

Governance of water supply and sanitation in Belo Horizonte, Brazil: an assessment of the relationship between the municipality and the service provider

Ana Paula Barbosa Vitor de Oliveira

PhD. Student, Post Degree Program in Sanitation, Environment and Water Resources
Federal University of Minas Gerais, Brazil

Léo Heller*

Professor, Department of Sanitary and Environmental Engineering
Federal University of Minas Gerais, Brazil

Abstract

One understands that in order to guarantee access to water supply, sanitation, solid wastes management and storm water management services to everyone, it is not possible to continue prioritizing the management of these services only in the technological side, as it has been happening historically in Brazil. These actions are in the public policies sphere and therefore should be monitored and assessed to enable possible track corrections and the accountability. Scientific researches relative to sanitation management as public policy are scarce. In this paper it is proposed an analysis of the governance aspects of the Water Supply and Sanitation Service – WSS in Belo Horizonte, Brazil, in a systematized approach of principles of the public policy, as science, and of the law. The main objective is to better understand specifically the relationship between the service provider and the local power, by means of the assessment of the contractual instrument established by the parts in compliance with the Municipal Sanitation Policy – MSP, a municipal law that regulates the sector. It is an analysis with relative capacity of generalization, given the similar context of this case with others of many Brazilian municipalities and of developing countries. The hypothesis explored in this study is that, in developing countries the existence of a legally regulated environment is insufficient to assure a relationship between titleholder and service provider of WSS in compliance with the principles of this regulation.

Keywords: Regulation, Water Supply and Sanitation, Governance, Service Provision

* Corresponding Author: heller@desa.ufmg.br

1 Introduction

The case of WSS governance in Belo Horizonte, through the analysis of the relationship between the municipality and the service provider (COPASA) formed in a shared management agreement has the potential of contributing to a better understanding of the governance of water supply and sanitation in large cities in Brazil. COPASA, a state government company, is a service provider in Belo Horizonte, which, in spite of the high rates of service when compared to other Brazilian municipalities, still has great challenges in order to assure the universalization of the services, mainly to the poorer population, and the implementation of water management integrated to the territory and other related policies.

The signing of the Cooperation Agreement for the Shared Management derived from the expiration of the service rendering concession agreement between COPASA and Belo Horizonte Municipality - BHM, signed in 1973, effective for 27 years, extended to 2002. The process scenario which resulted in the present agreement was composed of: i) absence of a national regulatory framework for the basic sanitation sector; ii) conflict between federative entities, local and state government, about the definition of the one responsible for the direct rendering or delegation of the sanitation services in metropolitan regions; iii) politico-partisan scenario in the State and in the City Hall, which enabled the re-alignment of the relations for the sanitation service management in the municipality; iv) initially the City Hall finding out the existing systems operated by the company (register, operational aspects, costs and revenues) and v) lack of integration between the two federative entities, municipality and state, for the service rendering, still a reflex from the PLANASA (Sanitation National Plan) period, implemented during the military dictatorship. All the involved institutions required technical and political structuring for the preparation and analyses of alternatives and proposals for the service provision. This process demanded years of work in an environment marked by intense political and institutional tensions.

Only recently, in January 2007, the National regulatory framework for the basic sanitation sector was approved, covering water supply, sanitary wastewater collection system, solid wastes and urban storm water management actions.

Considering the singularity of the established relationship and at the same time the relevance of its analysis, in view of the importance of Belo Horizonte in the country, this paper develops assessment of the Cooperation Agreement for Shared Management, between Belo Horizonte City Hall and COPASA, using as referential for the analysis the compliance with the Municipal Sanitation Policy - MSP of Belo Horizonte, approved by law in December, 2001. This study considers as its main premise that the MSP is the main sanitation law in Belo Horizonte, as regulatory reference of the service at the time of the signing of the agreement. For this reason, the Federal Constitution (1988) is considered as basis, which attributes to the Municipality the competence to legislate on local interest matters. The hypothesis explored in the study is that, in developing countries, the existence of a regulatory environment – presumed here as the definitions of the MSP – is insufficient to assure a relationship between the titleholder and the service provider of WSS, compatible with the principles of this regulation.

2 Methodology

The methodology adopted for the study may be divided in:

- 1STStage – contextualization of the political and institutional scenario and of the sanitation regulation in Brazil and in Belo Horizonte, at the time of the execution of the agreement, through literature review. The understanding of the context is fundamental to weigh and to better assess the results characterized by the agreement.
- 2nd Stage – analysis of the compliance of the agreement of WSS service rendering with the Municipal Sanitation Policy (MSP – Law 8260, September 03, 2001) aiming at the understanding of the governance of these services in Belo Horizonte.

3 Discussion and Results

3.1. Some politico-institutional aspects of the sanitation in Brazil and in Belo Horizonte

Understanding the sanitation management in the 1970s and 80s in Brazil, marked by the implementation of a model which influences until recently the services rendering, is essential for the comprehension of the WSS governance in Brazil. Until the 70s, the responsibility of service provision was mainly of the municipality and for this there were municipal water supply and sanitation companies with administrative and financial structures of their own (ARRETCHE, 1999). In 1967, NHD (National Housing Bank) was created, an entity in charge of establishing guidelines and of funding the sanitation sector (REZENDE; HELLER, 2002). During the military regime in 1971, PLANASA (Sanitation National Plan) is institutionalised, which motivated the implementation and strengthening of the Sanitation State Companies (SSCs), through the guarantee of financial resources transfers to them, to the detriment of the municipalities, municipal companies and autarchies. This state policy was the one responsible for the implementation of a State company in each Brazilian state and the extinction of various municipal companies or their incorporation to the State Companies, mainly the ones that rendered services to the federative capital cities where most of the urban Brazilian population was concentrated in. During the PLANASA period there was extreme concentration of decisions in the state sphere, more specifically in the state companies and a radical separation of the institutions responsible for the health and the ones that planned and provided the WSS services. By means of Decree-Law 949, October 13, 1969, NHD was authorized to invest in the financing operations for WSS, besides its own resources, also the resources from the FGTS – (Employee's Dismissal Fund), deriving from the contribution of the country's companies, in a proportion of their workers' salaries' value (SIDINSAN, 2005).

The military dictatorship was coming to an end in 1985 and in 1986 NHD was extinct during PLANASA's crisis. From then on, in spite of the absence of an institutionalised policy, only recently approved, the sector kept practices acquired during the PLANASA period, such as

the autonomy of the state companies to render service overlooking the local government as the conceding power defined in the 1988 Constitution. In 1991, the Federal Congress initiates debates on the creation of a national legislation for the sector, approving only in December, 2006, the Law of the National Guidelines for Basic Sanitation (Law 11.445). One of the main points, which covered in a tough manner the discussions on the approval of the mentioned law, was the one that deals with the issue of who holds the title to render services in Metropolitan regions. However, the approved Law does not deal with the theme, since the Supreme Federal Court has been judging two lawsuits on the issue (SILVA, 2006).

The 1988 Federal Constitution (FC) establishes a new order in the Democratic State of Right, establishing as federative entities: the Federal Union, the States, the Municipalities and the Federal District, determining common and individual competences to these entities. The competence of the municipality, according to article 30, V of the FC, is to organize and render public service of local interest. It is also of the competence of the municipality to legislate on issues of local interest. There is another interpretation for issues out of the restricted limits of the municipality, because they deal with services common to two or more municipalities. In this sense, the Constitution foresees in article 241 the so-called associated management of public services, to be developed through public consortium or cooperation agreements between the municipalities (between them or even with the participation of the state) and the states. This management, always voluntary, will depend on a disciplinary municipal law and it was the instrument adopted to regulate the continuation of the services rendering in Belo Horizonte by COPASA.

The conflict, as from then on, about who is titleholder of the sanitation sector is installed between the Municipalities and the States. The recognition of the titleholder of the municipalities for management of solid wastes and urban drainage, which is also part of the basic sanitation, as defined in the new Law 11.445, is not questioned. However, the SSCs have been operating a significant portion of systems from various municipalities, which integrate metropolitan regions in an independent and autonomous manner. The fact that some water and sanitation systems have parts covering more than one municipality, has led State governments, representing the SSCs interests, to claim the entitlement of the States for WSS in these situations. The basis used for the questioning of the competence of the municipality in these regions is another definition of the FC, which delegates to the States the possibility to establish metropolitan regions, by means of complementary law, to integrate the organization, the planning and the execution of the public functions of common interest.

The scenario of the regulation of the public sanitation services is very diversified in Brazil and it reflects a confusing view of the economic regulation, where the following situations coexist: (a) situations where there are no regulatory instruments, normally when the services are not charged from the users in a direct manner; (b) municipal legislations, normally insufficient or inadequate, both for the services directly rendered and also for the delegated services; (c) state regulatory acts, which in some cases reproduce the federal legislation from PLANASA; (d) insufficient, inadequate, precarious and without due legal support juridical instruments of delegation; and (e) irregular delegations, overdue or without adequate juridical instrument (PEIXOTO, 2005).

Figure 1 presents the possibilities of rendering public service, established in the federal legislation. The Federal Constitution does not establish any modality as preferential, it is therefore for titleholders to choose the most adequate alternative.

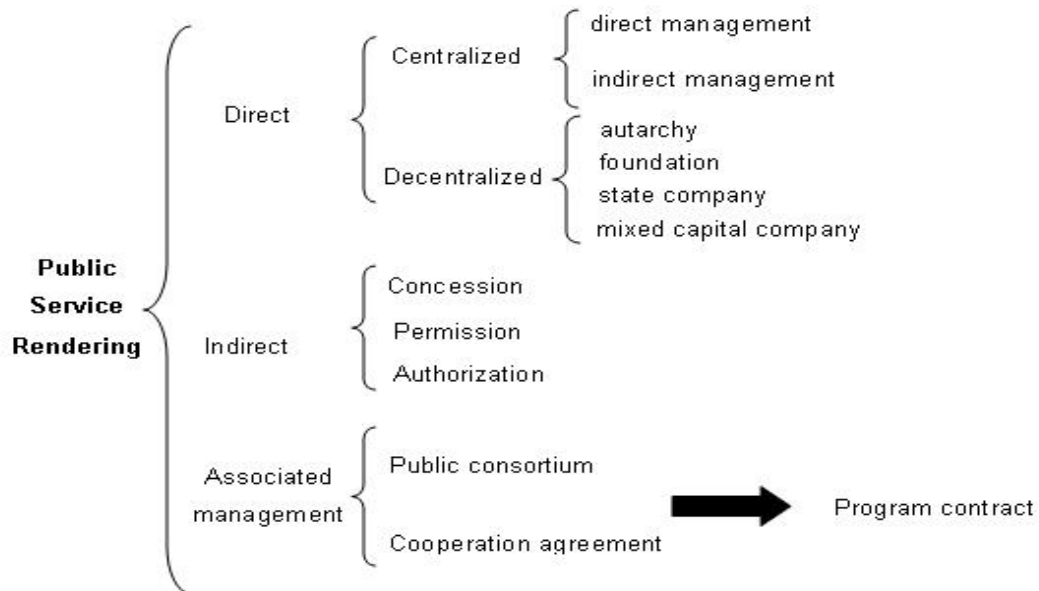


Figura 1 – Modalities of Regulation of Public Services in Brazil
Source: Peixoto (2005)

For the reference year 2005, the sample of the services providers with data published at the NSS - National Sanitation System, consists of 422 entities: 26 of regional coverage (SSCs), 8 of micro-regional services and 388 of local services. The total of the Brazilian population with access to water supply service comes to 138.6 million, of which 105.2 million (75,9%) are rendered by State companies, 27.7 million (20.0%) by direct public administration, autarchies or municipal companies and 5.7 million (4.1%) by private companies (NSS, 2005). The coverage of the water supply service carried out by SSCs taking as parameter the population to be serviced is much higher than the other modalities. The expressive participation of companies of regional coverage in the national service rendering helps to understand the magnitude of their operation and thus, what the transference or decision power sharing with the local sphere could mean to them, in an organizational culture consolidated in the practice of autonomy of these companies for more than 30 years

In December 2001, the Municipal Sanitation Policy was established in Belo Horizonte (Law 8260), defining sanitation as water supply, wastewater sanitation, solid waste management, urban drainage and vectors control. An important point determined as from this framework is the management of the service by means of a Municipal Sanitation System, constituted by instruments such as the Municipal Sanitation Plan, the Sanitation Conference, the regulation of the services rendering contracts and agreements and the Municipal Sanitation Fund – MSF (regulated in March 2003, through the Municipal Decree 11.289). The Municipal Sanitation

Council is foreseen as deliberative and advisory collegiate body to compose the Municipal Sanitation System.

Belo Horizonte municipality, with approximately 2,3 million inhabitants presents high rates of sanitation services, however, there are 10 thousand inhabitants without water supply, 300 thousand without wastewater collection, 100 thousand do not have trash collection, 45 thousand live in areas of risk subject to landslides and a significant proportion of water courses is polluted (BHM, 2004). One can conclude that there is a long way to go, and in this sense, it is necessary the integrated effort.

3.2 Assessment of the Cooperation Agreement in the light of the Sanitation Municipal Policy

The Municipal Sanitation Policy (MSP), here understood as a regulatory framework for sanitation services rendered in the municipality, was prepared supported by three pillars: i) the local government as the responsible one for the direct rendering or delegation of sanitation services; ii) the citizen as relevant actor in the services management, once it was determined the democratization of the decision making processes in specific forums, the popular participation in the process and the universalization of the services with special attention to the population with low income and iii) instruments to favor the good practices of management in a regulated environment, with the establishment of a Municipal Sanitation System.

In order to favor the synthesis of the agreement assessment, in the light of the MSP, research elements were established, key or relevant aspects approached or absent in the agreement were considered, pointed out later on. One understands, for analysis sake, that the agreement that is being assessed creates a contractual relationship, and thus, it should be complete, balanced and with wide coverage, so as to enable necessary instruments and tools for the good governance practices of the service.

a – the agreement, the undersigned and the titleholder issue

The undersigned of the agreement for the shared management of the WSS services are: the State of Minas Gerais, the Belo Horizonte Municipality, COPASA and SUDECAP.

The State and the Municipality are federative entities, authorized by the constitution to sign agreements in the form of shared management for services rendering. SUDECAP is a municipal autarchy, and thus it is a public entity. It is important to point out the fact that COPASA undersigns the agreement because it used to have public administration, but it is a private law mixed economy company. As from 2004, the company went public in the stock exchange market and part of the stocks belonging to the private capital, thus not limiting exclusively to rendering service of public interest.

This modality of service rendering through a cooperation agreement, besides foreseen in the constitution it is also object of specification in the MSP. Article 14 of the MSP foresees that

the cooperation agreement be authorized by specific Law, with the purpose of enabling effective social control, meeting the sanitation needs for the population and instructing the economic-financial aspects of the contracts or agreements. The agreement limited itself to an act of the executive power, disagreeing in this aspect from the established in the MSP.

In the agreement, all the undersigned have specified individual attributions and for COPASA and SUDECAP common attributions are also foreseen. The recognition of the conceding power is not made explicit. It is foreseen the integrated and shared management of the services by COPASA and SUDECAP, contradicting what was announced in the MSP, which determines the municipal competence for the management, the organization and direct and indirect services rendering and recognizes the municipality as the conceding power, the municipality should establish mechanisms of control on the performance of the service provider.

In the agreement, the participation of the municipality is established in the statutory audit committee of COPASA, by means of the acquisition of the company stock by the municipality, in exchange of municipal assets transferred from the municipality to COPASA. One can think of two possibilities regarding this participation: i) the guarantee of the intervention of the municipality in the company so as to seek better service to the public interest or/and ii) confound itself in its attribution as grantor and service provider, here assuming the interpretation of the local power as the titleholder established in the Federal Constitution.

b – the forms and criteria of remuneration

In the agreement the following criteria and form of remuneration for the services were established: i) it is COPASA's responsibility to prepare a proposal of tariff readjustment and revision for the services, applicable in the municipal sphere, whose values will be approved and determined by the State; ii) the proceeds from the rates collection of the WSS services will be apportioned: 4% to SUDECAP and 96% to COPASA; iii) the portion allocated to SUDECAP will consist in the contribution to the Sanitation Municipal Fund (SMF); iv) the values spent by the Municipality for the defrayal of its water consumption and expenses with sewage are added to the values credited to MSF; v) COPASA obliges itself to establish independent accounting costs centers which enables it to adapt and control the costs; vi) the investments will be applied in accordance with the priorities defined in the Management Plan and in the Integrated Plan following the guidelines of the MSP.

Since the COPASA tariffs, in the state of Minas Gerais, are common to all the systems, the establishment of these tariffs by the State/COPASA without the municipality's approval disagrees with the MSP, which delegates to COMUSA (Municipal Sanitation Council) the approval of the composition of service rendering tariffs or fees.

The resources destined to the MSF indicate a convergence to the MSP, which foresees it as part of the Municipal Sanitation System, making available financial resources for the carrying

out of structural works determined as priority by the Municipal Sanitation Plan approved in the collegiate body, COMUSA.

It is important to point out as a weakness the inexistence of investment commitments, as well as limits or criteria for capital remuneration, once COPASA is a company with public offerings in the São Paulo Stock Market. At the moment of the undersigning of the agreement, COPASA still had not structured its IPO – initial public offering. However, it was a company of private law, which may represent other interests besides the public interest and no amendment was made to the agreement, subsequent to the changes occurred in COPASA, which could avoid or correct eventual distortions or imbalance in the relationship between the entities.

c. Social control and citizen participation

The agreement does not mention in the shared management proposal the intention of democratization of the decision-making processes with social participation or with the determination of specific forums for this purpose. Guidelines for the universalization of the services are also absent in the agreement, mainly in what refers to the attention to the population with lower income. These absences are in divergence with the principles established in the SMP and they represent vulnerable points in the agreement, whose role is to regulate the relationship among the parts.

These absences may be interpreted as an attempt to preserve the centralizing policy in the decision making process, prevailing mercantile principles for the economic-financial sustainability of the services. The possibility of subsidies for the low-income population, either through the rates or through external sources, is not mentioned. Subsidies in the sector have been practiced with little transparency. There is no data made available publicly on the movement of the costs and revenues and there are neither rules nor criteria to promote the subsidy. The access of this service to the population with lower income is a role of the State, since it is the developer of public policies. It is expected from a regulated environment that the mechanisms to make this access feasible be clearly constructed. In this discussion one takes as reference the social welfare state adopted in many developed western countries.

4 Conclusions

The applied emphasis in the paper was the assessment of an agreement based on a specific law, aiming at verifying the hypothesis that the existence of a regulatory environment is insufficient to assure a relationship between the titleholder and the one rendering the WSS service in accordance with the principles of this regulation. The paper does not intend to carry out an assessment of the legality or legitimacy of the agreement. For this purpose it would be necessary more research of all the legislations that compete in the federal, state and municipal spheres, including jurisprudence. The expectation is that the assessment in compliance with the SMP may be an indicator of the relationship established by the stakeholders involved in the service rendering, assisting in the understanding of WSS governance in Belo Horizonte, and subsequently it may subsidize improvements in the established policy.

It is important to point out, as a positive aspect in the analysis the Belo Horizonte's initiative being the pioneer to establish a Municipal Sanitation Policy, previous to the national regulatory framework, despite political and institutional background that weakened and hindered, during three decades, the participation of municipalities in sanitation management in a more pro active manner. It is perceptible in the principles and in the management model proposed by the MSP the effort to assure the responsibility of the municipality for the services and to guarantee adequate tools for an effective and participative management. The construction of the policy and of the instruments defined by the law, such as the establishment of a municipal sanitation council, the execution of a plan, the consolidation of a financial fund and the possibility of citizen participation in the decision making processes, was only possible through technical investments made on the sector, which consolidated in institutional strengthening, necessary for the municipality to meet the expectations of practices of good governance in a regulated environment.

In the agreement various issues established in alignment with the MSP principles and guidelines were verified, as the proposal of integration for a more effective and efficient management, the allocation of resources to the municipal sanitation fund to enable a service coherent with the local population demand, without judging here the value directed to this purpose in the agreement. However, fundamental issues of divergence make it clear the existing tensions in the sector and the difficulty to establish a balanced relationship between the various stakeholders in the regulated environment. As examples of these divergences the following stand out: i) the lack of definition of a titleholder, which harms in various ways the public service rendering, the price setting and what makes the identification of the responsible one for the accountability to the society indefinite, ii) the absence of forecast for citizen participation as part of an exercise of citizenship and also as a management tool and iii) the lack of clear rules of investment and capital remuneration, as well as the supply of the service to the lower income population.

One cogitates that, considering the present legal figure of the company responsible for rendering services and the demand for the universalization of the access to the services, it would be fundamental for the balance between public and private interest present in the process that the rules be clearer, generating a reliable and sustainable environment.

The effective application of the legislation and the development of the sector in an environment of regulation with the society's control thus, still demands: i) adaptation of the organizational architecture of the state, with the conciliation between an efficient service rendering and the guarantee of the citizenship rights; ii) permanent assessment of the public policies, so as to enable their strategic control; iii) transparency of the actions and decisions; iv) resolution of conflicts between federative entities for the adequacy of their attributions.

References

- Arretche, M. Política Nacional de Saneamento (National Sanitation Policy): A Reestruturação das Companhias Estaduais (The Restructuring of the State Companies)1999. Available at: http://www.ipea.gov.br/pub/infraestrutura/saneamento/san_parte3.pdf. Access in October, 2007
- Belo Horizonte. Law 8260 of 03 December, 2001: Establishes the municipal sanitation policy. 2001.
- Belo Horizonte. Decree 11.289: Regulates the Municipal Sanitation Fund. 2003.
- Belo Horizonte. Municipal Sanitation Plan of Belo Horizonte – 2004/2007. 2004.
- Brazil. Federal Constitution of Brazil.1988.
- Brazil. Law 11.445: Establishes national guidelines for basic sanitation. 2007.
- Peixoto, J. B. Elementos de Gestão Financeira e Política Tarifária (Financial Management Elements and Tariff Policy). Course Textbook: Gestão integrada das águas e dos resíduos nas cidades. (Integrated Management of the waters and solid wastes in the cities) 2005. Brasília
- Rezende, S; Heller, L. O saneamento no Brasil, políticas e interfaces (Sanitation in Brazil, policies and interfaces). Belo Horizonte: ed. UFMG. 2002.
- SINDISAN. Conheça a história do saneamento (Learn about the sanitation history). 2005. Available at: <http://www.sindisan.org.br/ler.asp?id=11&titulo=banl-saneamento> Access in February. 2007.
- Silva, E.A. O Brasil tem Nova Lei de Saneamento (Brazil has a New Law for Sanitation). 2006. Available at: <http://www.fnucut.org.br>. Access in February.2007.
- SNIS. Diagnóstico dos serviços de água e esgotos (Diagnosis of the water and sanitation services) – 2005. Part 2 – information and indicators charts Ministério das Cidades (Ministry of the Cities). Brasil. 2005.