

EN BANC

**G.R. No. 238467 – MARK ANTHONY V. ZABAL, THITING ESTOSO JACOSALEM, and ODON S. BANDIOLA., *Petitioners*, v. RODRIGO R. DUTERTE, President of the Republic of the Philippines, SALVADOR C. MEDIALDEA, Executive Secretary, and EDUARDO M. AÑO, Officer-in-Charge of the Department of Interior and Local Government, *Respondents*.**

Promulgated:

February 12, 2019

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**SEPARATE CONCURRING OPINION**

**CARPIO, J.:**

This case involves the constitutionality of Proclamation No. 475,<sup>1</sup> declaring a state of calamity in Barangays Balabag, Manoc-Manoc and Yapak in 1,032-hectare Boracay Island and ordering the temporary closure of the island as a tourist destination for six months, starting 26 April 2018 until 25 October 2018.

I vote to dismiss the petition.

Proclamation No. 475 was issued because of the environmental degradation and destruction of the ecological balance of Boracay Island, which was aggravated by the continuing rise of tourist arrivals.<sup>2</sup> Under Section 4<sup>3</sup> of Presidential Decree No. 1586,<sup>4</sup> the President may declare

<sup>1</sup> DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION.

<sup>2</sup> The WHEREAS clauses of Proclamation No. 475 cites the result of the evaluation and investigation of the Inter-Agency Task Force composed of the DENR, DILG, and DOT, which revealed, among others, (1) high concentration of fecal coliform in some of the beaches in Boracay; (2) insufficient sewer and waste management system resulting in improper disposal of waste products, including discharge of waste water near the shores; (3) 937 illegal structures constructed on forestlands and wetlands, as well as 102 illegal structures on areas classified as easements.

<sup>3</sup> Section 4. *Presidential Proclamation of Environmentally Critical Areas and Projects.* – The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

For the same purpose as above, the Ministry of Human Settlements shall: (a) prepare the proper land or water use pattern for said critical project(s) or area(s); (b) establish ambient environmental quality standards; (c) develop a program of environmental enhancement or protective measures against calamitous factors such as earthquake, floods, water erosion and others, and (d) perform such other functions as may be directed by the President from time to time.

<sup>4</sup> ESTABLISHING AN ENVIRONMENTAL IMPACT STATEMENT SYSTEM INCLUDING

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certain areas in the country as environmentally critical. To pave the way for the rehabilitation of Boracay Island and prevent further degradation of its rich ecosystem, the proclamation ordered the temporary closure of the island as a tourist destination for six months,<sup>5</sup> during which period the government would undertake massive road, drainage, and sewerage construction, as well as require all establishments to comply with the Clean Water Act, Clean Air Act, Code on Sanitation of the Philippines, Ecological Solid Waste Management Act of 2000, and other relevant laws. **However, local residents of Boracay Island were not prohibited from entering or leaving the island during the rehabilitation period as the prohibition applied only to travelers and tourists.**

The rehabilitation of Boracay Island resulted in the closure of almost all of the hotels because of non-compliance with the Clean Water Act, Clean Air Act, National Building Code of the Philippines, Code on Sanitation of the Philippines, Ecological Solid Waste Management Act of 2000, and the Environmental Compliance Certificate requirement.<sup>6</sup> The Department of Tourism suspended the accreditation of hotels and resorts in Boracay Island for six months to stop the disposal of wastewater into the seas.<sup>7</sup> Some establishments have also built illegal structures on Boracay's wetlands and forestlands which had to be dismantled.<sup>8</sup> Furthermore, some companies were operating without Environmental Compliance Certificate (ECC), in violation of Presidential Decree No. 1586 which established the Environmental Impact Statement System.<sup>9</sup>

Swimming in the waters of Boracay Island was generally not allowed during the six-month rehabilitation period.<sup>10</sup> The illegal discharge of untreated wastewater into the sea and the insufficient sewerage system caused the high concentration of fecal coliform in some of the beaches in

OTHER ENVIRONMENTAL MANAGEMENT RELATED MEASURES AND FOR OTHER PURPOSES.

<sup>5</sup> <https://news.abs-cbn.com/specials/the-boracay-project> (visited 9 November 2018); <https://news.abs-cbn.com/news/05/10/18/duterte-creates-boracay-inter-agency-rehab-task-force> (visited 9 November 2018); <http://www.officialgazette.gov.ph/downloads/2018/05may/20180508-EO-53-RRD-2.pdf> (visited 9 November 2018).

<sup>6</sup> "The Environmental Management Bureau (EMB)-6 has issued 478 notices of violations to establishments in Boracay Island for violating environmental laws." <https://pia.gov.ph/news/articles/1010563> (visited 12 November 2018); <http://visayas.politics.com.ph/ang-dami-nga-denr-issues-478-violation-notices-to-boracay-businesses/> (visited 12 November 2018); <https://businessmirror.com.ph/new-denr-list-reveals-more-boracay-businesses-violated-environment-laws/> (visited 12 November 2018).

<sup>7</sup> <https://news.abs-cbn.com/news/02/26/18/tourism-dept-to-suspend-accreditation-of-non-compliant-boracay-hotels> (visited 9 November 2018).

<sup>8</sup> <http://cnnphilippines.com/news/2018/03/02/senate-boracay-probe.html> (visited 9 November 2018).

<sup>9</sup> <https://businessmirror.com.ph/new-denr-list-reveals-more-boracay-businesses-violated-environment-laws/> (visited 12 November 2018).

<sup>10</sup> <https://www.rappler.com/nation/200719-no-total-swimming-fishing-ban-boracay-residents> (visited 16 November 2018).

Boracay Island.<sup>11</sup> The extremely high level of coliform bacteria which reached 47,460 mpn (most probable number) per 100 ml.<sup>12</sup> of water sample was alarming considering that the safe level for swimming and other activities is just 1,000 mpn/100ml. of water sample.<sup>13</sup> Thus, the ban on swimming imposed by the government was justified and necessary considering the high coliform level in the waters of Boracay Island, which was clearly unsafe for swimming and posed serious health and sanitation hazards.<sup>14</sup>

Many roads were closed for rehabilitation, widening, and construction, including the main road network which is the primary access to many establishments in the island.<sup>15</sup> Not only were the roads widened, sewage pipes were also laid to prevent sewage from flowing into the beach waters, and drainage pipes were installed to prevent clogged waterways which caused flooding before the closure.<sup>16</sup> As such, traveling around Boracay Island was severely restricted even for the local residents. Under

<sup>11</sup> <https://www.bworldonline.com/denr-to-fast-track-approvals-for-boracay-sewage-treatment-plants/> (visited 12 November 2018); <https://businessmirror.com.ph/water-from-boracay-hidden-pipes-found-positive-for-coliform-bacteria/> (visited 12 November 2018).

<sup>12</sup> <https://newsinfo.inquirer.net/979944/environmental-issues-have-been-hounding-boracay-for-20-years> (visited 16 November 2018).  
<https://www.philstar.com/headlines/2015/02/21/1426419/government-raises-concern-over-high-bacteria-levels-boracay-water> (visited 16 November 2018).

<sup>13</sup> Section 6.2.1 of the Implementing Rules and Regulations of Chapter VIII - "Public Swimming or Bathing Places" of the Code on Sanitation of the Philippines states:

6.2 *Natural Bathing Places*

6.2.1 The quality of water for natural bodies of water used for swimming, bathing, or other contact recreation purposes shall be within the standard set by the Department of Environment and Natural Resources.

a. *Inland Waters.* – For inland water, total coliform shall not exceed 1,000 MPN per 100 ml of water sample, fecal coliform shall not exceed 200 MPN per 100 ml of water sample, and a pH range of 6.5-8.5.

b. *Marine and Estuarine Waters.* – For marine water, total coliform shall not exceed 1,000 MPN per 100 ml of water sample, fecal coliform shall not exceed 200 MPN per 100 ml of water sample, and a pH range of 6.0-8.5.

<sup>14</sup> Section 5.2.1 of the Implementing Rules and Regulations of Chapter VIII - "Public Swimming or Bathing Places" of the Code on Sanitation of the Philippines states:

5.2 *Safety Precautions at Public Natural Bathing Places*

5.2.1 No public bathing place shall be maintained on a natural body of water that has been determined and declared by the Department of Health or the local health office to be unsafe for bathing or may pose to be a menace to health of the bathers.

<sup>15</sup> <https://businessmirror.com.ph/dpwh-fast-tracks-completion-of-boracay-islands-road-infrastructure/> (visited 9 November 2018); <https://www.rappler.com/nation/210011-photo-boracay-to-open-war-zone-like-roads> (visited 12 November 2018).

<sup>16</sup> <https://news.mb.com.ph/2018/09/25/dpwh-speeds-up-completion-of-boracay-main-road/> (visited 12 November 2018); <https://news.abs-cbn.com/focus/multimedia/slideshow/08/16/18/this-is-how-boracay-looks-like-then-and-now> (visited 12 November 2018).

Section 1 of Commonwealth Act No. 548,<sup>17</sup> “[national] roads may be temporarily closed to any or all classes of traffic by the Director of Public Works or his duly authorized representative whenever the condition of the road or the traffic thereon makes such action necessary or advisable in the public interest, or for a specified period, with the approval of the Secretary of Public Works and Communications.”

The rehabilitation of Boracay Island as a consequence of Proclamation No. 475, declaring a state of calamity in Boracay Island, resulted in: (1) the closure of majority of the hotels and other business establishments for non-compliance with environmental laws; (2) the closure of many roads for repair, widening, and installation of drainage pipes; and (3) the ban on swimming in the beaches of Boracay Island due to the unsafe level of coliform bacteria.

Given such a situation in Boracay Island, the invocation on behalf of non-residents of Boracay Island of the right to travel, which includes the right to move freely within the country,<sup>18</sup> is misplaced. First, the valid closure of roads severely restricted movement around the island. Second, the closure of hotels and establishments pending investigation and accreditation left tourists and non-locals with no accommodations. Third, the valid ban on swimming in Boracay beaches for sanitary and health considerations made unavailable the main tourist attraction of Boracay Island.

Clearly, the condition of Boracay Island during the six-month rehabilitation period justified the prohibition on travelers and tourists from entering Boracay Island because of the physical impediment to traveling around the island resulting from the massive road, sewerage and drainage construction, the lack of accommodations, and the ban on swimming and other water recreational activities. Thus, Proclamation No. 475 is a valid exercise of various existing laws, that is, Presidential Decree No. 1586, Commonwealth Act No. 548, Clean Water Act of 2004 (Republic Act No. 9275), Clean Air Act of 1999 (Republic Act No. 8749), National Building Code of the Philippines (Republic Act No. 6541), Ecological Solid Waste Management Act of 2000 (Republic Act No. 9003), and the Code on Sanitation of the Philippines (Presidential Decree No. 856). These are laws pursuant to the police power of the state. There is no claim that these laws are unconstitutional. The President, in the exercise of his control over the Executive branch of government,<sup>19</sup> can directly exercise the functions of

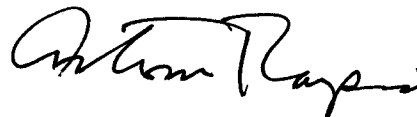
<sup>17</sup> AN ACT TO REGULATE AND CONTROL THE USE AND TRAFFIC ON NATIONAL ROADS AS WELL AS CONSTRUCTIONS ALONG THE SAME, PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF.

<sup>18</sup> *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, 8 August 2017, 835 SCRA 350, citing *Marcos v. Manglapus*, 258 Phil. 479, 497-498 (1989).

<sup>19</sup> Section 17, Article VII, 1987 Constitution.

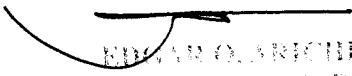
subordinate officials tasked to implement these laws.

Accordingly, I vote to **DISMISS** the petition.



**ANTONIO T. CARPIO**  
Associate Justice

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EDGAR O. ARICHETA  
Clerk of Court En Banc  
Supreme Court