

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

**LEYTE METROPOLITAN WATER
DISTRICT and ENGINEER RANULFO
C. FELICIANO, General Manager,
Petitioners,**

- versus -

C.T.A. Case No. 6165

**HON. CORNELIO C. SISON, Undersecretary
DEPARTMENT OF FINANCE,
Respondent.**

Promulgated:

FEB 08 2002

Art. 10, Sec. 1, Art. 10, Sec. 1

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RESOLUTION

The crux of the controversy in the case at bar centers on the jurisdictional issue of whether or not herein Petitioner Leyte Metropolitan Water District is a government-owned and controlled corporation (GOCC) with original charter.

It is imperative for this Court to shed light on the matter in order to determine whether We have jurisdiction to take cognizance of the instant case. If the verdict on the issue is in the negative, then we can entertain Petitioner's appeal and proceed to receive Petitioner's evidence *ex parte*. (Respondent was already declared as in default in accordance with this Court's resolution dated August 7, 2001). However, if it is proven that the Petitioner is a GOCC, then Section 66, Chapter 14, Book IV of the Administrative Code of 1987 (Executive Order No. 292) accordingly applies, such that controversies between and among government offices and corporations shall be

administratively settled and adjudicated by the Solicitor General or by the Secretary of Justice, as the case maybe. Consequently, this court has no jurisdiction over the case.

In a resolution dated September 27, 2001, this Court ordered both parties to submit their respective memorandum containing their position on the instant issue.

As can be inferred from their memorandum, Petitioners' main argument revolves around the fact that Leyte Metropolitan Water District (LMWD) is considered a private corporation, performing public service and supplying public wants. According to Petitioners, LMWD was conceived because of the public clamor to solve the water problem prevailing in the province. Thus, through the consensus of their constituents, the Province's *Sangguniang Panlalawigan* passed Resolution No. 52 (dated February 19, 1975) and created the LMWD in accordance with PD 198. LMWD is actually an offshoot of Leyte Metropolitan Waterworks and Sewerage System (LMWSS). But because of problems in the present funding and personnel capabilities, LMWSS was replaced by LMWD, with the former transferring all its assets, liabilities and obligations to the newly formed LMWD. A unique feature of the LMWD is that it was formed and organized as an autonomous local water district free from political influence and independent of any local government. Thus, Petitioner firmly believes that LMWD is a private corporation performing public function.

In asseverating that LMWD is a private corporation, Petitioner mainly relied on the provisions of P.D. 198 (May 25, 1973), as amended, which is the general legislation, which authorizes the formation of the local water district. Section 6 of PD 198 provides, thus:

“**Section 6. Formation of District.** - This Act is the source of authorization and power to form and maintain a district. Once formed, a district is subject to the provisions of this act and not under the jurisdiction of any Political subdivision. x x x”

This provision was modified by Section 1 of PD 1479, which reads:

“Section 1. The first paragraph of Section 6 of Presidential Decree No. 198, as amended, is hereby amended to read as follows:

“**Section 6. Formation of District.** - This Act is the source of authorization and power to form and maintain a district. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, right and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act.”

In effect, Petitioner is assailing the decision of the Supreme Court in the *Davao City Water District vs Civil Service Commission, G.R. Nos 95237-38, September 13, 1991*, which declared that water districts are GOCCs with original charter. According to Petitioner, the said Supreme Court decision is contrary to the aforesaid provision of PD 1479 which expressly states that water districts shall be considered quasi-public corporations performing public service; as such, they shall exercise all the power, rights and privileges given to private corporations.

We are not convinced with the arguments of the Petitioner.

The issue at bar is not one of first impression. The Supreme Court, in the case of *Davao City Water District vs CSC (supra)* has already made a categorical pronouncement that local water districts are GOCCs with original charter, thus:

“Ascertained from a consideration of the whole statute, PD 198 is a special law applicable only to the different water districts created pursuant thereto. In all its essential terms, it is obvious that it pertains to a

special purpose which is intended to meet a particular set of conditions and circumstances. The fact that said decree generally applies to all water districts throughout the country does not change the fact that PD 198 is a special law. Accordingly, this Court's resolution in Metro Ilo-ilo case declaring PD 198 as a general legislation is hereby abandoned.

By “government-owned or controlled corporation with original charter”, we mean government owned or controlled corporation created by a special law and not under the Corporation Code of the Philippines. Thus, in the case of *Lumanta vs NLRC* (GR No. 82819, February 8, 1989, 170 SCRA 79,82). We held:

“The Court, in National Service Corporation vs NLRC, GR No.69870, 29 November 1988, quoting extensively from the deliberations of the 1986 Constitutional Commission in respect of the intent and meaning of the new phrase ‘with original charter’, in effect held that government-owned and controlled corporations with original charter refer to corporations chartered by special law as distinguished from corporations organized under our general incorporation statute- Corporation Code. x x x”

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No consideration may thus be given to petitioners' contention that the operative act, which created the water districts are the resolutions of the respective local sanggunians and that consequently, PD 198, as amended, cannot be considered as their charter.

It is to be noted that PD 198, as amended is the source of authorization and power to form and maintain a district.

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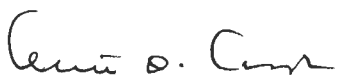
Moreover, it must be observed that PD 198, contains all the essential terms necessary to constitute a charter creating a juridical person. For example, Section 6 (a) provides for the name that will be used by the water district x x x. It also prescribes for the numbers and qualifications of the members of the Board of Directors, x x x the manner of their appointment and nominations, x x x their terms of office, x x x the manner of filling up vacancies, and the compensation and personal liability of the members of the Board of Directors x x x.

Noteworthy, the above quoted provisions of PD 198, as amended, are similar to those, which are actually contained in other corporate charters. The conclusion is inescapable that the said decree is in truth and in fact the charter of the different water districts for it clearly defines the latter's primary purpose and its basic organizational set up. In other words, PD 198, as amended, is the very law which gives a water district juridical personality. While it is true that a resolution of a local sanggunian is still necessary for the final creation of a district, this Court is of the opinion that said resolution cannot be considered as its charter, the same being intended only to implement the provisions of said decree. In passing a resolution forming a water district, the local sanggunian is entrusted with no authority or discretion to grant a charter for the creation of a private corporation. It is merely given the authority for the formation of a water district, on a local option basis, to be exercised under and in pursuance of PD 198." (*Underscoring supplied*)

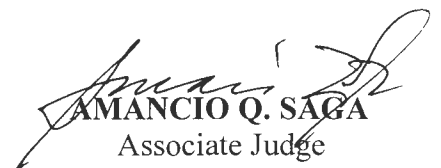
The wordings of the Supreme Court are clear. This Court does not intend to depart from the wisdom of the afore-quoted decision as it is in all fours applicable to the case at bar. Although Resolution No. 52 is the act which prompted the creation of the Leyte Metropolitan Water District, PD 198 is still the special law which will govern it.

WHEREFORE, in view of the foregoing, Petitioner Leyte Metropolitan Water District is hereby declared a government-owned and controlled corporation with original charter. Thus, this Court does not have jurisdiction to take cognizance of the instant case. This resolution is, however, without prejudice to the right of the Petitioner to refile this case, if he so desires, in the appropriate forum.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Judge


JUANITO C. CASTAÑEDA, JR.
Associate Judge


AMANCIO Q. SACA
Associate Judge