷ This rests on the theory that the administrative authority is in a better position to resolve questions addressed to its particular expertise, and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so.¹⁸

The records show that the petitioner failed to exhaust the available administrative remedies. At the time RD Lipayon denied the petitioner's application for the CNC, Administrative Order No. 42 dated November 2, 2002¹⁹ had just vested the authority to grant or deny applications for the ECC in the Director and Regional Directors of the EMB. Notwithstanding the lack of a specific implementing guideline to what office the ruling of the EMB Regional Director was to be appealed, the petitioner could have been easily guided in that regard by the *Administrative Code of 1987*, which provides that the Director of a line bureau, such as the EMB,²⁰ shall have

¹⁶ *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 265.

¹⁷ *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc.*, G.R. No. 175039, April 18, 2012, 670 SCRA 83, 89.

¹⁸ *Sunville Timber Products, Inc. v. Abad*, G.R. No. 85502, February 24, 1992, 206 SCRA 482, 486-487.

¹⁹ RATIONALIZING THE IMPLEMENTATION OF THE PHILIPPINE ENVIRONMENTAL IMPACT STATEMENT (EIS) SYSTEM AND GIVING AUTHORITY, IN ADDITION TO THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, TO THE DIRECTOR AND REGIONAL DIRECTORS OF THE ENVIRONMENTAL MANAGEMENT BUREAU TO GRANT OR DENY THE ISSUANCE OF ENVIRONMENTAL COMPLIANCE CERTIFICATES

²⁰ Republic Act No. 8749 (*Philippine Clean Air Act of 1999*) converted the Environmental Management Bureau from a staff bureau to a line bureau. Under Section 20, in conjunction with Section 41, Chapter 8, Book IV of the *Administrative Code of 1987*, the Director of a line bureau shall have supervision and control over all division and other units, including regional offices, under the bureau.

supervision and control over all division and other units, including regional offices, under the bureau.²¹ Verily, supervision and control include the power to “review, approve, reverse or modify acts and decisions of subordinate officials or units.”²² Accordingly, the petitioner should have appealed the EMB Regional Director’s decision to the EMB Director, who exercised supervision and control over the former.

It is relevant to mention that the DENR later promulgated Administrative Order No. 2003-30²³ in order to define where appeals should be taken, providing as follows:

Section 6. Appeal

Any party aggrieved by the final decision on the ECC/CNC applications may, within 15 days from receipt of such decision, file an appeal on the following grounds:

- a. Grave abuse of discretion on the part of the deciding authority, or
- b. Serious errors in the review findings.

The DENR may adopt alternative conflict/dispute resolution procedures as a means to settle grievances between proponents and aggrieved parties to avert unnecessary legal action. Frivolous appeals shall not be countenanced.

The proponent or any stakeholder may file an appeal to the following:

Deciding Authority	Where to file the appeal
EMB Regional Office Director	Office of the EMB Director
EMB Central Office Director	Office of the DENR Secretary
DENR Secretary	Office of the President

Moreover, the petitioner states in its pleadings that it had a pending appeal with the DENR Secretary. However, the records reveal that the subject of the appeal of the petitioner was an undated resolution of the DENR Regional Director, Region VII, denying its application for the CNC,²⁴ not the decision of RD Lipayon. Nonetheless, even assuming that the

²¹ Administrative Code of 1987, Book IV, Chapter 8, Sections 20 and 41.

²² Administrative Code of 1987, Book IV, Chapter 7, Section 38(1).

²³ It took effect on August 4, 2003.

²⁴ *Rollo*, pp. 42-43.

pending appeal with the DENR Secretary had related to RD Lipayon's decision, the petitioner should still have waited for the DENR Secretary to resolve the appeal in line with the principle of exhaustion of administrative remedies. Its failure to do so rendered its resort to mandamus in the RTC premature. The omission is fatal, because *mandamus* is a remedy only when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.²⁵

Another reason for denying due course to this review is that the petitioner did not establish that the grant of its application for the CNC was a purely ministerial in nature on the part of RD Lipayon. Hence, *mandamus* was not a proper remedy.

The CNC is a certification issued by the EMB certifying that a project is not covered by the Environmental Impact Statement System (EIS System) and that the project proponent is not required to secure an ECC.²⁶ The EIS System was established by Presidential Decree (P.D.) No. 1586 pursuant to Section 4 of P.D. No. 1151 (*Philippine Environmental Policy*) that required all entities to submit an EIS for projects that would have a significant effect on the environment, thus:

Section 4. *Environmental Impact Statements*. – Pursuant to the above enunciated policies and goals, all agencies and 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 detailed statement on–

- (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
- (c) alternative to the proposed action

²⁵ Section 3, Rule 65, *Rules of Court*.

²⁶ This definition is based on DENR Administrative Order No. 2003-30, Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System.

- (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.
- x x x x

P.D. No. 1586 exempted from the requirement of an EIS the projects and areas not declared by the President of the Philippines as environmentally critical,²⁷ 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 National 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.

On December 14, 1981, the President issued Proclamation No. 2146 declaring areas and types of projects as environmentally critical and within the scope of the EIS System, as follows:

A. Environmentally Critical Projects

I. Heavy Industries

- a. Non-ferrous metal industries
- b. Iron and steel mills
- c. Petroleum and petro-chemical industries including oil and gas
- d. Smelting plants

II. Resource Extractive Industries

- a. Major mining and quarrying projects
- b. Forestry projects
 - 1. Logging

²⁷ Section 4 of P.D. No. 1586 provides:

Section 4. *Presidential Proclamation of Environmentally Critical Areas and Projects.* - The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President may by his proclamation reorganized such government offices, agencies, institutions, corporations or instrumentalities including the realignment of government personnel, and their specific functions and responsibilities.

2. Major wood processing projects
3. Introduction of fauna (exotic-animals) in public/private forests
4. Forest occupancy
5. Extraction of mangrove products
6. Grazing
- c. Fishery Projects
 1. Dikes for fishpond development projects

III. Infrastructure Projects

- a. Major dams
- b. Major power plants (fossil-fueled, nuclear fueled, hydroelectric or geothermal)
- c. Major reclamation projects
- d. Major roads and bridges.

B. Environmentally Critical Areas

1. All areas declared by law as national parks, watershed reserves, wildlife preserves and sanctuaries;
2. Areas set aside as aesthetic potential tourist spots;
3. Areas which constitute the habitat for any endangered or threatened species of indigenous Philippine Wildlife (flora and fauna);
4. Areas of unique historic, archaeological, or scientific interests;
5. Areas which are traditionally occupied by cultural communities or tribes;
6. Areas frequently visited and/or hard-hit by natural calamities (geologic hazards, floods, typhoons, volcanic activity, etc.);
7. Areas with critical slopes;
8. Areas classified as prime agricultural lands;
9. Recharged areas of aquifers;
10. Water bodies characterized by one or any combination of the following conditions:
 - a. tapped for domestic purposes
 - b. within the controlled and/or protected areas declared by appropriate authorities
 - c. which support wildlife and fishery activities
11. Mangrove areas characterized by one or any combination of the following conditions:
 - a. with primary pristine and dense young growth;
 - b. adjoining mouth of major river systems;
 - c. near or adjacent to traditional productive fry or fishing grounds;
 - d. which act as natural buffers against shore erosion, strong winds and storm floods;
 - e. on which people are dependent for their livelihood.
12. Coral reef, characterized by one or any combination of the following conditions:
 - a. with 50% and above live coralline cover;
 - b. spawning and nursery grounds for fish;
 - c. which act as natural breakwater of coastlines.

Projects not included in the foregoing enumeration were considered non-critical to the environment and were entitled to the CNC.

The foregoing considerations indicate that the grant or denial of an application for ECC/CNC is not an act that is purely ministerial in nature, but one that involves the exercise of judgment and discretion by the EMB Director or Regional Director, who must determine whether the project or project area is classified as critical to the environment based on the documents to be submitted by the applicant.

The petitioner maintains that RD Lipayon already exercised his discretion in its case when he made his finding that the application substantially complied with the procedural requirements for review. As such, he was then obliged to issue the CNC once the petitioner had submitted the required certifications.

The petitioner errs on two grounds.

Firstly, RD Lipayon had not yet fully exercised his discretion with regard to the CNC application when he made his finding. It is clear that his finding referred to the “procedural requirements for review” only. He had still to decide on the substantive aspect of the application, *that is*, whether the project and the project area were considered critical to the environment. In fact, this was the reason why RD Lipayon required the petitioner to submit certifications from the various government agencies concerned. Surely, the required certifications were not mere formalities, because they would serve as the bases for his decision on whether to grant or deny the application.

Secondly, there is no sufficient showing that the petitioner satisfactorily complied with the requirement to submit the needed certifications. For one, it submitted no certification to the effect that the project site was not within a critical slope. Also, the PHIVOLCS’s certification showed that the project site had experienced an Intensity VII earthquake in 1990, a fact that sufficed to place the site in the category of

“areas frequently visited and/or hard-hit by natural calamities.” Clearly, the petitioner failed to establish that it had the legal right to be issued the CNC applied for, warranting the denial of its application.

It is not amiss for us to observe, therefore, that the petitioner grossly misunderstood the nature of the remedy of *mandamus*. To avoid similar misunderstanding of the remedy hereafter, a short exposition on the nature and office of the remedy is now appropriate.

The writ of *mandamus* is of very ancient and obscure origin. It is believed that the writ was originally part of the class of writs or mandates issued by the English sovereign to direct his subjects to perform a particular act or duty.²⁸ The earliest writs were in the form of *letters missive*, and were mere personal commands. The command was a law in itself, from which there was no appeal. The writ of *mandamus* was not only declaratory of a duty under an existing law, but was a law in itself that imposed the duty, the performance of which it commanded.²⁹ The King was considered as the fountain and source of justice, and when the law did not afford a remedy by the regular forms of proceedings, the prerogative powers of the sovereign were invoked in aid of the ordinary powers of the courts.³⁰

A judicial writ of *mandamus*, issued in the King’s name out of the court of King’s Bench that had a general supervisory power over all inferior jurisdictions and officers, gradually supplanted the old personal command of the sovereign.³¹ The court of King’s Bench, acting as the general guardian of public rights and in the exercise of its authority to grant the writ, rendered the writ of *mandamus* the suppletory means of substantial justice in every case where there was no other specific legal remedy for a legal right, and ensured that all official duties were fulfilled whenever the subject-matter

²⁸ High, *A Treatise On Extraordinary Legal Remedies*, Third Edition (1896), §2, p. 5.

²⁹ *In re Lauritsen*, 109 N.W. 404 (Minn. 1906).

³⁰ High, *op. cit.*, §3, p. 7.

³¹ *Id.*

was properly within its control.³² Early on, the writ of *mandamus* was particularly used to compel public authorities to return the petitioners to public offices from which they had been unlawfully removed.³³

Mandamus was, therefore, originally a purely prerogative writ emanating from the King himself, superintending the police and preserving the peace within the realm.³⁴ It was allowed only in cases affecting the sovereign, or the interest of the public at large.³⁵ The writ of *mandamus* grew out of the necessity to compel the inferior courts to exercise judicial and ministerial powers invested in them by restraining their excesses, preventing their negligence and restraining their denial of justice.³⁶

Over time, the writ of *mandamus* has been stripped of its highly prerogative features and has been assimilated to the nature of an ordinary remedy. Nonetheless, the writ has remained to be an extraordinary remedy in the sense that it is only issued in extraordinary cases and where the usual and ordinary modes of proceeding and forms of remedy are powerless to afford redress to a party aggrieved, and where without its aid there would be a failure of justice.³⁷

The writ of *mandamus* has also retained an important feature that sets it apart from the other remedial writs, *i.e.*, that it is used merely to compel action and to coerce the performance of a pre-existing duty.³⁸ In fact, a doctrine well-embedded in our jurisprudence is that *mandamus* will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same.³⁹ The petitioner bears the burden to show that there is

³² *Commonwealth ex rel. Thomas v. Commissioners of Allegheny County*, 32 Pa. 218 (1858).

³³ Antieau, *The Practice Of Extraordinary Remedies*, Vol. 1, 1987 Edition, §2.00, p. 291.

³⁴ *Abueva v. Wood*, 45 Phil. 612, 625 (1924).

³⁵ High, *op. cit.*, §3, pp. 6-7.

³⁶ Ferris, *et al.*, *The Law of Extraordinary Legal Remedies*, 1926 Edition, §187, p. 218.

³⁷ High, *op. cit.*, §4, p. 9.

³⁸ *Id.* §7, p. 11.

³⁹ *Manila International Airport Authority v. Rivera Village Lessee Homeowners Association Incorporated*, G.R. No. 143870, September 30, 2005, 471 SCRA 358, 375.

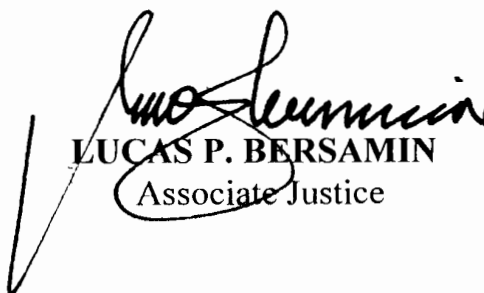
such a clear legal right to the performance of the act, and a corresponding compelling duty on the part of the respondent to perform the act.⁴⁰

A key principle to be observed in dealing with petitions for *mandamus* is that such extraordinary remedy lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary.⁴¹ A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when its discharge requires neither the exercise of official discretion or judgment.⁴²

The petitioner's disregard of the foregoing fundamental requisites for *mandamus* rendered its petition in the RTC untenable and devoid of merit.

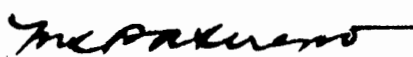
WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

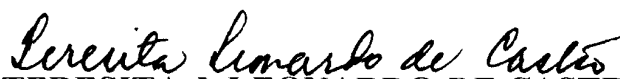


MARIA LOURDES P. A. SERENO
Chief Justice


⁴⁰ *Wightman-Cervantes v. Mueller*, 750 F. Supp. 2d 76, 81 (D.C.2010).

⁴¹ *High, op. cit.*, §24, pp. 31.

⁴² *Philippine Coconut Authority v. Primex Coco Products, Inc.*, G.R. No. 163088, July 20, 2006, 495 SCRA 763.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice