



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated September 7, 2022 which reads as follows:*

**“G.R. No. 208538 (*Amburayan Ancestral Land Owners Association v. Cordillera Hydro Electric Power Corporation*).** – This Petition for Review on *Certiorari* (petition) assails the Decision<sup>2</sup> dated 25 March 2013 and the Resolution<sup>3</sup> dated 10 July 2013 by the Court of Appeals (CA) in CA-G.R. SP No. 120871. The CA affirmed the Order<sup>4</sup> dated 20 April 2011 and Order<sup>5</sup> dated 29 July 2011 of the National Water Resources Board (NWRB) in Water Use Conflict Case No. 2011-016, which dismissed the Protest filed by petitioner Amburayan Ancestral Land Owners Association (AALOA).

**Antecedents**

This case stemmed from respondent Cordillera Hydro Electric Power Corporation’s (COHECO) Water Permit Application (WPA) No. CAR-BEN-2010-10-016 filed on 08 October 2010 before the NWRB. COHECO’s WPA is for the utilization of water from Amburayan River in Kapangan, Benguet, for its proposed run-of-hydroelectric power project. As stated in the WPA, the point of diversion of the project is located in *Barangay* Balakbak, Kapangan, Benguet.<sup>6</sup>

On 10 February 2011, AALOA filed a Protest/Opposition<sup>7</sup> (Protest) against COHECO’s WPA, docketed as Water Use Conflict Case (WUC)

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<sup>1</sup> *Rollo*, pp. 32-52

<sup>2</sup> *Id.* at 10-16. Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Vicente S.E. Veloso, and Nina G. Antonio-Valenzuela.

<sup>3</sup> *Id.* at 26-27. Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Vicente S.E. Veloso, and Nina G. Antonio-Valenzuela.

<sup>4</sup> *Id.* at 126-128. Penned by Executive Director Vicente S. Paragas, Career Executive Service Officer III.

<sup>5</sup> *Id.* at 129-130. Penned by Executive Director Vicente S. Paragas, Career Executive Service Officer III.

<sup>6</sup> *Id.* at 1477.

<sup>7</sup> *Id.* at 175-183.

Case No. 2011-016. AALOA alleged that it only learned on 03 February 2011 of the existence of the WPA, which covers the water of Amburayan River within the ancestral lands/domains of its members.<sup>8</sup>

AALOA alleged that it is composed of Indigenous Peoples/Indigenous Cultural Communities (IPs/ICCs) who own ancestral lands/domain within the territories of certain *barangays* in Kapangan, Benguet where Amburayan River is flowing.<sup>9</sup> It asserted that the grant of COHECO's WPA would deprive AALOA's members of their ownership rights over their ancestral lands/domains and natural resources therein, transgress their rights to decide priorities for development and protection of indigenous culture and traditions, and violate Section 59<sup>10</sup> of Republic Act No. (RA) 8371,<sup>11</sup> otherwise known as "The Indigenous Peoples' Rights Act of 1997,"<sup>12</sup> which requires a certification precondition that the area does not overlap with any ancestral domain.<sup>12</sup>

Likewise, AALOA maintained that COHECO's WPA will affect not only *Barangay* Balakbak, but *Barangays* Beleng-Belis, Boklaoan, Taba-ao, Cuba, Pudong, Sagubo, and Gadang (where AALOA's principal office is located),<sup>13</sup> as well. However, since COHECO only indicated *Barangay* Balakbak in its WPA, only the latter was notified of said WPA, to the exclusion of other *barangays* that will be deprived of the water sought to be diverted and will suffer the ill-effects of the underground tunnel.<sup>14</sup>

On 04 March 2011, COHECO filed its Answer with Motion to Dismiss<sup>15</sup> and argued that AALOA's Protest was filed out of time and should be dismissed outright. Contrary to the allegations of AALOA, and in compliance with the law, notices of COHECO's WPA were sent and posted by the (1) District Engineer of the Department of Public Works and Highways (DPWH); (2) Director of the Department of Environment and Natural Resources (DENR); (3) Provincial Officer of the National Irrigation

<sup>8</sup> Id. at 34.

<sup>9</sup> Id. at 33.

<sup>10</sup> Section 59 reads:

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.

<sup>11</sup> Entitled "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." Approved: 29 October 1997.

<sup>12</sup> *Rollo*, pp. 177-179.

<sup>13</sup> Id. at 361.

<sup>14</sup> Id. at 34.

<sup>15</sup> Id. at 241.

Administration (NIA); (4) *Barangay* Chairman of *Barangay* Balakbak, Kapangan, Benguet where the point of diversion of the WPA is located; and (5) Municipal Council Secretary of the Municipality of Kapangan.<sup>16</sup> Since the last day of posting of the notice was on 13 November 2010, the last day for filing a verified protest against COHECO's WPA was on 13 December 2010.<sup>17</sup>

Moreover, AALOA has no standing to represent IPs/ICCs because it is not registered as an Indigenous People's Organization (IPO) with the National Council on Indigenous Peoples (NCIP).<sup>18</sup> Further, COHECO conducted a road presentation and Consultative Community Assemblies on all affected *barangays* to provide them adequate information and address their concerns, in compliance with the Free and Prior Informed Consent (FPIC) Process under RA 8371.<sup>19</sup>

### **Ruling of the NWRB**

In its Order<sup>20</sup> dated 29 April 2011, the NWRB dismissed AALOA's Protest for lack of jurisdiction. The NWRB found that the proposed diversion point of COHECO's WPA is located at *Barangay* Balakbak, Kapangan, Benguet. It also confirmed that the posting of notices commenced on 08 November 2010, and the last day of such posting was on 07 December 2010. Thus, the period for filing a protest against COHECO's WPA expired on 06 January 2011. Consequently, AALAO's Protest filed on 10 February 2011 was filed out of time.<sup>21</sup>

Aggrieved, AALOA filed a Petition for Reconsideration<sup>22</sup> on the grounds of fraud and newly discovered evidence. AALOA allegedly found out that the actual location of the diversion point of COHECO's WPA was within *Barangay* Cuba, and not *Barangay* Balakbak. It argued that COHECO misrepresented the location of the diversion point in its WPA, which amounted to fraud.

After conducting hearing and receiving evidence on the foregoing, the NWRB, in its Order<sup>23</sup> dated 29 July 2011, denied AALOA's petition for reconsideration for lack of merit. The NWRB affirmed that the location of the diversion point of the proposed project of COHECO is within *Barangay* Balakbak, and not in *Barangay* Cuba.

Undeterred, AALOA filed a Petition for Review<sup>24</sup> under Rule 43 of the Rules of Court before the CA. AALOA argued, among others, that there was

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<sup>16</sup> Id. at 244.

<sup>17</sup> Id. at 247.

<sup>18</sup> Id. at 245.

<sup>19</sup> Id. at 248.

<sup>20</sup> Id. at 128.

<sup>21</sup> Id. at 127.

<sup>22</sup> Id. at 131.

<sup>23</sup> Id. at 130.

<sup>24</sup> Id. at 77.

no notice of posting at *Barangays* Cuba and Taba-ao, Kapangan, Benguet, where the weir and intake and the diversion point, respectively, of COHECO's WPA are located. Hence, the period to file a protest has not commenced. AALOA likewise argued that the WPA should have been referred to the NCIP for a certification that it does not overlap with an ancestral land/domain. Otherwise, it should undergo the FPIC process with the IPs/ICCs directly affected, pursuant to RA 8371.<sup>25</sup>

### **Ruling of the CA**

The CA affirmed the NWRB's Orders and dismissed AALOA's petition for review. The dispositive portion of the assailed Decision reads:

**WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit and the assailed Orders dated April 20, 2011 and July 29, 2011 rendered by the National Water Resource Board are hereby **AFFIRMED**.

**SO ORDERED.**<sup>26</sup>

The CA examined and found that the evidence on record sufficiently established that the point of diversion of COHECO's WPA is in *Barangay* Balakbak, making notice to *Barangays* Cuba and Taba-ao unnecessary.<sup>27</sup> Accordingly, the NWRB correctly rejected AALOA's Protest for being filed out of time.<sup>28</sup>

AALOA filed a Motion for Reconsideration, which was denied. Hence, this Petition.

### **Issues**

We are called to resolve the following issues: (1) whether the provision requiring the sending and posting of notices of a water permit application under Presidential Decree No. 1067,<sup>29</sup> otherwise known as "The Water Code of the Philippines" (Water Code), is deemed amended by the provision mandating the conduct of FIPC under RA 8371; (2) whether AALOA provided compelling reasons for the liberal application of the rule requiring the filing of protest within the prescribed period; and (3) whether the CA erred in dismissing AALOA's petition for review on procedural grounds.

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<sup>25</sup> Id. at 92-93.

<sup>26</sup> Id. at 21.

<sup>27</sup> Id. at 20.

<sup>28</sup> Id. at 21.

<sup>29</sup> Entitled "A DECREE INSTITUTING A WATER CODE, THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIATION, UTILIZATION, EXPLOITATION, DEVELOPMENT, CONSERVATION AND PROTECTION OF WATER RESOURCES." Approved: 31 October 1976.

### Ruling of the Court

The petition has no merit. Preliminarily, We shall first resolve the procedural issues raised by petitioner.

#### *Procedural grounds of the CA in dismissing AALOA's Rule 43 petition*

We note, at the outset, that the procedural defects cited by the CA in its decision only constituted as *additional* grounds for dismissal. Hence, the CA did not dismiss AALOA's petition based solely on procedural grounds.

The CA found the following procedural defects as additional grounds to dismiss AALOA's petition: (1) the assailed NWRB orders appended to the petition were not duplicate original or certified true copies; (2) the petition was bereft of the proper certification against forum shopping; (3) unsigned notarial acknowledgement of the verification and certificate of non-forum shopping was not attached; (4) there was no proper proof of service; and (5) lack of competent evidence of identity of Atty. Cruzaldo B. Bacduyan (Atty. Bacduyan) on the verification and certificate of non-forum-shopping.<sup>30</sup>

As to the *first* procedural ground, Rule 43, Section 6 of the Rules of Court requires that the petition for review must "be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers."

Supreme Court Administrative Circular No. 3-96<sup>31</sup> defines a certified true copy as that copy which is "duly authenticated by the authorized officers or representatives of the issuing entity."<sup>32</sup> The certification is "accomplished by the proper Clerk of Court or by his or her duly authorized representative or by the proper officer of the court, tribunal, board, commission, or office involved, or by his duly authorized representative. **Certification by the parties themselves, their counsel or any other person shall not be allowed.**"<sup>33</sup>

In this case, the NWRB's assailed orders attached to AALOA's Rule 43 petition did not comply with the foregoing as these were merely certified by AALOA's counsel. Neither can it be considered substantial compliance given that AALOA did not exert any effort, even if belated, to comply with the requirement.<sup>34</sup> Thus, the CA correctly considered the same as an additional ground to dismiss AALOA's petition.

<sup>30</sup> Id. at 23-24.

<sup>31</sup> Administrative Circular No. 3-96. "Clarification of the Provisions of Paragraph (3), Revised Circular No. 1-88 and Supplemental Rules Therefor." Approved: 17 April 1996.

<sup>32</sup> Id.; *Duremdes v. Jorilla*, G.R. No. 234491, 26 February 2020.

<sup>33</sup> Id.; Supreme Court Revised Circular No. 1-88, paragraph (3). Emphasis and underscoring supplied.

<sup>34</sup> Id.

As to the *second* procedural ground, the lack of certification against forum shopping, as a rule, is not curable. When the petitioner is a corporation, the certification is signed by a natural person, who must be duly authorized by a valid board resolution, which must be attached. A certification against forum shopping that is unaccompanied by proof of the signatory's authority to file a petition on behalf of the corporation is a sufficient ground to dismiss the petition.<sup>35</sup>

Anent the *third* procedural ground, the records show that the notarial certificate of the verification and certification against forum shopping does not contain the province or city where the notary public is commissioned and the office address of the notary public,<sup>36</sup> as required under Rule VIII, Section 2(c) of the 2004 Rules on Notarial Practice.<sup>37</sup> Hence, the notarial certificate is incomplete. Being deficient, the CA correctly found that the notarial acknowledgment of AALOA's certification against forum shopping is considered as unsigned.<sup>38</sup>

In this case, the certification against forum shopping attached to AALOA's petition was not accompanied by proof that Atty. Bacduyan, the signatory, was authorized to file the petition on behalf of AALOA.<sup>39</sup> The assertion that Atty. Bacduyan's authority is evidenced by the Secretary's Certificate attached to AALOA's Protest/Opposition as Annex "D" before the NWRB, does not comply with the requirement of attaching the proof of the signatory's authority. Moreover, the said Secretary's Certificate indicates that the authority given to Atty. Bacduyan was to represent AALOA and cause to be prepared and filed, on behalf of the association, a **verified protest** against COHECO's WPA **before the NWRB**.<sup>40</sup> This cannot be considered as proof of Atty. Bacduyan's authority to file the petition under Rule 43 before the CA. Consequently, the CA correctly held that AALOA's petition was bereft of proper certification against forum shopping.

We diverge from the findings of the CA as to *fourth* and *fifth* procedural grounds. The CA acknowledged that "there was an affidavit of service and registry of receipts were appended to the Petition."<sup>41</sup> Moreover, COHECO participated in the proceedings and filed its comment/opposition to AALOA's petition.<sup>42</sup> Thus, there was proper proof of service in this case.

<sup>35</sup> *Shipside Inc. v. Court of Appeals*, 404 Phil. 981 (2001).

<sup>36</sup> *Rollo*, p. 123.

<sup>37</sup> 2004 Rules on Notarial Practice, Rule VIII, Section 2:

"SEC. 2 *Contents of the Concluding Part of the Notarial Certificate*. – The notarial certificate shall include the following:

(a) x x x;

(b) x x x;

(c) the words "Notary Public" and **the province or city where the notary public is commissioned, the expiration date of the commission, the office address of the notary public; x x x**" (Emphasis supplied.)

<sup>38</sup> *Rollo*, p. 24; *See Spouses Bautista v. Silva*, 533 Phil. 627 (2006).

<sup>39</sup> *Id.* at 123.

<sup>40</sup> *Id.* at 235-236.

<sup>41</sup> *Id.* at 22.

<sup>42</sup> *Id.* at 48.

Likewise, We find that contrary to the ruling of the CA, AALOA's verification and certification against forum shopping indicates Atty. Bacduyan's IBP I.D., SSS I.D., and Community Tax Certificate as competent evidence of his identity.<sup>43</sup> There is thus no basis in the CA's finding that there was no competent evidence pertaining to the identity of Atty. Bacduyan.<sup>44</sup> Rule IV, Section 2(b)(2) of the 2004 Rules on Notarial Practice<sup>45</sup> does not absolutely require the presentation of competent evidence of identity to the notary public. It is necessary only when the signatory is not personally known to the notary. "When the signatory is personally known to the notary, the presentation of competent evidence of identity is a superfluity."<sup>46</sup>

Notwithstanding the error of the CA as regards the *fourth* and *fifth* procedural grounds, the same does not detract from the fact that the petition filed before it was fraught with infirmities warranting its dismissal.

Having threshed out the procedural matters, We now proceed to the merits of this case.

*RA 8371 did not modify the provisions on posting of notices of water permit application under the Water Code and its Implementing Rules and Regulations*

AALOA argues that the provisions on the conduct of FPIC under RA 8371 amended the provisions on posting of notice of a water permit application under the Water Code. It further contends that COHECO's WPA must be denied because COHECO failed to comply with the mandatory FPIC process prior to its application.

Meanwhile, COHECO stressed that this is a new issue that cannot be raised by AALOA for the first time on appeal. In the NWRB, AALOA argued that since notice of COHECO's WPA was not posted in *Barangays Gadang and Cuba*, the alleged location of the diversion points of the WPA, the period to file a protest has not commenced. In the CA, AALOA alleged that the diversion point is located in *Barangay Taba-ao*, where no notice was posted. Now, AALOA contends that the FPIC process under RA 8371 modified the provisions under the Water Code, such that notice of COHECO's WPA should have been posted in all affected *barangays*, and not just where the diversion point is located.

<sup>43</sup> Id. at 123.

<sup>44</sup> Id. at 24.

<sup>45</sup> "SEC. 2. *Prohibitions* – x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –

(1) x x x; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules." (Emphasis supplied.)

<sup>46</sup> *Cortal v. Inaki A. Larrazabal Enterprises*, 817 Phil. 464, 487 (2017).

It is a settled rule that a party may not change his or her theory of the case on appeal. Thus, “an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process.”<sup>47</sup> Nonetheless, the rule admits of an exception, *i.e.*, “when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory, [x x x] the Court may give due course to the petition and resolve the principal issues raised therein.”<sup>48</sup>

We find that the present case falls under the exception. The factual bases of the new issue do not require presentation of further evidence in order for COHECO to properly respond. In fact, COHECO has made its arguments against this in its Comment/Opposition.<sup>49</sup> Hence, we resolve the issue.

Article 16 of the Water Code mandates the NWRB to inform the public of any application for water permit filed before it. In addition, Section 9 of the Amended Implementing Rules and Regulations of the Water Code (IRR) requires the NWRB to send notices to concerned government agencies and barangay for posting, thus:

Section 9. *Processing, Posting and Sending of Notices of Applications/Petitions* – Upon receipt of an application or a petition, the Board shall process the same to determine completeness of the requirements prescribed in Section 5 hereof. Once completed, and upon payment of the filing fee, **notices of the application/petition shall be posted in a conspicuous place in the office of the Board for a period of thirty (30) days. The Board shall also send notices to the following offices for posting in conspicuous places for the same period:**

- a) **Barangay Chairman of the place where the point of diversion is located;**
- b) City or Municipal Secretary of the city or town where the point of diversion is located;
- c) The Secretary of the Sangguniang Panlalawigan of the province where the point of diversion is located;
- d) Department of Public Works and Highways (DPWH) District Engineer or National Irrigation Administration (NIA) Provincial Irrigation Officer as the case may be.

Copies of the notice of application shall, likewise, be furnished to concerned Regional Offices of the Department of Public Works and Highways, National Irrigation Administration, National Power Corporation, Department of Environment and Natural Resources, and Local Water District Office, if there is one and such other agencies as may be specified by the Board.<sup>50</sup>

<sup>47</sup> *Bote v. Veloso*, 700 Phil. 78, 86 (2012).

<sup>48</sup> *Canlas v. Tubil*, 616 Phil. 915, 923-924 (2009).

<sup>49</sup> *Rollo*, pp. 1484-1490.

<sup>50</sup> Emphasis supplied.

On the other hand, Section 59 of RA 8371 lays down the FPIC Process and Certification Precondition:

**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.<sup>51</sup>

In relation to the foregoing, the NCIP issued Administrative Order No. 3, Series of 2012, or The Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes of 2012 (FPIC Guidelines). Section 6 of the Guidelines provides that the application for Certification Precondition shall be endorsed by the appropriate regulatory agency or unit of government to the NCIP Regional Office that has jurisdiction over the area where the project or activity is sought to be undertaken.

The repealing clause of RA 8371 states that: “Presidential Decree No. 410, Executive Order Nos. 122-B and 122-C, and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.”<sup>52</sup>

This is a general repealing clause as to other laws and rules not expressly mentioned therein. Hence, its effect upon the provisions of the Water Code and/or its IRR, if any, can only be an implied repeal.<sup>53</sup> The failure to specifically mention the Water Code in the repealing clause of RA 8371 indicates that Congress did not intend to repeal the Water Code, “unless an irreconcilable inconsistency and repugnancy exist” in the provisions of RA 8371, the later law, and the Water Code, the earlier law.<sup>54</sup>

Implied repeal by irreconcilable inconsistency takes place when the following requisites are present: (1) the two statutes should cover the same subject matter; (2) they are clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and (3) they cannot be reconciled or harmonized and cannot be given effect, *i.e.*, one law cannot be

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<sup>51</sup> Emphasis supplied.

<sup>52</sup> Republic Act No. 8371, Section 83.

<sup>53</sup> *United Harbor Pilots' Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc.*, 440 Phil. 188, 199 (2002).

<sup>54</sup> *Mecano v. Commission on Audit*, 290-A Phil. 272 (1992).

enforced without nullifying the other.<sup>55</sup> None of these requisites are present in this case.

*First*, RA 8371 and the Water Code do not cover the same subject matter. RA 8371 covers the protection and promotion of the rights of IPs and ICCs, while the Water Code covers the State's regulation of the appropriation, control, and conservation of water resources.

*Second*, RA 8371 and the Water Code are not inconsistent or incompatible with each other, a fact conceded by AALOA when it admitted that the two laws do "not necessarily clash against each other."<sup>56</sup>

Section 59 of RA 8371 enjoins the NWRB from issuing any license without a Certification Precondition, which entails a separate process before the NCIP. This does not conflict with Article 16 of the Water Code and Section 9 of its IRR pertaining to the filing, processing, and sending notice of a water permit application for posting. While the NWRB cannot properly issue or grant a water permit application without the Certification Precondition, the NWRB is not precluded from accepting and processing a water permit application, which may proceed simultaneously with the FPIC process under RA 8371.

*Third*, the relevant provisions of RA 8371 and the Water Code and its IRR can be reconciled and both given effect. Section 6 of the FPIC Guidelines requires all applications for Certification Precondition to be endorsed by the concerned regulatory agency to the NCIP. Such endorsement serves as notice to the affected IPs/ICCs of any plan, project, or activity that may affect them or their ancestral domain, and to determine the necessity for conducting the FPIC process. Hence, even if the *barangays* of IPs/ICCs who may be affected by an activity or project are not given notice of a water permit application, they will be informed and their consent will be acquired, through the NCIP, if their ancestral domain will be affected or overlapped.

It is, therefore, clear that RA 8371 did not modify or repeal, even by implication, the provisions on the posting of notices under the Water Code and its IRR.

In the present case, it was not necessary for the affected *barangays* to be sent notice of COHECO's WPA for posting. The NCIP would have notified the IPs/ICCs in said *barangays* of said fact upon COHECO's application for Certification Precondition, as well as of the conduct of the FPIC process. In fact, COHECO has alleged, and the records show that COHECO is undergoing the FPIC process with the concerned IPs/ICCs to be affected by its project.<sup>57</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> *Rollo*, p. 40.

<sup>57</sup> *Id.* at 1490.

More importantly, there is no proof or any allegation that the NWRB has issued or granted COHECO's WPA without the Certification Precondition. Thus, we agree with COHECO that AALOA's contentions that COHECO failed to comply with the requirements under RA 8371 are premature.

Relatedly, there is no merit to AALOA's allegation that the FPIC process was not followed by COHECO *prior* to its WPA. The law does not require that the FPIC process be completed, or the Certification Precondition be issued prior to filing, accepting, and/or processing an application for water permit. The law only enjoins the NWRB from *issuing* or *granting* such application without the Certification Precondition.

*AALOA failed to provide compelling reasons for the liberal application of the rule requiring the filing of protests within the prescribed period*

Procedural rules are set to facilitate the orderly administration of justice and to ensure the enforcement of substantive rights. It is thus "a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants."<sup>58</sup>

Strict compliance with the rules is required, and exceptions to its strict application should only be for the most persuasive and compelling reasons.<sup>59</sup> Faithful compliance with and application of the rules is the general rule, while non-compliance, suspension, or even mere relaxation of its application is the exception.<sup>60</sup> A party can invoke liberal application of the rules only when such party is able to show justification for his or her failure to abide by the rules.<sup>61</sup> Such party must hurdle the heavy burden of proving that he or she deserves an exceptional treatment.<sup>62</sup>

In this case, AALOA failed to hurdle such burden or show justification for a liberal application or relaxation of the rules.

AALOA insists that COHECO "blatantly violated" Section 59 of RA 8371 "by attempting to obtain a permit over the Amburayan river without" complying with FPIC process.<sup>63</sup> However, as discussed, the law does not require that the FPIC process be completed or a Certification Precondition be issued *prior* to filing, accepting, or processing a water permit application.

<sup>58</sup> *Sebastian v. Morales*, 445 Phil. 595, 605 (2003).

<sup>59</sup> *See Novatenika Land Corporation v. Philippine National Bank*, 706 Phil. 414, 422-423 (2013).

<sup>60</sup> *Pilapil v. Heirs of Maximino R. Briones*, 543 Phil. 184 (2007); *Esguerra v. Holcim Philippines, Inc.*, 717 Phil. 77, 90 (2013).

<sup>61</sup> *Abrenica v. Law Firm of Abrenica, Tungol and Tibayan*, 534 Phil. 34 (2006).

<sup>62</sup> *Prieto v. Alpadi Development Corporation*, 715 Phil. 705, 719 (2013).

<sup>63</sup> *Rollo*, p. 46.

The law only enjoins the NWRB from issuing a permit or granting such application without a Certification Precondition.

The NWRB has not issued a water permit or granted COHECO's WPA without a Certification Precondition from the NCIP. Hence, there is yet no violation. Meanwhile, the records confirm that COHECO is currently complying with the FPIC process, and the NWRB has required COHECO to submit such certification before it could determine its WPA.<sup>64</sup>

AALOA likewise failed to show that it is entitled to be notified of COHECO's WPA. It is not among the government agencies under the Water Code IRR where notice of COHECO's WPA should be sent for posting.

Further, AALOA has not established its legal personality to represent the collective rights of its members as IPs/ICCs under RA 8371. On the other hand, COHECO was able to present evidence that AALOA has no such legal personality. In a Certification dated 07 March 2011, the NCIP stated that AALOA is "not one of those registered and hence not recognized" organization by NCIP.<sup>65</sup> AALOA failed to refute such certification or present controverting evidence even in this petition.

Lastly, it is worth noting that the CA and the NWRB did not simply disregard AALOA's allegations and dismiss its protest solely on technical grounds. The NWRB heard and received evidence relating to AALOA's allegations of fraud and newly discovered evidence. The CA re-examined the evidence on record before affirming the NWRB's orders, thus:

**An examination of respondent's documentary evidence** such as the municipal map of Kapangan, authenticated by Mayor Roberto Canuto, Certification issued by Barangay Captain Alex Mencio of Barangay Balakbak; and Certification issued by Barangay Captain Orlando Gorio of Barangay Cuba, **sufficiently established that the point of diversion was in Barangay Balakbak. Consequently, respondent was not obligated to send notices to the barangay of Cuba and Taba-ao.**

Given the conclusion that Barangay Balakbak was the point of diversion and that notice was sent to the Barangay Chairman thereat and posting of notices to the concerned government agencies were made for 30 days from November 8, 2010 to December 7, 2010, it follows that the 30-day period for petitioner to file its protest pursuant to Section 10 of IRR of PD 1067 commenced to run from December 7, 2010. Necessarily, petitioner had 30 days or until January 6, 2011 to file the Protest/Opposition. However, the record revealed that petitioner's Protest/Opposition dated February 9, 2011 was only filed on February 10, 2011 or beyond the 30-day period provided for in Section 10. Hence, the NWRB correctly rejected petitioner's Protest/Opposition.<sup>66</sup>

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<sup>64</sup> Id. at 1490.

<sup>65</sup> Id. at 1370.

<sup>66</sup> Id. at 20-21. Emphasis supplied.

When findings of fact of administrative agencies over matters under their jurisdiction are supported by substantial evidence, “[i]t is not the task of the appellate court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding sufficiency of evidence.”<sup>67</sup>

In this case, the factual findings of the NWRB are supported by substantial evidence. Thus, such findings are binding on the CA.<sup>68</sup> Consequently, since these have been affirmed by the CA, such findings shall be accorded full respect and finality by the Court.<sup>69</sup>

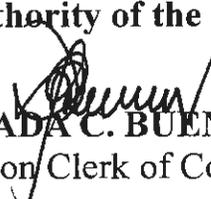
Considering that AALOA was not able to justify its failure to file its protest within the prescribed period, We find no cogent reason to disturb or deviate from the findings and rulings of the NWRB and the CA. The CA and the NWRB properly applied the procedural rules for the filing of protests against COHECO’s WPA.

**WHEREFORE**, We **DENY** the petition. The Decision dated 25 March 2013 and the Resolution dated 10 July 2013 of the Court of Appeals in CA-G.R. SP No. 120871 are **AFFIRMED**.

The petitioner’s submission of a soft copy in portable document format of its signed manifestation dated October 16, 2015 as required in the Resolution dated December 9, 2015 and reiterated in the Resolution dated September 14, 2016, is **DISPENSED WITH**.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *10/16*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**54-II**

OCT 14 2022

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(CA-G.R. SP No. 120871)

<sup>67</sup> *Hipolito, Jr. v. Cinco*, 677 Phil. 331, 349 (2011).

<sup>68</sup> RULES OF COURT, Rule 43, Section 10.

<sup>69</sup> *Hipolito, Jr. v. Cinco*, 677 Phil. 331, 350 (2011).

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