

## EN BANC

[ G.R. No. 230107, July 24, 2018 ]

**DEPARTMENT OF TRANSPORTATION (DOTR), MARITIME INDUSTRY AUTHORITY (MARINA), AND PHILIPPINE COAST GUARD (PCG), PETITIONERS, VS. PHILIPPINE PETROLEUM SEA TRANSPORT ASSOCIATION, HERMA SHIPPING TRANSPORT CORPORATION, ISLAS TANKERS SEATRANSPORT CORPORATION, MIS MARITIME CORPORATION, PETROLIFT, INC., GOLDEN ALBATROSS SHIPPING CORPORATION, VIA MARINE CORPORATION, AND CARGOMARINE CORPORATION, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### The Case

This case concerns the constitutionality of establishing the "Oil Pollution Management Fund," under Section 22(a) of Republic Act No. (RA) 9483 and Section 1, Rule of its Implementing Rules and Regulations (IRR), by imposing "ten centavos (10c) per liter for every delivery or transshipment of oil made by tanker barges and tanker haulers."

#### Antecedents

The value of the Philippine marine ecosystem cannot be overemphasized. The country is part of an important marine biosphere known as the "coral triangle" that includes Malaysia, Indonesia and Papua New Guinea. Marine scientists working in the area have referred to this ocean corridor as the *marine equivalent of the Amazon*.<sup>[1]</sup> At the center of it all is the Philippines "with the richest concentration of marine life on the entire planet."<sup>[2]</sup> Characterized by extensive coral reefs, sea-grass beds, and dense mangrove forests, Philippine waters indeed contain some of the world's most diverse ecosystems.<sup>[3]</sup>

In a report, it was explained that "[t]he full extent of the Philippines' marine biodiversity is not known, but the best information available reveals an astounding variety of marine life: 5,000 species of clams, snails and mollusks; 488 species of corals; 981 species of bottom-living algae, and thousands of other organisms. Five of the seven sea turtle species known to exist in the world today occur in Philippine waters."<sup>[4]</sup>

Repeated oils spills, however, have threatened this national treasure.

In December 2005, a power barge ran aground off the coast of Antique, dumping 364,000 liters of bunker oil. This oil spill severely polluted 40 kilometers of Antique's coastline and decimated more than 230 hectares of pristine mangrove forest. Rehabilitation costs have been estimated at USD million.<sup>[5]</sup>

A few months after the Antique incident, or on August 11, 2006, a Petron-chartered single hull vessel carrying 2.1 million liters of oil sank in the Guimaras Strait, causing the Philippines' worst oil spill.<sup>[6]</sup> Dubbed an "ecological time bomb," the sunken vessel leaked an estimated 100 to 200 liters of oil per hour, while roughly 320 kilometres of coastline was covered in thick sludge. Miles of coral reef and mangrove forests were laid to waste and more than 1,100 hectares of marine sanctuaries and reserves were badly damaged. And with all fishing activities put to a halt, around 40,000 people were affected.

The aftereffects of the Guimaras disaster were felt few days later on August 22, 2006, when sludge washed up on Panay, threatening rich fishing grounds.

The sunken ship was too deep for divers to reach and the Philippines, lacking heavy salvage equipment, appealed for international help to prevent the disaster from getting worse.<sup>[7]</sup> Help came from experts from the United States and Japan who helped assess the clean-up operations and suggested measures on how to stop the slick from spreading further to vast mangrove areas and fishing grounds.<sup>[8]</sup>

On August 23, 2006, the oil spill claimed its first human victim. Health officials said the man inhaled the fumes of the thick, tar-like substance outside his home on Guimaras island. Villagers reported that skin and breathing problems became commonplace. The government hired locals for the clean-up, paying them less than \$4 day to scoop up the sludge on the shores, with no protective gear and using their bare hands.<sup>[9]</sup>

Recognizing the gravity and extent of the Guimaras oil spill, the lack of proper response strategy, the absence of the necessary equipment for containing, cleaning up, and removing spilled oil, and the difficulty in pinning the liability on oil companies, Congress was prompted to pass law implementing the *International Convention on Civil Liability for Oil Pollution Damage* (1969 Civil Liability Convention) and the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (1992 Fund Convention).<sup>[10]</sup> The 1969 Civil Liability Convention was later amended by the 1992 Protocol (1992 Civil Liability Convention).<sup>[11]</sup>

The legislative measure began as Senate Bill No. (SB) 2600 sponsored by then Senator Pia S. Cayetano. With sixteen (16) senators voting in favor, SB 2600 was sent to the House of Representatives where it was adopted as an amendment to House Bill No. 4363. With the concurrence of both houses, the enrolled copy of the consolidated bill was sent to the Office of the President for signature.

On June 2, 2007, RA 9483, entitled "*An Act Providing For The Implementation of the Provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Providing Penalties for Violations thereof, and for Other Purposes*" or simply the "Oil Pollution Compensation Act of 2007," was signed into law. The provision relevant to this case, Section 22 of RA 9483, provides for the establishment of an "Oil Pollution Management Fund" (OPMF) and states as follows:

**SEC. 22. Oil Pollution Management Fund.** - An Oil Pollution Management Fund (OPMF) to be administered by the MARINA is hereby established. Said Fund shall be constituted from:

(a) Contributions of Owners and operators of tankers and barges hauling Oil and for petroleum products in Philippine waterways and coast wise shipping routes. During its first year of existence, the Fund shall be constituted by an impost of ten centavos (10c) per liter for every delivery or transshipment of Oil made by tanker barges and tanker haulers. For the succeeding fiscal years, the amount of contribution shall be jointly determined by Marina, other concerned government agencies, and representatives from the Owners of tankers barges, tankers haulers, and Ship hauling Oil and/or petroleum products. In determining the amount of contribution, the purposes for which the fund was set up shall always be considered; and

(b) Fines imposed pursuant to this Act, grants, donations, endowment from various sources, domestic or foreign, and amounts specifically appropriated for OPMF under the annual General Appropriations Act.

**The Fund shall be used to finance the following activities:**

**(a) Immediate containment, removal and clean-up operations of the PCG in all Oil pollution cases, whether covered by this Act or not; and**

**(b) Research, enforcement and monitoring activities of relevant agencies such as the PCG, MARINA and PPA, and other ports authority of the DOTC, Environmental Management Bureau of the DENR, and the DOE: *Provided, That ninety percent (90%) of the Fund shall be maintained annually for the activities set forth under item (a) of this paragraph: Provided, further, That any amounts specifically appropriated for said Fund under the General Appropriations Act shall be used exclusively for the activities set forth under item (a) of this paragraph.***

**In no case, however, shall the Fund be used for personal services expenditures except for the compensation of those involved in clean-up operations.**

*Provided, That amounts advanced to a responding entity or claimant shall be considered as advances in case of final adjudication/award by the RTC under Section 18 and shall be reimbursed to the Fund. (emphasis ours)*

Nine years later, or on April 12, 2016, the IRR of RA 9483 was promulgated, with Section 1, Rule thereof implementing the questioned Section 22 of RA 9483. It states:

#### **RULE FINAL PROVISIONS**

Section 1. **Oil Pollution Management Fund (OPMF)** - Administration of the OPMF shall be [the] responsibility of the Maritime Industry Authority.

1.1. Establishment of the OPMF The Maritime Industry Authority (MARINA) is hereby authorized to establish and open a trust fund account with any government

depository bank for OPMF - the OPMF shall be available for disbursement/payment of expenses immediately after any occurrence of any oil pollution case or incident.

- 1.2. Source/Composition of OPMF - OPMF shall be composed mainly from the following sources[:]
  - 1.2.1. Contribution of Owners and Operators of Tankers and barges hauling oil and/or petroleum products in Philippines (sic) waterways and coastwise shipping routes;
    - 1.2.1.1. During its first year of existence from the date of implementation of the Act(,) [t]he OPMF shall be constituted through an impost of levy of ten centavos (0.10) per liter for every delivery of transshipment of oil received by tanker barges or tanker hauler from an oil depot, refinery, or other storage facility for carriage to its point of destination regardless of any intervening or intermediate point for consolidation, de consolidation or change of means of transportation of such oil.
    - 1.2.1.2. An OPMF Committee shall be constituted to determine the amount of contribution for the succeeding years.
  - 1.2.2. Fines and Penalties under Section 1, Rule IX of this IRR and other fines and penalties that may be determined by the OPMF Committee;
  - 1.2.3. Grants, donations and endowment from various domestic and foreign sources; and
  - 1.2.4. Amounts appropriated under the Annual General Appropriations Act pursuant to Section 2, Rule of this IRR.
- 1.3. The OPMF Committee shall be constituted as follows:
  - Chairman - Administrator, MARINA
  - Vice Chairman - Commandant, PCG
  - Members: representative from the following:
    - DOTC
    - PPA
    - DOE
    - DENR-EMB
    - Tanker Association
    - (to be designated/appointed by the association members)
  - Secretariat - MARINA staff designated by the Administrator
- 1.4. The OPMF Committee shall perform the following Duties and Functions:
  - 1.4.1. Determine the contribution for the year based on the utilization of the OPMF;
  - 1.4.2. Conduct/undertake an annual review and evaluation to determine the need to increase/decrease the amount of contribution for the following year/period;
  - 1.4.3. Issue circulars to prescribe the rate/amount of contributions of Owners and Operators of Tankers and barges hauling oil and/or petroleum products in Philippines (sic) waterways and coastwise shipping routes for any particular period;
  - 1.4.4. Issue, in addition to the violations provided under Section 1, Rule of this IRR Circular prescribing fines and penalties for additional violations of (sic) relative to the implementation of this Act;
  - 1.4.5. Determine/approve amount for the initial and succeeding transfer of funds to the PCG, in accordance with National Oil Spill Contingency Plan;
  - 1.4.6. Determine/approve the conduct of research activities pursuant to Para. (sic) 1.4.1.2, of this Rule; and
  - 1.4.7. Approve the proposed annual budget for the enforcement and monitoring activities of concerned agencies/offices.
- 1.5. Utilization of the OPMF
  - 1.5.1. Transfer or funds/disbursement from OPMF shall be with prior approval of the OPMF Committee which will cover expenditures relative to the following:
    - 1.5.1.1. For the immediate containment, removal and clean-up operations of the PCG in all Oil Pollution cases the amount shall be in accordance with the Claims Manual.
    - 1.5.1.2. Research, enforcement and monitoring activities as approved by the OPMF Committee.
  - 1.5.2. Reimbursement of expenses incurred for immediate containment, removal and clean-up operations undertaken following an incident shall require approval from the OPMF Committee;
  - 1.5.3. Total expenses for immediate containment, removal and clean-up operations undertaken following an incident shall not exceed 90% of the funds available in the OPMF on the date of the incident;
  - 1.5.4. Amounts appropriated under the General Appropriations Act for the immediate containment, removal and clean-up operations undertaken following an incident.
  - 1.5.5. The fund shall not be used for payment of personal services expenditures, except for the compensation of those involved in clean-up operations

- undertaken following [an] incident.
- 1.5.6. Total expenses for research, enforcement and monitoring activities as approved by the OPMF Committee shall not exceed 10% of the total funds available in the OPMF for any given calendar year.
- 1.6. Procedures for the Collection and Deposit/Remittance of the OPMF:
  - 1.6.1. Owners and Operators of Tankers and barges hauling oil and/or petroleum products in the Philippines (sic) waterways and coastwise shipping routes shall pay their monthly contributions to the MARINA Central Office or to any of its Maritime Regional Offices (MROs) within the first days of the succeeding month;
  - 1.6.2. In the case of economic zone authorizes (sic) with special charters, MARINA shall put up collection desk in its premises, monthly contributions shall be paid to the MARINA collecting officer.
  - 1.6.3. Contribution shall be computed based on the rate prescribed by the OPMF Committee and the number of liters of oil delivered/transported as reflected/reported in the Monthly Voyage Report (MVR). The MVR shall be supported with copies of the bill of lading issued for the month;
  - 1.6.4. MARINA Collection/Accountable Officers shall deposit all collection received for the OPMF intact the following day to the OPMF Fund Account;
  - 1.6.5. MARINA Collecting Officers in the MROs and (sic) shall submit to the Central Office a Monthly Report of Collection and Deposits.
- 1.7. Transfer/Disbursement of Funds
  - 1.7.1. Immediately after receipt of report from PCG of any incident of oil spill/pollution, the MARINA shall transfer to the latter the amount covering the initial requirements for the containment and removal of the spill;
  - 1.7.2. The amount transfer (sic) shall be considered as Revolving fund by the PCG;
  - 1.7.3. The PCG shall request MARINA for the replenishment of the Revolving Fund when disbursement has reached at least 75% of the total amount;
  - 1.7.4. Disbursement or payment of expenses relative to the containment, removal and clean-up operations undertaken by other government agencies/offices or private companies shall be made by the PCG;
  - 1.7.5. Any unexpended portion of the cash advance shall be refunded to the OPMF.
- 1.8. Disbursement Procedures (10%):
  - 1.8.1. MARINA, PCG, PPA, and other government agencies/offices concerned shall submit annual plans and budget estimates covering enforcement/monitoring and research activities, pursuant to Section 1.4.1.2 to 1.4.1.4 of this Rule.
  - 1.8.2. Annual Plans and Budget estimates for research, enforcement and monitoring activities shall be submitted to the OPMF for deliberation and approval.
  - 1.8.3. Any new research proposal, in addition to the annual plan may be submitted to the OPMF Committee for deliberation/approval.
  - 1.8.4. Transfer of funds for research activities shall be as approved by the OPMF Committee.
- 1.9. Reimbursement to the OPMF:
  - 1.9.1. MARINA shall be provided copy of any decision/order issued by the RTC on the settlement of claims for compensation for pollution damages.
- 1.10. Audit of the OPMF
  - 1.10.1. The OPMF shall be subjected to the usual audit procedures by the Commission on Audit (COA).
- 1.11. Reporting
  - 1.11.1. The MARINA, as administrator of the OPMF, shall prepare the following quarterly reports and submit the same to the Secretary of the DOTC, the members of the OPMF Committee and other concerned government offices;
    - 1.11.1.1. Collection and Deposit
    - 1.11.1.2. Disbursement
    - 1.11.1.3. Status of Funds
  - 1.11.2. An audited report of disbursement shall be prepared and submitted by PCF to the MARINA within 90 days after the termination of the clean-up operations.
  - 1.11.3. MARINA shall submit financial reports as required by COA, Bureau of Treasury and Department of Budget (DBM) and Congress.

Respondents lost no time in assailing the law and the IRR. A month after the promulgation of the IRR, they filed a Petition for Declaratory Relief (with Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction) under Rule 63, contesting Section 22 (a) of RA 9483, as well as Section 1, Rule of its IRR. The petition was raffled off and heard by the Regional Trial Court, Branch 216, Quezon City (RTC).

There, they argued that the obligation to contribute to the OPMF solely imposed upon the owners and operators of oil/petroleum tankers and barges violates their right to equal protection of the law; that the ten-centavo (10c) impost is confiscatory and, thus, violates their right to due process; Section 22 (a) is a prohibited rider; and, finally, the provision provides an undue delegation of legislative power.<sup>[12]</sup>

In an Order<sup>[13]</sup> dated July 25, 2016, the RTC granted the prayer for issuance of a writ of preliminary injunction and enjoined the implementation of the assailed provision and IRR.<sup>[14]</sup>

### **RTC Decision**

On February 22, 2017, the RTC rendered the questioned Decision granting the petition for declaratory relief and ruling in favor of respondents.

The trial court held that there is no clear and valid reason as to why the oil/petroleum tankers and barges are being treated differently from other vessels. For the trial court, there is no substantial distinction between tankers and barges and these other vessels in terms of their potential to cause oil pollution or effect damage as a consequence thereof. The RTC agreed with respondents that to be valid, all potential marine pollutants should be required to contribute to the OPMF.<sup>[15]</sup>

With respect to the 10-centavo per liter imposition, the RTC agreed with respondents that the amount is confiscatory and that said amount will cripple, if not bankrupt, the respondents' businesses.<sup>[16]</sup>

As regards the allegation that Section 22 is a rider, the trial court agreed. It held that based on the title, it is clear that RA 9483 was enacted merely to implement the provisions of the 1992 Civil Liability and the 1992 Fund Conventions.<sup>[17]</sup> The trial court noted that these Conventions do not order the creation of an OPMF.<sup>[18]</sup>

Lastly, the RTC ruled that the law does not set specific parameters to guide the implementing agencies on how to determine the amount of contribution for the succeeding years after the first year of existence where the 10-centavo amount applies.<sup>[19]</sup>

We quote the decretal portion of the assailed Decision:

WHEREFORE, the Petition is hereby granted. The court renders judgment as follows:

- 1) The Injunction enjoining the respondents from implementing Assailed Provision (Section 22, paragraph (a) of Republic Act No. 9483), and Assailed IRR (Section 1, Rule of the Implementing Rules and Regulations of Republic Act No. 9438) is made permanent; and
- 2) Section 22, paragraph (a) of Republic Act No. 9483, and Section 1, Rule of the Implementing Rules and Regulations of Republic Act No. 9483 are declared unconstitutional.

SO ORDERED.<sup>[20]</sup>

Aggrieved, petitioners are now with this Court *via* the present petition for review on *certiorari* assailing the February 22, 2017 Decision of the RTC. Petitioners argue that the RTC erred in declaring Section 22(a) of RA 9483 and its implementing rule unconstitutional, given that respondents' petition for declaratory relief questioned the wisdom behind them and was, thus, beyond the lower court's jurisdiction. Petitioners further add that the classification in Section 22 of RA 9483 and its IRR is reasonable and just, and does not violate the equal protection clause. Likewise, petitioners maintain that public interest in protecting the marine wealth of the country warrants the imposition of the 10-centavo impost. Finally, the petitioners insist that the creation of the OPMF is relevant to the subject matter of RA 9483.<sup>[21]</sup>

In its July 3, 2017 Resolution, the Court required the respondents to file their Comment within non-extendible period of ten days<sup>[22]</sup> from receipt of the resolution. On September 2, 2017, respondents filed their Comment on the Petition,<sup>[23]</sup> mainly reiterating their contentions before the trial court.<sup>[24]</sup>

### **The Issue**

The core issue to be resolved in this case is whether Section 22 (a) of RA 9483 and Section 1, Rule of its IRR are unconstitutional.

### **The Court's Ruling**

The petition is impressed with merit.

#### ***The Creation of the OPMF can be the subject of judicial inquiry***

We agree with respondents that the issue presented is a justiciable question which allows the exercise by this