

NATIONAL POWER CORPORATION, PETITIONER, VS. SOUTHERN PHILIPPINES POWER CORPORATION, RESPONDENT.

Ponente: CARANDANG, J.

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CARANDANG, J.:

This Petition for Review[1] under Rule 43 of the Rules of Court filed by the National Power Corporation (“NPC”) seeks to set aside the April 1, 2013 Decision[2] of the Energy Regulatory Commission (“ERC”) granting Southern Philippines Power Corporation’s (“SPPC”) petition for dispute resolution and supplemental petition and ordering NPC to pay SPPC for the contracted capacity of 55,000 kW (or 55 MW) of electricity from 2005 until 2010, as well as the June 3, 2013 Order[3] denying NPC’s motion for reconsideration for being filed out of time.

The facts as culled from the assailed rulings and the records are as follows:

On October 26, 1996, the consortium of ALSONS Power Holdings Corporation and TOMEN Corporation entered into a service contract with NPC, the terms of which are embodied in an Energy Conversion Agreement (“ECA”).[4]

Under the ECA, the consortium undertook to deliver electrical energy to NPC after converting fuel supplied by the latter. As such, the consortium agreed to design, build and operate a 50 MW (or 50,000 kW) bunker-C fired diesel generating unit in General Santos City.[5]

On January 31, 1997, SPPC assumed the role and obligations of the consortium through an Accession Undertaking. Thus, SPPC became a party to the ECA with NPC.[6]

From March 18, 1998 until 2004, SPPC consistently nominated 50,000 kW (or 50 MW) of the Power Station’s capacity to NPC.[7]

On February 2, 2005, SPPC informed NPC that it installed an additional unit capable of generating five (5) MW (or 5,000 kW) of electrical energy. Since 2005, SPPC has nominated and made available to NPC an electric power output capacity of 55,000 kW (or 55 MW) which is equivalent to 110% of the Nominal Capacity allowed under the ECA.[8] Accordingly, SPPC issued Power Sales Invoices to NPC charging it the corresponding fees for the generated 55,000 kW (or 55 MW) capacity.[9]

In a letter dated March 24, 2008, SPPC requested payment from NPC attributable to the additional ten percent (10%) capacity made available since 2004.[10] In its letter-reply dated April 21, 2008, NPC denied SPPC’s request for payment and reiterated its stand that it will only pay up to 100% of the Nominal Capacity of the power plant.[11]

On August 25, 2008, SPPC and NPC executed a Terms of Reference[12] wherein they mutually agreed to submit the resolution of the dispute to the jurisdiction of the ERC.[13]

On January 6, 2009, SPPC filed a Petition for Dispute Resolution[14] with the ERC, praying that it be allowed to

declare a capacity nomination of 110% of the Nominal Capacity without the consent of NPC; that it be allowed to supplement the energy sources of the Power Station with additional engines as may be necessary without the consent of NPC; and that NPC be ordered to pay unpaid fees from 2005 to 2008.[15] NPC filed its Answer,[16] contending that it can accept capacity nominations of up to 110% of the Nominal Capacity but the same should only come from the five (5) 18V38 Stork-Wartsila engines provided for in the ECA;[17] that SPPC is not allowed to install additional units to meet its Contracted Capacity;[18] and that NPC can only be held liable to pay for generated energy beyond 50 MW when the same comes from the five (5) generating units under the ECA.[19] NPC prayed for the dismissal of SPPC's petition.

On December 14, 2009, SPPC filed a Supplemental Petition[20] praying for the payment of unpaid fees from 2005 to 2010.

Parties then filed their respective memoranda.[21]

On April 1, 2013, the ERC rendered its Decision in favor of SPPC, ratiocinating that since under the ECA, NPC agreed to pay for the power output capacity of the Power Station nominated and demonstrated by SPPC, provided that said contracted capacity does not exceed 110% of the nominal capacity, it cannot now unjustly refuse to recognize the 55,000 kW (or 55 MW) capacity which SPPC had consistently nominated and demonstrated since 2005. Hence, the ERC ruled that NPC should pay SPPC for the contracted capacity of 55,000 kW (or 55 MW) from 2005 to 2010. The dispositive portion of the decision reads:

“WHEREFORE, the foregoing premises considered, the petition and supplemental petition both filed by Southern Philippines Power Corporation (SPPC) are hereby GRANTED.

Accordingly, the National Power Corporation (NPC) should pay SPPC for the contracted capacity of 55,000 kW from 2005 until 2010.

Relative thereto, SPPC and NPC are directed to reconcile their accounts and submit the same, including the proposed payment scheme, within thirty (30) days, from receipt hereof.

SO ORDERED.”[22] (emphasis supplied)

NPC moved for reconsideration but the same was denied by the ERC in its June 3, 2013 Order for being filed out of time.[23]

Hence, this petition for review. Petitioner NPC raised the following grounds, viz:

“I

THE HONORABLE COMMISSION GRAVELY ERRED IN RULING THAT NPC IS LIABLE TO PAY FOR THE 55MW CONTRACTED CAPACITY FROM 2005 to 2010.

II

THE HONORABLE COMMISSION GRAVELY ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION ON TECHNICAL GROUND.”[24]

The petition is devoid of merit.

We note that the ERC denied NPC's motion for reconsideration for being filed out of time. Raised as the second issue, NPC contends that the ERC erred in dismissing its motion for reconsideration on such a technical ground. NPC believes that the ends of justice can be best served should the ERC extend liberality in its favor.[25]

Sections 5 and 6, Rule 22 of Resolution No. 38, Series of 2006 – A Resolution Promulgating the Energy

Regulatory Commission's Rules of Practice and Procedure state:

"Section 5. Finality. - All final orders, resolutions or decisions of the Commission shall become final and inappealable upon the expiration of fifteen (15) days from notice thereof to all parties. Any appeal shall not stay the same, unless the appellate court shall direct otherwise.

Section 6. Appeal. - The appeal from final orders, resolutions or decisions of the Commission shall be taken within (15) days from notice thereof or of the denial of the appellant's motion for reconsideration duly filed in accordance with Rule 23."

Meanwhile, Section 1, Rule 23 of Resolution No. 38 provides:

"Section 1. Filing of Motion for Reconsideration. - A party adversely affected by a final order, resolution, or decision of the Commission rendered in an adjudicative proceeding may, within fifteen (15) days from receipt of a copy thereof, file a motion for reconsideration. In its motion, the movant may also request for reopening of the proceeding for the purpose of taking additional evidence in accordance with Section 17 of Rule 18. No more than one motion for reconsideration by each party shall be entertained."

Section 4, Rule 10 of Resolution No. 38 also requires that "[t]he filing of pleadings and other papers shall be made by presenting the original and two (2) copies of any pleading or other papers, together with the diskettes or compact discs containing the electronic files of the same, personally to the Docket Section of the Commission, or by sending them by registered mail addressed to the Docket Section."

Here, NPC admits that it filed its motion for reconsideration via LBC four (4) days after it was due.[26] Clearly, NPC's motion for reconsideration was not seasonably filed nor filed in accordance with ERC's Rules of Practice and Procedure, thereby rendering ERC's decision final and executory.

Procedural rules, We must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies." [27] The adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. [28] While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. [29] There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity." [30] A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances. [31]

Here, We find no compelling reason for a relaxation of the rules. Hence, the final and executory nature of the assailed ERC decision can no longer be disturbed. Besides, even if We, in the interest of justice, consider the motion for reconsideration as timely filed, We still find the instant petition for review to be without merit.

The controversy at bar stems from the parties' conflicting interpretations of pertinent provisions of the ECA. Article 1374 of the Civil Code provides that "[t]he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." The same Code further sets down the rule that "[i]f some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual." [32]

Similarly, under the Rules of Court it is prescribed that "[i]n the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all" [33]

and “for the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret.”[34]

NPC contends that Sections 1, 3 and 3.1 of the First Schedule of the ECA limits SPPC to the installation of only five (5) engines.[35] NPC argues that when SPPC unilaterally installed a sixth engine with 5 MW (or 5,000 kW) capacity without its prior knowledge and consent, SPPC in effect amended the ECA and violated the principle of mutuality of contracts under Article 1308 of the Civil Code.[36] Sections 1, 3 and 3.1 of the First Schedule of the ECA provide:

“1. Project Scope

The Contractor shall be responsible for the design, engineering, supply, construction, installation and erection, including civil works, testing and commissioning of a bunker-C fired diesel generating power station.

Xxx xxx xxx

3. Extent of Works/Supply

In pursuance of its obligations under Section 1, the Contractor shall be responsible for:

3.1. Complete design, development and construction of the Power Station, consisting of 5 x 18V38 Stork-Wartsila engines with Black Start capability.”[37]

Bearing in mind the interpretative rules in the Civil Code, We give scant consideration to NPC’s contentions. Section 3.1 of the First Schedule of the ECA is not couched in restrictive or limiting terms. Besides, the provisions alluded to by the NPC must also be read with Section 3.3 of the same Schedule, viz:

“3.3. Electro-Mechanical Works

Supply, installation/erection, tests and commissioning to put into operation the required number of generation units and its corresponding minimum net capacity of 50,000 kW.”[38] (emphasis Ours)

Section 3.3 of the First Schedule of the ECA clearly does not limit SPPC to the original five (5) generating units but in fact allows it to put up the required number of units capable of generating a minimum net capacity of 50,000 kW.

NPC also contends that the dispatch of 55 MW on various dates in 2005 to 2008 does not have its consent,³⁹ thus, it cannot be held liable for the generation of the extra 5 MW of electricity.

We disagree.

As ruled by the ERC, Sections 2 and 2.1 of the Eighth Schedule of the ECA provide:

“2. Capacity Provision

The Contractor shall provide and NPC shall pay for the electric power output capacity of the Power Station as provided in Section 4.1 of this Schedule in respect of the amount of Contracted Capacity which, in respect of each Contract Year, shall be the actual net kW capability of Power Station nominated and demonstrated by the Contractor for such Contract Year provided that:

2.1. such Contracted Capacity may not exceed 110% of the Nominal Capacity unless NPC so agrees at its sole option and terms;”[40]

Reading Section 2.1, it is apparent that said provision is couched in general and mutual terms. SPPC is allowed to

nominate up to 110% of the Nominal Capacity, which is equivalent to 55 MW. The consent of NPC is only required when the Nominated Capacity exceeds 110%.

Indeed, the rule is settled that a contract constitutes the law between the parties who are bound by its stipulations^[41] which, when couched in clear and plain language, should be applied according to their literal tenor.^[42] Courts cannot supply material stipulations, read into the contract words it does not contain^[43] or, for that matter, read into it any other intention that would contradict its plain import.^[44] Neither can they rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.^[45]

WHEREFORE, premises considered, the instant petition for review is DENIED. The assailed April 1, 2013 Decision and June 3, 2013 Order of the ERC are AFFIRMED.

SO ORDERED.

Barza, R. F., and Reyes-Carpio, A., JJ., concur.

[1] Rollo, pp. 28-49.

[2] Rollo, pp. 50-66.

[3] Rollo, pp. 67-69.

[4] Rollo, p. 52.

[5] Id.

[6] Rollo, p. 53.

[7] Id.

[8] Id.

[9] Id.

[10] Rollo, p. 800.

[11] Rollo, p. 801.

[12] Rollo, pp. 586-590.

[13] Rollo, p. 588.

[14] Rollo, pp. 203-216.

[15] Rollo, pp. 213-214.

[16] Rollo, pp. 166-179.

[17] Rollo, p. 171.

[18] Id.

[19] Rollo, p. 175.

[20] Rollo, pp. 220-226.

[21] SPPC's Consolidated Memorandum, Rollo, pp. 335-370; NPC's Memorandum, Rollo, pp. 371-397.

[22] Rollo, p. 65.

[23] Rollo, p. 68.

[24] Rollo, p. 35.

[25] Rollo, p. 43.

[26] Id.

[27] Fortich vs. Corona, G.R. No. 131457, November 17, 1998, citing Art. III, Section 16, 1987 Constitution.

[28] Id., citing Garbo vs. Court of Appeals, et. al., 258 SCRA 159, 163 [1996].

[29] Id., citing Dulos vs. Court of Appeals, et. al., 188 SCRA 413, 422 [1990].

[30] Id., citing Garbo vs. Court of Appeals, et al., supra.

[31] Id.

[32] Catungal vs. Rodriguez, G.R. No. 146839, March 23, 2011, citing Civil Code, Article 1373.

[33] Id., citing Rules of Court, Rule 130, Section 11.

[34] Id., Section 13.

[35] Rollo, pp. 37-38.

[36] Rollo, pp. 36-37.

[37] Rollo, p. 107.

[38] Rollo, p. 108.

[39] Rollo, p. 41.

[40] Rollo, p. 130.

[41] Spouses Cabahug vs. National Power Corporation, G.R. No. 186069, January 30, 2013, citing R&M General Merchandise, Inc. v. Court of Appeals, 419 Phil. 131, 142 (2001).

[42] Id., citing Antipolo Properties, Inc. v. Nuyda, G.R. No. 171832, 12 October 2009, 603 SCRA 376, 381.

[43] Id., citing Sps. Barrera v. Sps. Lorenzo, 438 Phil. 42, 49 (2002).

[44] Id., citing German Marine Agencies, Inc. v. NLRC, 403 Phil. 572, 589 (2001).

[45] Id., citing Bautista v. Court of Appeals, 379 Phil. 386, 399 (2000).

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