

REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA

FORMER SPECIAL THIRTEENTH (13th) DIVISION

GREENPEACE SOUTHEAST ASIA
(PHILIPPINES), MAGSASAKA AT
SIYENTIPIKO SA PAGPAPAUNLAD
NG AGRIKULTURA (MASIPAG), REP.
TEODORO CASIÑO, DR. BEN
MALAYANG III, DR. ANGELINA
GALANG, MR. LEONARDO AVILA III,
MS. CATHERINE UNTALAN, ATTY.
MARIA PAZ LUNA, MR. JUANITO
MODINA, MR. DAGOHY MAGAWAY,
DR. ROMEO QUIJANO, DR. WENCY
KIAT, ATTY. H. HARRY ROQUE, JR.,
FORMER SENATOR ORLANDO
MERCADO, NOEL CABANGON,
MAYOR EDWARD HAGEDORN and
EDWIN MARTHINE LOPEZ,
Petitioners,

CA-G.R. SP No. 00013

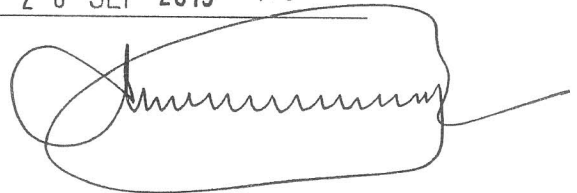
Members:
DICDICAN, *Chairperson*,
GARCIA-FERNANDEZ, and
ANTONIO-VALENZUELA, *JJ.*

- versus -

ENVIRONMENTAL MANAGEMENT
BUREAU OF THE DEPARTMENT OF
ENVIRONMENT AND NATURAL
RESOURCES, BUREAU OF PLANT
INDUSTRY AND THE FERTILIZER
AND PESTICIDE AUTHORITY OF
THE DEPARTMENT OF
AGRICULTURE, UP LOS BAÑOS
FOUNDATION, INC., UP MINDANAO
FOUNDATION, INC.,
INTERNATIONAL SERVICE FOR
THE ACQUISITION OF AGRI-
BIOTECH APPLICATIONS-
SOUTHEAST ASIA CENTER
Respondents.

Promulgated:

20 SEP 2013 9:30



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RESOLUTION

DICDICAN, J.:

This treats of the motions for reconsideration that were filed by herein respondents seeking for a reconsideration of the May 17, 2013 Decision¹ that was rendered by this Court in the instant case.

In their Motion for Reconsideration,² public respondents Bureau of Plant Industry (“public respondent BPI”), Environmental Management Bureau (“public respondent EMB”) and Fertilizer and Pesticide Authority (“public respondent FPA”) contended that this Court erred in granting the instant petition in that the petitioners failed to prove the requirements for the issuance of a writ of kalikasan and a writ of continuing mandamus. According to them, the *bt talong* was still in the field trial stage which was conducted in a controlled and isolated environment and that the statement that the same would be introduced for human consumption is misleading. They claimed that, should the result of the *bt talong* field trials prove to be adverse, then, they would not release the said results to the environment.

Moreover, the public respondents maintained that this Court's directive to “protect, preserve, rehabilitate and restore” the environment was vague and unambiguous, pointing out that there was nothing damaged or adversely affected in the first place. Further, they asseverated that the sufficiency of biosafety protocols in the conduct of field trials and the adequacy and effectiveness of the existing regulations, are all political questions and policy issues which are best left to the legislative and executive department of the government.

In its separate Motion for Reconsideration³, private respondent International Service for the Acquisition of Agri-Biotech Applications, Inc. (“private respondent ISAAA”) questioned the ruling of this Court in that it purportedly disregarded Executive Order No. 514 (National Biosafety Framework of the Philippines) and Department

¹ *Rollo, Volume V, pages 3823-3847.*

² *Ibid, pages 3860-3888.*

³ *Ibid, pages 3893-3948..*

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Administrative Order No. 08-2002 of the Department of Agriculture in stating that there are no laws which govern the study, introduction and use of genetically-modified organisms in the Philippines. Moreover, it added that this Court may not rule as regards the wisdom or adequacy of the rules and regulations which govern genetically-modified organisms as these are all political questions which should instead be resolved by the legislative and executive departments of the government. It likewise stressed that this Court should not have relied on the testimony of Dr. Ben Malayang whose educational background relates to the field of philosophy and who could not be considered as an expert in biological or environmental sciences.

Further, private respondent ISAAA echoed the submission of the public respondents that the petitioners failed to prove that they were entitled to the issuance of a writ of *kalikasan*, emphasizing that the precautionary principle finds no application in the instant case. Furthermore, it asseverated that the record was bereft of evidence that the herein respondents committed unlawful acts in violation of the people's right to a balanced and healthful ecology. On the contrary, private respondent ISAAA countered that they complied with all the environmental laws, rules and regulations in connection with the conduct of the *bt talong* field trials.

Lastly, private respondent ISAAA maintained that this Court erred in issuing a writ of *mandamus* insofar as it is concerned. Being a private entity, private respondent ISAAA argued that it does not hold any public office and that it is not enjoined by law to perform any duty arising from any office, trust or station.

For its part, the respondent University of the Philippines Los Baños⁴ ("private respondent UPLB") contended that the assailed decision of this Court dated May 17, 2013 is contrary to law as it violated its constitutional right to academic freedom. According to the respondent UPLB, the *bt talong* field trial was an academic research undertaking and a purely academic activity. As the proponent and the lead institution of the aforesaid project, the respondent UPLB insisted

⁴ *Ibid*, pages 3949-3960.

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that the conduct of the *bt talong* field trials would enable it to achieve and advance its aims and purpose as stated in its charter or the law which created it.

Moreover, the respondent UPLB claimed that the assailed decision was contrary to evidence on record, pointing out that the *bt talong* is not yet intended to be introduced into the ecosystem or to the Philippine market for human consumption. Further, it added that the precautionary principle is not yet relevant or applicable at this stage of experimentation and research of the aforementioned genetically-modified organism.

The respondent University of the Philippines Los Baños Foundation, Inc. (respondent UPLBFI), in its Motion for Reconsideration,⁵ merely adopted the allegations that were set forth in the motion for reconsideration that was filed by the herein public respondents.

In its Consolidated Comment /Opposition⁶ to the respondents' separate motions for reconsideration, herein petitioners countered that private respondent UPLB's claim of academic freedom was misplaced. They averred that the fact that the respondent UPLB applied for biosafety permits for the conduct of *bt talong* field trials is a recognition that its study and research was beyond the auspices and confines of the said academic institution. In line with this, the petitioners also reiterated that the respondent UPLB applied for the multi-location field trials without any authority from the board of directors of the said institution in violation of its charter.

Moreover, the petitioners reiterated its earlier stance that there was no free, prior and informed consent from the local government units where the *bt talong* field trials were conducted in violation of the Local Government Code of 1991. Further, the petitioners maintained that the issuance of a writ of kalikasan was proper given the serious safety concerns and adverse environmental impacts which the *bt talong* field trials may bring as evidenced by the testimonies of the

⁵ *Ibid*, pages 3961-3963..

⁶ *Ibid*, pages 3971-4005..

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expert witnesses who were presented by both parties during the hearings that were conducted by this Court.

Anent the claim by the respondents that the precautionary principle finds no relevance in the instant case, the petitioners argued that the standards for the application of the aforementioned principle had been met in this case. The petitioners insisted that no less than the administrative and executive orders which were relied upon by the respondents in the instant petition recognize the threat of genetically-modified organisms to human life and health.

In their Reply,⁷ to the petitioners' consolidated comment/opposition, the public respondents maintained that public consultations were held prior to the holding of the *bt talong* field trials. They contended that they never deprived the petitioners of access to information regarding the aforesaid trials, including access to the application documents and certifications in relation thereto. The public respondents pointed out that the field trials were unanimously endorsed by the UPLB Biosafety Committee which is composed of four (4) members of the academe and two (2) community representatives. Thus, the inclusion of community representatives reveals that there was community participation in the decision-making of whether or not to approve the *bt talong* field trials.

Moreover, the public respondents stated that the approval of affected local government units was not required for the conduct of the *bt talong* field trials. In fact, they noted that the biosafety permits for the said trials were issued following their compliance of DA AO No. 08 and, in the absence of clear and convincing proof, it is presumed that official duty had been regularly performed when the aforesaid biosafety permits were issued in favor of UPLB.

In its own reply, private respondent ISAAA reiterated its earlier stance that, contrary to the claim of the petitioners, there were existing laws which govern the study, introduction and use of genetically-modified organisms in the country. Moreover, it asserted that the *bt talong* field trials are not covered by the Philippine

⁷ *Ibid*, pages

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Environmental Impact Statement System (PEISS) which only covers environmentally critical projects and undertakings. Thus, there was no need for the proponents of the *bt talong* field trials to secure an environment impact statement and environmental compliance certificate under the Philippine Fisheries Code of 1998.

Likewise, private respondent ISAAA belied the claim of the petitioners that *bt talong* is a pesticide in that it is not a substance or product whose primary purpose is to control, prevent, destroy, repel or mitigate any pest. Instead, it insisted that *bt talong* is an edible plant which is meant for human consumption. Private respondent ISAAA also stressed that, contrary to the petitioners' claim, the precautionary principle finds no application in the instant case. According to private respondent ISAAA, the petitioners failed to show that the conduct of the *bt talong* field trials may lead to threats of serious and irreversible damage to the environment. Moreover, it contended that the petitioners failed to show that there was lack of full scientific certainty in establishing a causal link between the field trials and threats to human life or health and prejudice to the environment.

To our mind, the respondent UPLB could not find solace on Section 5 (1) of Article XIV of the 1987 Philippine Constitution and the University of the Philippines Charter in asserting its right to academic freedom. True, the institutional academic freedom includes the right of a school or college to decide and adopt its aims and objectives and to determine how these objections can best be attained, free from outside coercion or interference. However, like any other right, the right to academic freedom ends when the overriding public welfare calls for some restraint.⁸ The right to academic freedom does not, in any way, give the respondent UPLB unbridled freedom to conduct experimentation, studies and research that may put to risk the health of the people and the environment which are equally protected under our fundamental law.

Besides, the writ of kalikasan originally issued in this case by the Supreme Court did not stop research on *bt talong* but only the

⁸ *Mercado, et al. v. AMA Computer College, G.R. No. 183572, April 13, 2010.*

particular procedure adopted in doing field trials and only at this time when there is yet no law in the form of a Congressional enactment for ensuring its safety and levels of acceptable risks when introduced into the free environment. Implicit in the writ is the Court's confidence on the creative ability of science that it can devise safer tests other than field trials. To reiterate it, the writ stops field trials of *bt talong* as a procedure but it does not stop *bt talong* research, and so, it is not an assault on academic freedom.

As regards the other issues that were raised by the movants-respondents, a perusal of the arguments of the said respondents in support of their respective motions for reconsideration would show that there is no compelling reason that would warrant a reversal or modification of this Court's May 17, 2013 decision. The motions have not raised any substantial ground or reason that would call for the upturning of the findings of this Court. It is not true that the requirements for the issuance of a writ of kalikasan and a writ of continuing mandamus have not been met in the case at bench. The fact is that such requirements have actually been met.

There is no gainsaying the fact that the conduct by the respondent UPLB of field trials of *bt talong* in certain places of this country has violated or tends to violate the right of the Filipino people to "a balanced and healthful ecology in accord with the rhythm and harmony of nature" as enshrined in Section 16 of Article II of the 1987 Constitution of the Republic of the Philippines. By way of academic discussion, it would be well to reiterate what has been stated by us in our decision that the right of the Filipino people to a "**balanced and healthful ecology**" is actually a **compound right**. It is a **conjunct** of two rights, namely, (1) the right to a **balanced** ecology and (2) the right to a **healthful** ecology. The right to a **balanced ecology** is the right to live in an ecosystem that function naturally and where human-nature relationships occur within the bounds of processes like natural selection and evolution - an ecosystem where feed and feeder relations and predator and prey populations are at a balance where none is unnaturally disadvantaged or eliminated. On the other hand, the right to a **healthful ecology** is the right to not suffer acute or chronic harm resulting from alterations of natural ecological

dynamics. **“Acute harm”** is immediate harm (*e.g.* dying or getting sick immediately following a harmful event). **“Chronic harm”** is harm built up over time (*e.g.* accumulation of toxins that harm health only after their concentrations reach certain levels). **Both of the aforementioned conjunct rights must be affirmed and held true – and not one is denied – so that the entire constitutional guarantee is affirmed and held true.**

We suppose that it is of universal and general knowledge that an ecosystem is a universe of biotic (living) and non-biotic things interacting as a living community in a particular space and time. In the ecosystem are found specific and particular biotic and non-biotic entities which depend on each other for the biotic entities to survive and maintain life. A critical element for biotic entities to maintain life would be that their populations are in a proper and natural proportion to others so that, in the given limits of available non-biotic entities in the ecosystem, no one population overwhelms another. In the case of the Philippines, it is considered as one of the richest countries in terms of biodiversity. It has so many plants and animals. It also has many kinds of other living things than many other countries in the world. We do not fully know how all these living things or creatures interact among themselves. But, for sure, **there is a perfect and sound balance of our biodiversity as created or brought about by God out of His infinite and absolute wisdom.** In other words, every living creature has been in existence or has come into being for a purpose. So, we humans are not supposed to tamper with any one element in this swirl of interrelationships among living things in our ecosystem. Now, introducing a genetically modified plant in our intricate world of plants by humans certainly appears to be an ecologically imbalancing act. The damage that it will cause may be irreparable and irreversible.

At this point, it is significant to note that, during the hearing conducted by this Court on November 20, 2012 wherein the testimonies of seven experts were given, Dr. Peter J. Davies (Ph.D in Plant Psychology), Dr. Tuskar Chakraborty (Ph.D in Biochemistry and Molecular Biology), Dr. Charito Medina (Ph.D in Environmental Biology), Dr. Reginaldo Eborra (Ph.D in Entomology), Dr. Florida Cariño (Ph.D in Insecticide Toxicology), Dr. Ben Malayang (Ph.D in

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Wildland Resource Science) and Dr. Saturnina Halos (Ph.D in Genetics) were in unison in admitting that *bt talong* is an altered plant. This is shown in the following excerpt of the transcript of stenographic notes of their testimonies:

*Chairperson:

x x x x. So now, we try to stipulate on certain matters that can be stipulated upon. Are all the witnesses here conversant with '*bt talong*'? Are you all conversant with *bt talong*? So '*bt talong*' is an altered eggplant? It is an altered plant, correct? It is considered as a regulated article. Is the Court right?

"Witness:

Yes, your Honor."
(TSN, Basa, Nov. 20, 2012, p. 32)

Thus, it is evident and clear that *bt talong* is a technology involving the deliberate alteration of an otherwise natural state of affairs. It is designed and intended to alter natural feed-feeder relationships of the eggplant. It is a deliberate genetic reconstruction of the eggplant to alter its natural order which is meant to eliminate one feeder (the borer) in order to give undue advantage to another feeder (the humans). The genetic transformation is one designed to make *bt talong* toxic to its pests (the targeted organisms). In effect, *bt talong* kills its targeted organisms. Consequently, **the testing or introduction of *bt talong* into the Philippines, by its nature and intent, is a grave and present danger to (and an assault on) the Filipinos' constitutional right to a balanced ecology** because, in any book and by any yardstick, it is an ecologically imbalancing event or phenomenon. It is a willful and deliberate tampering of a naturally ordained feed-feeder relationship in our environment. It destroys the balance of our biodiversity. Because it violates the conjunct right of our people to a balanced ecology, the whole constitutional right of our people (as legally and logically construed) is violated.

Of course, the *bt talong's* threat to the human health of the Filipinos as of now remains uncertain. This is because while, on one

hand, no Filipinos has ever eaten it yet, and so, there is no factual evidence of it actually causing acute or chronic harm to any or a number of ostensibly identifiable perms, on the other hand, there is correspondingly no factual evidence either of it not causing harm to anyone. However, in a study published on September 20, 2012 in "**Food and Chemical Toxicology**", a team of scientists led by Professor Gilles-Eric Seralini from the University of Caen and backed by the France-based Committee of Independent Research and Information on Genetic Engineering came up with a finding that rats fed with Roundup-tolerant genetically modified corn for two years developed cancers, tumors and multiple organ damage. The seven expert witnesses who testified in this Court in the hearing conducted on November 20, 2012 were duly confronted with this finding and they were not able to convincingly rebut it. That is why we, in deciding this case, applied the precautionary principle in granting the petition filed in the case at bench.

Prescinding from the foregoing premises, therefore, because one conjunct right in the whole Constitutional guarantee is factually and is undoubtedly at risk, and the other still factually uncertain, the entire constitutional right of the Filipino people to a **balanced and healthful ecology** is at risk. Hence, the issuance of the writ of kalikasan and the continuing writ of mandamus is justified and warranted.

The claim of the movants-respondents that the *bt talong* field trials do not have for their end the introduction of *bt talong* to the public for human consumption is actually unavailing. They seem to be just making a slim dichotomy or bifurcation of ends. The ultimate end of the whole exercise appears to be that the *bt talong* will eventually be released to the general public for food consumption if it passes the safety assessments. This is shown in the following excerpts of the testimonies of the expert witnesses:

"Chairperson:

What are the uses of *BT Talong*?

"Dr. Halos:

Actually, it is the number one vegetable right now in the Philippines. It is cooked in many different types of dishes, your Honor.

"Chairperson:

So it is used for food?

"Dr. Halos:

Yes, your Honor.

"Chairperson:

So, it is being eaten by human beings and other living creatures. Now, if eaten, does *bt talong* pose any harm, danger, or hazard to life or health?

"Dr. Halos:

No, your Honor. The *bt talong* that we have right now actually contains a gene that has been in '*BT Cotton*' for the past more than 16 years. And, BT Cotton, the oil of Bt Cotton, is actually used as food and, also the gene product, protein of *bt talong* has been well tested and it has been accepted as 'sere' for food by many seculatory agencies such as the European Union, Australia, New Zealand, USA, Canada, Brazil, China, India, Mexico, Argentina and South Africa. And I think Dr. Cariño has more to say.

"Chairperson:

Would you like to add?

"Dr. Cariño:

Yes, your Honor. This is to clarify something with the *bt talong* and the *bt talong* has its substance. It is not supposed to be consumed at the moment still under field trial, so it is not supposed to be eaten at the moment. It has not been released for food nor for feed and so in the context of a confined field test, it has supposed to have it out in the field in a very controlled manner and any produce that comes out from that area is supposed to be

destroyed or kept for further safety and analysis only.

Chairperson:

So, actually, there is no full scientific certainty that it does not cause any harm pertaining to health?

Dr. Cariño:

Bt talong, per se, has not been fully valued yet that is why it is undergoing trials. If reporting of the BT toxin in *bt talong* is Cry1Ac, there are numerous studies that had been actually published on relative safety of Cry1Ac protein and it is actually considered as an additional protein and the various reviews can be seen in the OECD Digest of risks assessments on Cry1Ac protein. Alternatively, if you are looking at the possibility of harm coming from the introduced protein as yet, we have not done a full blown assessment of it as of the moment. But we look at the protein sequence and with a comparison of its sequence with other sequences in the data basis to see if it is similar to this amino acid sequence of other known toxins and, so far, I have actually...in my affidavit, I have actually seen personally that it is not closely related to any of the known toxins that are found into its system.

Chairperson:

So, in effect, we can not really say that *bt talong* is perfectly safe for human consumption?

Dr. Cariño:

Right now it is not meant to be consumed by human at this point. Let me just clarify one point. When any GM material is supposed to be introduced for food and for feed and before it is actually utilized for like skill production, it goes through several steps. The first step is actually the 'lab', laboratory work and it is actually tested in this clean-houses, rolled-out confined limited field test and then it goes to butyl abyss of field tests where it is like generating more and more informations. We are still early on this pathway, so we are only in the confined field test and, at the moment, the thing is that it is still being tested. The focus is on its efficacy after doing a preliminary assessment of the possible pathological and ecological effect, and that is the pathway that has been recommended by so many academics as well as scientific institutions as well. And, that has been a tract followed by almost

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all the genetically modified crops that is being introduced in the market today, but at the moment *bt talong* is not yet a commodity. It is not yet being evaluated as a commodity.

“Chairperson:

So, no one in this country has yet eaten this *bt talong*?

“Dr. Cariño:

No, it has not been eaten, as far as I know. Even in India it has not been consumed by human beings because it has not been introduced as a commodity.

“Chairperson:

But what is the ultimate purpose of growing *bt talong*? Is it not for human consumption, of course?

“Dr. Cariño:

If it passes the safety assessments. That there is always a peak condition that, if it would not to be evaluated in a step of the way much like to evaluate any new product that is coming into the market evaluation, goes on a step-by-step and at least day-to-day basis.”

(TSN, Basa, November 20, 2012. p. 33 to 37)

WHEREFORE, in view of all the foregoing premises, we hereby **DENY** the motions for reconsideration filed in this case.

SO ORDERED.



ISAIAS P. DICDICAN
Associate Justice

WE CONCUR:



MYRA V. GARCIA-FERNANDEZ
Associate Justice



NINA G. ANTONIO-VALENZUELA
Associate Justice