

IN THE MATTER OF THE CONFIRMATION OF ARBITRATOR'S AWARD UNDER THE PROVISIONS OF REPUBLIC ACT NO. 876; P. J. KIENER COMPANY, LTD., GAVINO UNCHUAN AND INTERNATIONAL CONSTRUCTION C...

G.R. No. L-27341. October 30, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Appellees P. J. Kiener Co. Ltd., Gavino Unchuan and International Construction Corporation claimed from the Armed Forces of the Philippines P3,601,971.84 for extra work done as contractors on the Mactan Airfield. The Secretary of National Defense wanted to pay only P659,935 for said extra work. The parties aforementioned submitted the dispute to arbitration under Republic Act 876.

After hearing said parties, on April 21, 1961 the arbitrator awarded P2,372,331.40 in favor of the claimants. A petition was thereupon filed by said claimants in the Court of First Instance of Cebu, on May 19, 1961, for con-firmation of the award, as provided for in the same Repub-lic Act 876.

The Armed Forces of the Philippines, thru the Secretary of National Defense, was furnished a copy of said petition. No answer was filed, but the Secretary of National Defense sent a letter to the court stating that the project involved "is a joint venture of the U.S. and P.I. governments under the Mutual Defense Assistance Agreement and is financed exclusively by U.S. funds. Therefore, although the arbitrator's decision has already been accepted by the General Military Council chairmanned by the Secretary of National Defense, the same has to be concurred in by the Chief Advisor, JUSMAG, representing the U.S. government, in order to give it binding effect."

The petition was consequently heard ex parte. On July 3, 1961, the Court of First Instance rendered its decision. And on July 13, 1961, the Secretary of National Defense received a copy of the decision. Five months later, on December 12, 1961, after the writ execution had been issued and garnishment made pursuant thereto, the Republic of the Philippines filed with the aforesaid court a motion for intervention with motion to set aside the decision and stay execution. It assailed the propriety of the arbitration in the absence of stipulation in the contract providing for it and further reiterated the contention that the concurrence of the Joint U.S. Military Advisory Group (JUSMAG) was needed to give effect to the award.

Petitioners opposed the motion. Subsequently, execution was stayed and all pending matters were held in abeyance at the request of the parties, as they tried, unsuccessfully, to explore possible ways of settling the dispute.

On February 16, 1965, petitioners asked for an alias writ of execution. It was granted the next day but later suspended by the court. On July 28, 1965, the Secretary of National Defense paid P659,935 to petitioners, leaving P1,712,396.40 of the claim based on the arbitrator's award.

On October 1, 1966 the court a quo denied the Republic's motion for intervention and reconsideration of the decision. Said order is hereunder quoted:

"Considering movant-intervenor's motion dated December 12, 1961 to set aside the decision of this Court and to stay execution; the Court hereby finds said motion unmeritorious and, therefore, denies the same.

"On the issue of jurisdiction, it is believed that this Court has jurisdiction to confirm the arbitrator's award in question (Exhibit "10"). The argument of intervenor that Republic Act 876 does not cover arbitration of the kind or class subject of this case has no relevance to the issue of jurisdiction. Certainly, section 2 of said Act covers arbitration of this nature since the parties may submit to arbitration even without a contract to this effect. Section 607 and 608, of the Revised Administrative Code do not affect this Court's jurisdiction; and the argument that no appropriation of public funds has been secured by movant-intervenor the Armed Forces of the Philippines, if such be the fact, does not deprive this court of its power to confirm the arbitrator's award. Furthermore, the intervenor still can and should appropriate the funds with which to settle its obligation to petitioners especially considering that the United States Government is not a party to the contract (Exhibit "5"). The Court does not accept intervenor's theory that this case is within the exclusive jurisdiction of the Auditor General since Commonwealth Act 327, in the opinion of this Court, contemplates cases where the parties have not agreed to arbitrate. In short, by availing of arbitration and inviting petitioners to arbitrate, movant-intervenor and/or its agencies have abandoned the procedure enjoined under said Commonwealth Act, otherwise the arbitration proceedings would be rendered useless and reduced to an idle ceremony.

"On the issue of due process, the records show that copy of the petition for confirmation was sent to and received by the 'Armed Forces of the Philippines c/o the Secretary of National Defense', the latter being the official of intervenor having control and supervision of the Armed Forces. Service of said petition was done in obedience to Section 23 of the Arbitration Act. And since there is no law designating the party to be sued in case of breach of contracts involving construction of military bases, service upon the Secretary is both sufficient and lawful (Santos vs. Santos as administrator of CAA, G.R. No. L-4699, Nov. 26, 1952).

"The issue of execution upon the Armed Forces' fund deposited in private banks has prodded this Court to study extensively the authorities pro and con. The weight of authority sustains the view that 'public funds' are not subject to execution. But there is reason in petitioners' argument that such funds have lost their 'public character' since title thereto have passed to the bank and said funds being fungibles, are commingled with other deposits. However, in so far as the prayer for stay of execution is concerned, the same has been rendered academic with the lifting on July 23, 1965, of writ of execution issued in this proceeding, and particularly the alias writ of execution dated February 17, 1965.

"Finally, the motion for intervention was filed after the Court had already disposed of the case. Intervention is allowed only 'at any stage of the trial,' the term 'trial' being used in its restricted sense, that is, the period for the introduction of evidence by both parties.

"SO ORDERED."

The Republic appealed from the order to this Court to raise questions purely of law. On June 3, 1967, appellees moved to dismiss the appeal, alleging that the Republic lacks personality to appeal and that the decision had become final and executory four months before the Republic moved to intervene. Said motion was opposed. This Court deferred action thereon until the case is taken up on the merits (Resolution of August 21, 1967).

Appellant Republic, however, failed to file its printed record on appeal or to move for extension of the reglementary period to do so, which expired on May 19, 1967 i.e. sixty days after notice was received by the Solicitor General, appellant's counsel, on March 20, 1967. Subsequently, almost four months late, or on September 8, 1967, said appellant's printed record on appeal was filed. Petitioners-appellees moved to strike it out and to dismiss the appeal.

Required by Us to show cause why the appeal should not be dismissed for failure to file the printed record on appeal on time, the Solicitor General explained that the delay was due to excusable negligence of the receiving clerk of his Office in inadvertently misplacing the notice to file printed record on appeal.

Without having to resolve the merits of appellees' first motion to dismiss the appeal, the same should be dismissed upon the ground of inexcusable failure to file the printed record on appeal on time. Appellate courts look with disfavor on excuses such as that offered by appellant's counsel, which appears to be a "habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed in the Rules of Court." (Philippine Air Lines, Inc. v. Arca, L-22729, February 9, 1967; Ocampo v. Caluag, L-21113, April 27, 1967; see also De Jesus v. Philippine National Bank, L-19299, November 28, 1964). Appellees' first motion to dismiss cannot be deemed to have suspended the period to file the printed record on appeal (Alonzo v. Rosario, 56 O.G. 3637), since said period had already lapsed when the motion was filed.

WHEREFORE, the appeal is hereby dismissed, without costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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