

THIRD DIVISION

**HILARION M. HENARES, JR.,
VICTOR C. AGUSTIN,
ALFREDO L. HENARES,
DANIEL L. HENARES,
ENRIQUE BELO HENARES,
and CRISTINA BELO
HENARES,**

Petitioners,

G.R. No. 158290

Present:

QUISUMBING, *J.*, Chairperson,
CARPIO,
CARPIO MORALES,
TINGA, and
VELASCO, JR., *JJ.*

- versus -

**LAND TRANSPORTATION
FRANCHISING AND
REGULATORY BOARD and
DEPARTMENT OF
TRANSPORTATION AND
COMMUNICATIONS,**

Respondents.

Promulgated:

October 23, 2006

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RESOLUTION

QUISUMBING, *J.*:

Petitioners challenge this Court to issue a writ of mandamus commanding respondents Land Transportation Franchising and Regulatory Board (LTFRB) and the Department of Transportation and Communications (DOTC) to require public utility vehicles (PUVs) to use compressed natural gas (CNG) as alternative fuel.

Citing statistics from the Metro Manila Transportation and Traffic Situation Study of 1996,^[1] the Environmental Management Bureau (EMB) of the National Capital Region,^[2] a study of the Asian Development Bank,^[3] the Manila Observatory^[4] and the Department of Environment and Natural Resources^[5] (DENR) on the high growth and low turnover in vehicle ownership in the Philippines, including

diesel-powered vehicles, two-stroke engine powered motorcycles and their concomitant emission of air pollutants, petitioners attempt to present a compelling case for judicial action against the bane of air pollution and related environmental hazards.

Petitioners allege that the particulate matters (PM) – complex mixtures of dust, dirt, smoke, and liquid droplets, varying in sizes and compositions emitted into the air from various engine combustions – have caused detrimental effects on health, productivity, infrastructure and the overall quality of life. Petitioners particularly cite the effects of certain fuel emissions from engine combustion when these react to other pollutants. For instance, petitioners aver, with hydrocarbons, oxide of nitrogen (NO_x) creates smog; with sulfur dioxide, it creates acid rain; and with ammonia, moisture and other compounds, it reacts to form nitric acid and harmful nitrates. Fuel emissions also cause retardation and leaf bleaching in plants. According to petitioner, another emission, carbon monoxide (CO), when not completely burned but emitted into the atmosphere and then inhaled can disrupt the necessary oxygen in blood. With prolonged exposure, CO affects the nervous system and can be lethal to people with weak hearts. ^[6]

Petitioners add that although much of the new power generated in the country will use natural gas while a number of oil and coal-fired fuel stations are being phased-out, still with the projected doubling of power generation over the next 10 years, and with the continuing high demand for motor vehicles, the energy and transport sectors are likely to remain the major sources of harmful emissions. Petitioners refer us to the study of the Philippine Environment Monitor 2002^[7], stating that in four of the country's major cities, Metro Manila, Davao, Cebu and Baguio, the exposure to PM₁₀, a finer PM which can penetrate deep into the lungs causing serious health problems, is estimated at over US\$430 million.^[8] The study also reports that the emissions of PMs have caused the following:

- Over 2,000 people die prematurely. This loss is valued at about US\$140 million.
- Over 9,000 people suffer from chronic bronchitis, which is valued at about US\$120 million.
- Nearly 51 million cases of respiratory symptom days in Metro Manila (averaging twice a year in Davao and Cebu, and five to six times in Metro

Manila and Baguio), costs about US\$170 million. This is a 70 percent increase, over a decade, when compared with the findings of a similar study done in 1992 for Metro Manila, which reported 33 million cases. ^[9]

Petitioners likewise cite the University of the Philippines' studies in 1990-91 and 1994 showing that vehicular emissions in Metro Manila have resulted to the prevalence of chronic obstructive pulmonary diseases (COPD); that pulmonary tuberculosis is highest among jeepney drivers; and there is a 4.8 to 27.5 percent prevalence of respiratory symptoms among school children and 15.8 to 40.6 percent among child vendors. The studies also revealed that the children in Metro Manila showed more compromised pulmonary function than their rural counterparts. Petitioners infer that these are mostly due to the emissions of PUVs.

To counter the aforementioned detrimental effects of emissions from PUVs, petitioners propose the use of CNG. According to petitioners, CNG is a natural gas comprised mostly of methane which although containing small amounts of propane and butane, ^[10] is colorless and odorless and considered the cleanest fossil fuel because it produces much less pollutants than coal and petroleum; produces up to 90 percent less CO compared to gasoline and diesel fuel; reduces NO_x emissions by 50 percent and cuts hydrocarbon emissions by half; emits 60 percent less PMs; and releases virtually no sulfur dioxide. Although, according to petitioners, the only drawback of CNG is that it produces more methane, one of the gases blamed for global warming. ^[11]

Asserting their right to clean air, petitioners contend that the bases for their petition for a writ of mandamus to order the LTFRB to require PUVs to use CNG as an alternative fuel, lie in Section 16, ^[12] Article II of the 1987 Constitution, our ruling in *Oposa v. Factoran, Jr.*, ^[13] and Section 4 ^[14] of Republic Act No. 8749 otherwise known as the "Philippine Clean Air Act of 1999."

Meantime, following a subsequent motion, the Court granted petitioners' motion to implead the Department of Transportation and Communications (DOTC) as additional respondent.

In his Comment for respondents LTFRB and DOTC, the Solicitor General, cites Section 3, Rule 65 of the Revised Rules of Court and explains that the writ of mandamus is not the correct remedy since the writ may be issued only to command a tribunal, corporation, board or person to do an act that is required to be done, when he or it unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, there being no other plain, speedy and adequate remedy in the ordinary course of law.^[15] Further citing existing jurisprudence, the Solicitor General explains that in contrast to a discretionary act, a ministerial act, which a mandamus is, is one in which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done.

The Solicitor General also notes that nothing in Rep. Act No. 8749 that petitioners invoke, prohibits the use of gasoline and diesel by owners of motor vehicles. Sadly too, according to the Solicitor General, Rep. Act No. 8749 does not even mention the existence of CNG as alternative fuel and avers that unless this law is amended to provide CNG as alternative fuel for PUVs, the respondents cannot propose that PUVs use CNG as alternative fuel.

The Solicitor General also adds that it is the DENR that is tasked to implement Rep. Act No. 8749 and not the LTFRB nor the DOTC. Moreover, he says, it is the Department of Energy (DOE), under Section 26^[16] of Rep. Act No. 8749, that is required to set the specifications for all types of fuel and fuel-related products to improve fuel compositions for improved efficiency and reduced emissions. He adds that under Section 21^[17] of the cited Republic Act, the DOTC is limited to implementing the emission standards for motor vehicles, and the herein respondents cannot alter, change or modify the emission standards. The Solicitor General opines that the Court should declare the instant petition for mandamus without merit.

Petitioners, in their Reply, insist that the respondents possess the administrative and regulatory powers to implement measures in accordance with the policies and

principles mandated by Rep. Act No. 8749, specifically Section 2^[18] and Section 21.^[19]

Petitioners state that under these laws and with all the available information provided by the DOE on the benefits of CNG, respondents cannot ignore the existence of CNG, and their failure to recognize CNG and compel its use by PUVs as alternative fuel while air pollution brought about by the emissions of gasoline and diesel endanger the environment and the people, is tantamount to neglect in the performance of a duty which the law enjoins.

Lastly, petitioners aver that other than the writ applied for, they have no other plain, speedy and adequate remedy in the ordinary course of law. Petitioners insist that the writ in fact should be issued pursuant to the very same Section 3, Rule 65 of the Revised Rules of Court that the Solicitor General invokes.

In their Memorandum, petitioners phrase the issues before us as follows:

- I. WHETHER OR NOT THE PETITIONERS HAVE THE PERSONALITY TO BRING THE PRESENT ACTION
- II. WHETHER OR NOT THE PRESENT ACTION IS SUPPORTED BY LAW
- III. WHETHER OR NOT THE RESPONDENT IS THE AGENCY RESPONSIBLE TO IMPLEMENT THE SUGGESTED ALTERNATIVE OF REQUIRING PUBLIC UTILITY VEHICLES TO USE COMPRESSED NATURAL GAS (CNG)
- IV. WHETHER OR NOT THE RESPONDENT CAN BE COMPELLED TO REQUIRE PUBLIC UTILITY VEHICLES TO USE COMPRESSED NATURAL GAS THROUGH A WRIT OF MANDAMUS^[20]

Briefly put, the issues are two-fold. First, Do petitioners have legal personality to bring this petition before us? Second, Should mandamus issue against respondents to compel PUVs to use CNG as alternative fuel?

According to petitioners, Section 16,^[21] Article II of the 1987 Constitution is the policy statement that bestows on the people the right to breathe clean air in a healthy environment. This policy is enunciated in *Oposa*.^[22] The implementation of this policy is articulated in Rep. Act No. 8749. These, according to petitioners, are the bases for their standing to file the instant petition. They aver that when there is an omission by the

government to safeguard a right, in this case their right to clean air, then, the citizens can resort to and exhaust all remedies to challenge this omission by the government. This, they say, is embodied in Section 4^[23] of Rep. Act No. 8749.

Petitioners insist that since it is the LTFRB and the DOTC that are the government agencies clothed with power to regulate and control motor vehicles, particularly PUVs, and with the same agencies' awareness and knowledge that the PUVs emit dangerous levels of air pollutants, then, the responsibility to see that these are curbed falls under respondents' functions and a writ of mandamus should issue against them.

The Solicitor General, for his part, reiterates his position that the respondent government agencies, the DOTC and the LTFRB, are not in a position to compel the PUVs to use CNG as alternative fuel. The Solicitor General explains that the function of the DOTC is limited to implementing the emission standards set forth in Rep. Act No. 8749 and the said law only goes as far as setting the maximum limit for the emission of vehicles, but it does not recognize CNG as alternative engine fuel. The Solicitor General avers that the petition should be addressed to Congress for it to come up with a policy that would compel the use of CNG as alternative fuel.

Patently, this Court is being asked to resolve issues that are not only procedural. Petitioners challenge this Court to decide if what petitioners propose could be done through a less circuitous, speedy and unchartered course in an issue that Chief Justice Hilario G. Davide, Jr. in his *ponencia* in the *Oposa* case,^[24] describes as "inter-generational responsibility" and "inter-generational justice."

Now, as to petitioners' standing. There is no dispute that petitioners have standing to bring their case before this Court. Even respondents do not question their standing. This petition focuses on one fundamental legal right of petitioners, their right to clean air. Moreover, as held previously, a party's standing before this Court is a procedural technicality which may, in the exercise of the Court's discretion, be set aside in view of the importance of the issue raised. We brush aside this issue of technicality under the principle of the transcendental importance to the public, especially so if these cases demand that they be settled promptly.

Undeniably, the right to clean air not only is an issue of paramount importance to petitioners for it concerns the air they breathe, but it is also impressed with public interest. The consequences of the counter-productive and retrogressive effects of a neglected environment due to emissions of motor vehicles immeasurably affect the well-being of petitioners. On these considerations, the legal standing of the petitioners deserves recognition.

Our next concern is whether the writ of mandamus is the proper remedy, and if the writ could issue against respondents.

Under Section 3, Rule 65 of the Rules of Court, mandamus lies under any of the following cases: (1) against any tribunal which unlawfully neglects the performance of an act which the law specifically enjoins as a duty; (2) in case any corporation, board or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust, or station; and (3) in case any tribunal, corporation, board or person unlawfully excludes another from the use and enjoyment of a right or office to which such other is legally entitled; and there is no other plain, speedy, and adequate remedy in the ordinary course of law.

In *University of San Agustin, Inc. v. Court of Appeals*, ^[25] we said,

...It is settled that mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its main objective. It does not lie to require anyone to fulfill contractual obligations or to compel a course of conduct, nor to control or review the exercise of discretion. On the part of the petitioner, it is essential to the issuance of a writ of mandamus that he should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. It never issues in doubtful cases. While it may not be necessary that the duty be absolutely expressed, it must however, be clear. The writ will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed. (Emphasis supplied.)

In this petition the legal right which is sought to be recognized and enforced hinges on a constitutional and a statutory policy already articulated in operational terms, *e.g.* in Rep. Act No. 8749, the Philippine Clean Air Act of 1999. Paragraph (a), Section 21 of the Act specifically provides that when PUVs are concerned, the

responsibility of implementing the policy falls on respondent DOTC. It provides as follows:

SEC 21. *Pollution from Motor Vehicles.* - a) **The DOTC** shall implement the emission standards for motor vehicles set pursuant to and as provided in this Act. To further improve the emission standards, the Department [DENR] shall review, revise and publish the standards every two (2) years, or as the need arises. It shall consider the maximum limits for all major pollutants to ensure substantial improvement in air quality for the health, safety and welfare of the general public.

Paragraph (b) states:

b) The Department [DENR] in collaboration with the **DOTC**, DTI and LGUs, shall **develop an action plan for the control and management of air pollution from motor vehicles** consistent with the Integrated Air Quality Framework . . . (Emphasis supplied.)

There is no dispute that under the Clean Air Act it is the DENR that is tasked to set the emission standards for fuel use and the task of developing an action plan. As far as motor vehicles are concerned, it devolves upon the DOTC and the line agency whose mandate is to oversee that motor vehicles prepare an action plan and implement the emission standards for motor vehicles, namely the LTFRB.

In *Oposa* ^[26] we said, the right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment. We also said, it is clearly the duty of the responsible government agencies to advance the said right.

Petitioners invoke the provisions of the Constitution and the Clean Air Act in their prayer for issuance of a writ of mandamus commanding the respondents to require PUVs to use CNG as an alternative fuel. Although both are general mandates that do not specifically enjoin the use of any kind of fuel, particularly the use of CNG, there is an executive order implementing a program on the use of CNG by public vehicles. Executive Order No. 290, entitled *Implementing the Natural Gas Vehicle Program for Public Transport (NGVPPT)*, took effect on February 24, 2004. The program recognized, among others, natural gas as a clean burning alternative fuel for vehicle which has the potential to produce substantially lower pollutants; and the Malampaya Gas-to-Power Project as representing the beginning of the natural gas industry of the Philippines. Paragraph 1.2, Section 1 of E.O. No. 290 cites as one of its objectives, the

use of CNG as a clean alternative fuel for transport. Furthermore, one of the components of the program is the development of CNG refueling stations and all related facilities in strategic locations in the country to serve the needs of CNG-powered PUVs. Section 3 of E.O. No. 290, consistent with E.O. No. 66, series of 2002, designated the DOE as the lead agency (a) in developing the natural gas industry of the country with the DENR, through the EMB and (b) in formulating emission standards for CNG. Most significantly, par. 4.5, Section 4 tasks the DOTC, working with the DOE, to develop an implementation plan for “a gradual shift to CNG fuel utilization in PUVs and promote NGVs [natural gas vehicles] in Metro Manila and Luzon through the issuance of directives/orders providing preferential franchises in present day major routes and exclusive franchises to NGVs in newly opened routes...” A thorough reading of the executive order assures us that implementation for a cleaner environment is being addressed. To a certain extent, the instant petition had been mooted by the issuance of E.O. No. 290.

Regrettably, however, the plain, speedy and adequate remedy herein sought by petitioners, *i.e.*, a writ of mandamus commanding the respondents to require PUVs to use CNG, is unavailing. Mandamus is available only to compel the doing of an act specifically enjoined by law as a duty. Here, there is no law that mandates the respondents LTFRB and the DOTC to order owners of motor vehicles to use CNG. At most the LTFRB has been tasked by E.O. No. 290 in par. 4.5 (ii), Section 4 “to grant preferential and exclusive Certificates of Public Convenience (CPC) or franchises to operators of NGVs based on the results of the DOTC surveys.”

Further, mandamus will not generally lie from one branch of government to a coordinate branch, for the obvious reason that neither is inferior to the other.^[27] The need for future changes in both legislation and its implementation cannot be preempted by orders from this Court, especially when what is prayed for is procedurally infirm. Besides, comity with and courtesy to a coequal branch dictate that we give sufficient time and leeway for the coequal branches to address by themselves the environmental problems raised in this petition.

In the same manner that we have associated the fundamental right to a balanced and healthful ecology with the twin concepts of “inter-generational responsibility” and “inter-

generational justice” in *Oposa*,^[28] where we upheld the right of future Filipinos to prevent the destruction of the rainforests, so do we recognize, in this petition, the right of petitioners and the future generation to clean air. In *Oposa* we said that if the right to a balanced and healthful ecology is now explicitly found in the Constitution even if the right is “assumed to exist from the inception of humankind,... it is because of the well-founded fear of its framers [of the Constitution] that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come. .^[29]

It is the firm belief of this Court that in this case, it is timely to reaffirm the premium we have placed on the protection of the environment in the landmark case of *Oposa*. Yet, as serious as the statistics are on air pollution, with the present fuels deemed toxic as they are to the environment, as fatal as these pollutants are to the health of the citizens, and urgently requiring resort to drastic measures to reduce air pollutants emitted by motor vehicles, we must admit in particular that petitioners are unable to pinpoint the law that imposes an indubitable legal duty on respondents that will justify a grant of the writ of mandamus compelling the use of CNG for public utility vehicles. It appears to us that more properly, the legislature should provide first the specific statutory remedy to the complex environmental problems bared by herein petitioners before any judicial recourse by mandamus is taken.

WHEREFORE, the petition for the issuance of a writ of mandamus is **DISMISSED** for lack of merit.

SO ORDERED.

LEONARDO A. QUISUMBING
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO

Associate Justice

CONCHITA CARPIO MORALES

Associate Justice

DANTE O. TINGA

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LEONARDO A. QUISUMBING

Associate Justice

Chairperson

C E R T I F I C A T I O N

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

ARTEMIO V. PANGANIBAN
Chief Justice

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- [1] *Rollo*, p. 4.
- [2] *Id.* at 6.
- [3] *Id.*
- [4] *Id.*
- [5] *Id.* at 7.
- [6] *Id.* at 5, 7-8.
- [7] *Id.* at 9.
- [8] *Id.* at 10.
- [9] *Id.* at 9-10.
- [10] *Id.* at 11, citing *Alternative Fuels: A Key to Reducing Air Pollution*. The Environmental Education and Information Division Environmental Management Bureau-DENR.
- [11] *Id.* at 11-12, citing Bacallan, J.J. *Alternative Fuels for Vehicles*. Business and Environment. First Quarter 2003. Volume 8, No. 1, page 12.
- [12] *Section 16*. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.
- [13] G.R. No. 101083, July 30, 1993, 224 SCRA 792.
- [14] SEC. 4. *Recognition of Rights*. – Pursuant to the above-declared principles, the following rights of citizens are hereby sought to be recognized and the State shall seek to guarantee their enjoyment:
- a) The right to breathe clean air;
 - b) The right to utilize and enjoy all natural resources according to the principle of sustainable development;
 - c) The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process;
 - d) The right to participate in the decision-making process concerning development policies, plans and programs, projects or activities that may have adverse impact on the environment and public health;
 - e) The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances;
 - f) The right of access to public records which a citizen may need to exercise his or her rights effectively under this Act;
 - g) The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and cleanup of affected area, and to seek the imposition of penal sanctions against violators of environmental laws; and
 - h) The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity.

[15] *Rollo*, p. 64.

[16] SEC. 26. *Fuels and Additives*.- Pursuant to the Air Quality Framework to be established under Section 7 of this Act, the Department of Energy (DOE), co-chaired by the Department of Environment and Natural Resources (DENR), in consultation with the Bureau of Product Standards (BPS) of the DTI, the DOST, the representatives of the fuel and

automotive industries, academe and the consumers shall set the specifications for all types of fuel and fuel-related products, to improve fuel composition for increased efficiency and reduced emissions: . . .

[17] SEC. 21. *Pollution from Motor Vehicles*. - a) The DOTC shall implement the emission standards for motor vehicles set pursuant to and as provided in this Act. To further improve the emission standards, the Department [DENR] shall review, revise and publish the standards every two (2) years, or as the need arises. It shall consider the maximum limits for all major pollutants to ensure substantial improvement in air quality for the health, safety and welfare of the general public.

[18] SEC. 2. *Declaration of Principles*. - . . .

Finally, the State recognizes that a clean and healthy environment is for the good of all and should therefore be the concern of all.

[19] SEC. 21. *Pollution from Motor Vehicles*. - a) The DOTC shall implement the emission standards for motor vehicles set pursuant to and as provided in this Act....

[20] *Rollo*, pp. 93-94.

[21] *Supra* note 12.

[22] *Oposa v. Factoran, Jr.*, *supra* note 13.

[23] *Supra* note 14.

[24] *Oposa v. Factoran, Jr.*, *supra* note 13.

[25] G.R. No. 100588, March 7, 1994, 230 SCRA 761, 771-772.

[26] *Oposa v. Factoran, Jr.*, *supra* note 13 at 805, 808.

[27] *Dwikarna v. Domingo*, G.R. No. 153454, July 7, 2004, 433 SCRA 748, 754.

[28] *Oposa v. Factoran, Jr.*, *supra* note 13 at 803.

[29] *Id.* at 805.