

THE NATIONAL GRID CORPORATION OF THE PHILIPPINES, PETITIONER, VS. CONSTRUCTION INDUSTRY ARBITRATION COMMISSION AND THE CONSORTIUM OF HYUNDAI ENGINEERING CO., LTD. AND HYUNDAI CO...

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

This is a Petition for Certiorari[1] filed under Rule 65 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Resolution[2] dated 22 August 2013 of public respondent Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 01-2013. The dispositive portion of which reads:

“WHEREFORE, premises considered, (1) the Motion to Dismiss dated 7 February 2013 filed by Respondent National Grid Corporation of the Philippines and (2) the Motion to Dismiss dated 4 February 2013 filed by Respondent National Transmission Corporation, are hereby denied.

Both Respondents are required to file their respective Answers to the Request for Arbitration within fifteen (15) days from receipt of this Resolution.

SO ORDERED.”

FACTS

On 12 November 2007, the Consortium of Hyundai Engineering Co. Ltd. and Hyundai Corporation (“Hyundai”) was awarded by the National Transmission Corporation (“TransCo”) with the Contract for the Survey, Design, Supply of Materials/Equipment and Erection/Installation and Commissioning of Maramag-Bunawan 230KV Transmission Backbone Project (“Subject Contract”).[3]

Section 2, Paragraph 18 of the Bidding Documents,[4] which was made an integral part of the Subject Contract, pertained to a dispute resolution and arbitration clause providing as follows:

“18 CLAIMS, DISPUTES and ARBITRATION

xxx xxx xxx

18.3 The Employer and the Contractor shall make every effort to resolve amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.

If, after thirty (30) days from the commencement of such informal negotiations, the Employer and the Contractor have been unable to resolve amicably a Contract Dispute, the parties shall jointly insure the appointment of a Dispute Adjudication Board. xxx

xxx xxx xxx

18.4 If a dispute arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any opinion, instruction, determination,

certification or valuation of the Employer, the dispute shall initially be referred in writing to the Dispute Adjudication Board for its decision, with a copy to the other party. Such reference shall state that it is made under this Sub-Clause. xxx

xxx xxx xxx

18.6 Any dispute in respect of which:

(a) the decision, if any, of the Dispute Adjudication Board has not become final and binding pursuant to Sub-clause 18.4, and

(b) amicable settlement has not been reached,

shall be finally decided by international arbitration. The arbitration rules under which the arbitration is conducted, the institution to nominate the arbitrator(s) or to administer the arbitration rules (unless named therein), the number of arbitrators, and the language and place of such arbitration shall be as set out in the Appendix to Tender. The arbitrator(s) shall have full power to open up, review and revise any decision of the Dispute Adjudication Board.

Neither party shall be limited, in the proceedings before such arbitrator(s), to evidence or arguments previously put before the Dispute Adjudication Board to obtain its decision.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the parties and the Dispute Adjudication Board shall not be altered by reason of the arbitration being conducted during the progress of the Works.

xxx xxx xxx

18.8 When the appointment of the Dispute Adjudication Board and any replacement has expired, any such dispute referred to in Sub-Clause 18.4 shall be finally settled by arbitration pursuant to Sub-Clause 18.6. The provisions of Sub-clauses 18.4 and 18.5 shall not apply to any such reference.“

During the effectivity of the Subject Contract, TransCo, together with the Power Sector Assets and Liabilities Management Corporation, by way of a Concession Agreement,[5] granted the National Grid Corporation of the Philippines (NGCP) the exclusive right to the construction, installation, financing, management, improvement, expansion, operation, maintenance, rehabilitation, repair and refurbishment of the nationwide transmission and sub-transmission systems in the Republic of the Philippines.

Thereafter, TransCo and NGCP entered into a Construction Management Agreement[6] which set forth the terms and conditions under which NGCP shall manage the construction and completion of “Projects Under Construction” previously awarded by TransCo to third-party contractors—including Hyundai, in relation to the Maramag-Bunawan Transmission Project. In the Construction Management Agreement, TransCo appointed NGCP as the Construction Manager of the so-called “Projects Under Construction”.

In a Letter[7] dated 16 March 2009, TransCo informed private respondent Hyundai of the “Transfer/Assignment of Contracts” to NGCP. The Letter in part reads:

“ xxx xxx xxx

To effectively operate and maintain the transmission assets and successfully complete the Projects Under Construction pursuant to the Construction Management Agreement entered into between TransCo and NGCP, it is necessary for NGCP or the Concessionaire to assume the rights and obligation of TransCo in the contracts related to the transmission business entered into by the latter. In connection with this, we would like to request for your confirmation or consent on the transfer/assignment of the contract/s listed in Annex A, including all

the rights and obligations of TransCo therein, to NGCP effective 15 January 2009.

We will highly appreciate your response within fifteen (15) days after your receipt of this letter. Should we not receive your response within the said period, we will consider the same as consent on your part.

xxx xxx xxx”

Private Respondent Hyundai did not respond to the Letter dated 16 March 2009, implying its consent thereto.

In 2010, the present dispute arose when NGCP, in its capacity as Construction Manager, assessed Hyundai with liquidated damages for the latter's alleged delay in the completion of the Maramag-Bunawan Transmission Project.

Pursuant to the above-quoted dispute resolution clause, Hyundai served notice upon NGCP for the appointment of a Dispute Adjudication Board to resolve the difference of opinion between the parties. When NGCP did not respond to the notice, Hyundai filed with herein public respondent CIAC a Request for Arbitration[8] against NGCP and TransCo.

NGCP filed a Motion to Dismiss[9] on the ground of absence of an agreement between Hyundai and NGCP to warrant submission of the dispute to voluntary arbitration.

TransCo for its part likewise filed a Motion to Dismiss[10] on the ground of the alleged failure of the Request for Arbitration to state a cause of action and Hyundai's alleged non-compliance with conditions precedent for arbitration.

On 22 August 2013, CIAC rendered the assailed Resolution, denying NGCP's and TransCo's respective motions to dismiss, and assuming jurisdiction over the dispute.[11]

Thus, petitioner filed the instant Petition on the following grounds:[12]

GROUND

I.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT IT HAS JURISDICTION OVER THE DISPUTE BETWEEN HYUNDAI AND NGCP DESPITE THE TOTAL ABSENCE OF AN AGREEMENT BETWEEN THEM TO SUBMIT THE DISPUTE TO VOLUNTARY ARBITRATION.

II.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT IT HAS JURISDICTION OVER THE DISPUTE BETWEEN HYUNDAI AND NGCP UPON THE ERRONEOUS CONCLUSION THAT THE RULING IN THE CASE OF PRUDENTIAL GUARANTEE VS. ANSCOR LAND FINDS APPLICATION IN THE PRESENT CASE.

III.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN INSISTING ON TAKING COGNIZANCE OF THE DISPUTE BETWEEN PETITIONER NGCP AND RESPONDENT HYUNDAI WHEN JURISDICTION IS VESTED IN THE REGULAR CIVIL COURTS.

THE COURT'S RULING

Before discussing the substance of the petition, We shall briefly address the procedural issue raised by private respondent in its Comment/Opposition. Hyundai claims that petitioner committed a serious procedural lapse in supposedly failing to furnish the former with copies of the relevant pleadings referred to in the Petition, thus, warranting the outright dismissal thereof.

The argument has no merit.

As correctly relied upon and complied with by petitioner NGCP, A.M. No. 11-9-4-SC, otherwise known as the Efficient Use of Paper Rule pertinently provides:

“SECTION 6. Annexes Served on Adverse Party. — A party required by the rules to serve a copy of his court-bound paper on the adverse party need not enclose copies of those annexes that based on the record of the court such party already has in his possession. In the event a party requests a set of the annexes actually filed with the court, the party who filed the paper shall comply with the request within five days from receipt.”

Based on the foregoing rule, petitioner's omission to furnish to private respondent with copies of the pleadings, orders, resolutions and other documents forming part of the records before CIAC is clearly justified, considering that private respondent is presumed to have obtained possession thereof during the proceedings a quo.

This brings Us to the real controversy presented in this Petition. In brief, the foregoing issues boil down to whether CIAC has jurisdiction over the dispute between Hyundai, on one hand, and TransCo and NGCP, on the other hand.

We resolve in the negative.

Section 4 of E.O. No. 1008 provides that:

“SEC. 4. Jurisdiction. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship, violation of the terms of agreement, interpretation and/or application of contractual time and delays, maintenance and defects, payment, default of employer or contractor, and changes in contract cost.

Excluded from the coverage of the law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Based on the foregoing, in order for the CIAC to acquire jurisdiction two requisites must concur: first, the dispute must be somehow connected to a construction contract; and second, the parties must have agreed to submit the dispute to arbitration proceedings.[13]

In this case, the point of contention of the parties touches on the existence of the second requirement, or the absence thereof. To recall, only Hyundai and TransCo contracted the Subject Contract, which embodies the dispute resolution clause. It is, thus, petitioner's stand that it could not be bound by the other parties' agreement to submit any construction dispute to arbitration proceedings.

In concluding the agreement to arbitrate between Hyundai and TransCo is binding upon petitioner NGCP, public respondent CIAC ruled in this wise:

“6.22. There is no dispute that the parties to the arbitration clause in the Subject Contract are the Claimant and Respondent TransCo. There is also no dispute that TransCo appointed Respondent NGCP, through the CMA, as the Construction Manager in the Project Under Construction which is the subject of the present dispute. The CMA between TransCo and NGCP is significantly and substantially connected to the Subject Contract between TransCo and the Claimant, out of which the present construction dispute arose. The significant and substantial connection between the subject contract and the CMA, in relation to the present construction dispute, provides sufficient basis for the CIAC to assume jurisdiction over the dispute and all three (3) parties – the Claimant, Respondent TransCo and Respondent NGCP, based on the Supreme Court ruling in the case of Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc., G.R. No. 177240, 8 September 2010, 630 SCRA 368.

6.23. In the Prudential Guarantee case, the owner of a townhouse construction project initiated an arbitration proceeding before the CIAC against the contractor for damages due to “very serious delays”. Together with the contractor (KRDC or Kraft Realty and Development Corporation), the owner (ALI or Anscor Land, Inc.) impleaded the company (PGAI or Prudential Guarantee and Assurance, Inc.) that issued the performance bond of the contractor as a co-respondent in the arbitration. The bonding company raised the defense, among other defenses, that it was not a party to the construction contract. The bonding company maintained that Executive Order (EO) No. 1008 did not vest jurisdiction of the CIAC to settle disputes between a party to a construction contract on one hand and a non-party on the other. It assailed the jurisdiction of the CIAC contending that the CIAC's jurisdiction was limited to the construction industry and cannot extend to surety or guarantee contracts.

6.24. Resolving the challenge to the jurisdiction of the CIAC over a non-party to the construction contract, the Supreme Court upheld the jurisdiction of the CIAC on the ground that, although the performance bond is not the construction contract itself, it is deemed 'as an associate of the main construction contract that it cannot be separate or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of EO No. 1008, which has jurisdiction over any dispute arising from or connected with it.' xxx “

After a circumspect review and analysis on the matter, this Court disagrees with the conclusion of public respondent CIAC.

For one, it is well-settled that an agreement to arbitrate partakes of the nature of a contract. The relation of the parties thereto is contractual, and the rights and liabilities of the parties are controlled by the law of contracts.[14] On this premise, an agreement to arbitrate is governed by the same fundamental principles which characterize contracts in general.

One such principle is the relativity of contracts, which dictates that a contract can only bind the parties who entered into it or their successors who have assumed their personality or juridical position, and that consonantly, such contract can neither favor nor prejudice a third person.[15] This principle is expressly declared in Article 1311 of the Civil Code, which provides:

“Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

xxx xxx xxx”

In this case, considering the absence of privity of contract between NGCP and Hyundai, the second requisite for CIAC to acquire jurisdiction over the present dispute is clearly not satisfied. Accordingly, petitioner NGCP cannot be compelled to arbitrate, without violating the principle on relativity of contracts.

At this juncture, it is significant to note that NGCP is not an assignee of TransCo, within the context of Article

1311 of the Civil Code. Paragraph 2.01 of the Construction Management Agreement is telling on this point, viz:

“2.01 Appointment. The Owner hereby appoints the Concessionaire to act as its Construction Manager to perform the matters particularly set forth herein, and authorizes the Concessionaire in the capacity as Construction Manager to take such action on its behalf and to exercise and enforce such rights, powers and discretions delegated to the Construction Manager by the terms hereof together with all such rights, powers and discretions reasonable incidental hereto and thereto. The Concessionaire hereby accepts its appointment as Construction Manager together with all the rights and obligations pertaining thereto, on and subject to the terms and conditions set out in the Agreement. In the performance of its functions under this Agreement, the Construction Manager acts as an independent contractor and no employer-employee relationship shall be created between the Owner and the Construction Manager's employees, representatives and agents. Nothing in this Agreement shall be construed as a guarantee by the Construction Manager of the performance of any Construction Contractor.”

The above-quoted provision confirms that TransCo never intended to transfer its title over the any of the Projects Under Construction – Maramag-Bunawan Transmission Project – or to cede whatever benefit or proceeds it is entitled to under the Subject Contract, in favor of NGCP. It is thus quite self-evident that by constituting NGCP as Construction Manager under the Construction Management Contract, TransCo merely delegated upon it the authority to exercise certain management functions, in connection with construction and completion of projects previously awarded to third-party contractors such as Hyundai. Hence, regardless of the language used in the Letter dated 16 March 2009, no real assignment or transfer of rights, much less subrogation, has actually taken place, as TransCo remains to be at the receiving end in its contract with Hyundai.

In view thereof, NGCP remains a stranger to the Subject Contract, and thus, CIAC cannot assert its jurisdiction upon petitioner.

It is true that in the case of *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*,^[16] the Supreme Court resolved to uphold the jurisdiction of CIAC over a bonding company, which is a non-party to a construction contract. A comparison, however, of the material circumstances in the *Prudential Guarantee* case,^[17] on one hand, and those in the case at bench, on the other hand, shows glaring dissimilarities, so as not to merit the application of doctrine laid down in the earlier decided case to the present controversy.

In the *Prudential Guarantee* case,^[18] *Prudential Guarantee and Assurance, Inc. (PGAI)* was impleaded in the construction arbitration proceeding, under the Performance Bond it issued adjunct to a construction contract. As issuer of the performance bond, PGAI's undertaking thereunder was that of a surety to the obligation of contractor under the construction contract. To Our minds, it is the very fact that a contract of suretyship existed between the parties that created far-reaching legal implications in that case.

The nature of a contract of suretyship, as elucidated in a recent jurisprudence,^[19] is as follows, viz:

“A contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee. Although the contract of a surety is secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. This was explained in the case of *Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation*, where it was written:

“The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promisee of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the

principal.

xxx xxx xxx

Thus, suretyship arises upon the solidary binding of a person deemed the surety with the principal debtor for the purpose of fulfilling an obligation. A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.”

Guided by the foregoing, it is not difficult to understand the Supreme Court's pronouncement in the Prudential Guarantee case,[20] that the Performance Bond (contract of surety) is significantly and substantially connected to the construction contract, and thus, effectively bound the surety to the arbitration clause contained in the construction contract. It is Our view, however, that this doctrine remains to be an exception to the general rule that only the parties who agreed to submit their dispute to arbitration are bound by such stipulation.

The present case is devoid of the circumstances that gave rise to the exception laid down by the Prudential Guarantee case[21] to warrant application thereof herein. Under the present facts, the second contract involved herein is not one of suretyship but a management contract. Nowhere in the Construction Management Agreement did petitioner NGCP bind itself to be solidarily liable for the fulfillment of TransCo's obligations under the Subject Contract. Furthermore, Construction Management Agreement is not an accessory contract, as it exists independently of the Subject Contract. Hence, this Court finds no reason to depart from the general rule.

By way of final note, while this Court recognizes the existence of a valid arbitration clause between Hyundai and TransCo under the Subject Contract, the continuation of the proceedings before CIAC involving the two parties would not be efficient. This is because the decision will not be binding upon petitioner NGCP who is a non-party to the arbitration agreement. What is more, the arbitration panel will not be able to completely dispose of all the issues of this case without including NGCP in its proceedings. Accordingly, the interest of justice would only be served if the trial court hears and adjudicates the case in a single and complete proceeding.[22]

WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed Resolution dated 22 August 2013 of the public respondent Construction Industry Arbitration Commission is hereby REVERSED and SET ASIDE. Judgment is hereby rendered GRANTING petitioner NGCP's Motion to Dismiss in CIAC Case No. 01-2013. Accordingly, all orders or issuances rendered, and proceedings conducted, in CIAC Case No. 01-2013, insofar as they involve petitioner NGCP, are hereby NULLIFIED, for having been made by CIAC without jurisdiction. Finally, all further proceedings insofar as they affect petitioner NGCP are hereby ENJOINED.

SO ORDERED.

Salazar-Fernando (Chairperson) and Bruselas, JJ., concur.

[1]Rollo, pp. 3-27.

[2] Rollo, pp. 28-51.

[3] Rollo, pp. 320-333.

[4] Rollo, pp. 192-319.

[5] Rollo, pp. 52-131.

[6] Rollo, pp. 132-145.

- [7] Annex 3 of Private Respondent's Comment/Opposition.
- [8] Rollo, pp. 146-191.
- [9] Rollo, pp. 457-470.
- [10] Rollo, pp. 471-475.
- [11] Supra, footnote 2.
- [12] Rollo, pp. 9-10.
- [13] Manila Insurance Co., Inc. vs. Spouses Amurao, G.R. No. 179628, 16 January 2013.
- [14] Ormoc Sugar Cane Planters Association, Inc., et al., vs. The Court of Appeals, G.R. No. 156660, 24 August 2009.
- [15] FGU Insurance Corporation vs. G.P. Sarmiento Trucking Corporation, et al., G.R. No. 141910, 6 August 2002.
- [16] G.R. No. 177240, 8 September 2010.
- [17] Ibid.
- [18] Id.
- [19] Mariano Lim vs. Security Bank Corporation, G.R. No. 188539, 12 March 2014 (citing Philippine Charter Insurance Corporation v. Petroleum Distributors & Service Corporation, G.R. No. 180898, 18 April 2012).
- [20] Supra.
- [21] Ibid.
- [22] European Resources and Technologies, Inc., et al., vs. Ingenieurburo Birkhahn + Nolte, Ingeniurgesellschaft mbh, et al., G.R. No. 159586, 26 July 2004.

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