

HI-PRECISION STEEL CENTER, INC., PETITIONER, VS. LIM KIM STEEL BUILDERS, INC., AND CONSTRUCTION INDUSTRY ARBITRATION COMMISSION, RESPONDENTS.

G.R. No. 110434. December 13, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 18 June 1993, a "Petition for Extension to File Petition for Review"[1] was filed before the Court, petitioner Hi-Precision Steel Center, Inc. ("Hi-Precision") stating that it intended to file a Petition for Review on Certiorari in respect of the 13 November 1992 Award[2] and 13 May 1993 Order[3] of public respondent Construction Industry Arbitration Commission ("CIAC") in Arbitration Case No. 13--90. The Petition (really a Motion) prayed for an extension of thirty (30) days or until 21 July 1993 within which to file a Petition for Review.

An Opposition[4] to the Motion was filed by private respondent Lim Kim Steel Builders, Inc. ("Steel Builders") on 5 July 1993. On the same day, however, the Court issued a Resolution[5] granting the Motion with a warning that no further extension would be given.

The Opposition, the subsequent Reply[6] of petitioner filed on 20 July 1993 and the Petition for Review[7] dated 21 July 1993, were noted by the Court in its Resolution[8] of 28 July 1993. The Court also required private respondent Steel Builders to file a Comment on the Petition for Review and Steel Builders complied.

The Petition prays for issuance of a temporary restraining order[9] to stay the execution of the assailed Order and Award in favor of Steel Builders, which application the Court merely noted, as it did subsequent Urgent Motions for a temporary restraining order.[10]

Petitioner Hi-Precision entered into a contract with private respondent Steel Builders under which the latter as Contractor was to complete a P21 Million construction project owned by the former within a period of 153 days, i.e. from 8 May 1990 to 8 October 1990. The project completion date was first moved to 4 November 1990. On that date, however, only 75.8674% of the project was actually completed. Petitioner attributed this non-completion to Steel Builders which allegedly had frequently incurred delays during the original contract period and the extension period. Upon the other hand, Steel Builders insisted that the delays in the project were either excusable or due to Hi-Precision's own fault and issuance of change orders. The project was taken over on 7 November 1990, and eventually completed on February 1991, by Hi-Precision.

Steel Builders filed a "Request for Adjudication" with public respondent CIAC. In its Complaint filed with the CIAC, Steel Builders sought payment of its unpaid progress billings, alleged unearned profits and other receivables. Hi-Precision, upon the other hand, in its Answer and Amended Answer, claimed actual and liquidated damages, reimbursement of alleged additional costs it had incurred in order to complete the project and attorney's fees.

The CIAC formed an Arbitral Tribunal with three (3) members, two (2) being appointed upon nomination of

Hi-Precision and Steel Builders, respectively; the third member (the Chairman) was appointed by the CIAC as a common nominee of the two (2) parties. Only the Chairman was a lawyer. After the arbitration proceeding, the Arbitral Tribunal rendered a unanimous Award dated 13 November 1992, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the Owner [petitioner Hi-Precision] is ordered to pay the Contractor [private respondent Steel Builders] the amount of P6,400,717.83 and all other claims of the parties against each other are deemed compensated and offset. No pronouncement as to costs.

The Parties are enjoined to abide by the award."[11]

Upon motions for reconsideration filed, respectively, by Hi-Precision and Steel Builders, the Arbitral Tribunal issued an Order dated 13 May 1993 which reduced the net amount due to contractor Steel Builders to P6,115,285.83.[12]

In its Award, the Arbitral Tribunal stated that it was guided by Articles 1169, 1192 and 2215 of the Civil Code. With such guidance, the arbitrators concluded that (a) both parties were at fault, though the Tribunal could not point out which of the parties was the first infractor; and (b) the breaches by one party affected the discharge of the reciprocal obligations of the other party. With mutual fault as a principal premise, the Arbitral Tribunal denied (a) petitioner's claims for the additional costs allegedly incurred to complete the project; and (b) private respondent's claim for profit it had failed to earn because of petitioner's take over of the project.

The Tribunal then proceeded to resolve the remaining specific claims of the parties. In disposing of these multiple, detailed claims, the Arbitral Tribunal, in respect of one or more of the respective claims of the parties: (a) averaged out the conflicting amounts and percentages claimed by the parties;[13] (b) found neither basis nor justification for a particular claim;[14] (c) found the evidence submitted in support of particular claims either weak or non-existent;[15] (d) took account of the admissions of liability in respect of particular claims;[16] (e) relied on its own expertise in resolving particular claims;[17] and (f) applied a "principle of equity" in requiring each party to bear its own loss resulting or arising from mutual fault or delay (*compensatio morae*).[18]

Petitioner Hi-Precision now asks this Court to set aside the Award, contending basically that it was the contractor Steel Builders who had defaulted on its contractual undertakings and so could not be the injured party and should not be allowed to recover any losses it may have incurred in the project. Petitioner Hi-Precision insists it is entitled to damages, and claims that the Arbitral Tribunal committed grave abuse of discretion when it allowed certain claims by Steel Builders and offset them against claims of Hi-Precision.

A preliminary point needs to be made. We note that the Arbitral Tribunal has not been impleaded as a respondent in the Petition at bar. The CIAC has indeed been impleaded; however, the Arbitral Award was not rendered by the CIAC, but rather by the Arbitral Tribunal. Moreover, under Section 20 of Executive Order No. 1008, dated 4 February 1985, as amended, it is the Arbitral Tribunal, or the single Arbitrator, with the concurrence of the CIAC, which issues the writ of execution requiring any sheriff or other proper officer to execute the award. We consider that the Arbitral Tribunal which rendered the Award sought to be reviewed and set aside, should be impleaded even though the defense of its Award would presumably have to be carried by the prevailing party.

Petitioner Hi-Precision apparently seeks review both under Rule 45 and Rule 65 of the Rules of Court.[19] We do not find it necessary to rule which of the two: a petition for review under Rule 45 or a petition for certiorari under Rule 65 -- is necessary under Executive Order No. 1008, as amended; this issue was, in any case, not squarely raised by either party and has not been properly and adequately litigated.

In its Petition, Hi-Precision purports to raise "legal issues," and in presenting these issues, prefaced each with a

creative formula:

(1)

"The public respondent [should be the 'Arbitral Tribunal'] committed serious error in law, if not grave abuse of discretion, when it failed to strictly apply Article 1191, New Civil Code, against the contractor x x x";

(2)

"The public respondent committed serious error in law, if not grave abuse of discretion, when it failed to rule in favor of the owner, now petitioner herein, all the awards it claimed on arbitration, and when it nonetheless persisted in its awards of damages in favor of the respondent. x x x;"

(3)

"The public respondent committed serious error in law, if not grave abuse of discretion, for its abject failure to apply the doctrine of waiver, or estoppel against the contractor, the private respondent herein, when it agreed on November 16, 1990 to award termination of the contract and the owner's takeover of the project x x x;"

(4)

"The public respondent committed serious error in law, if not grave abuse of discretion, when it did not enforce the law between the parties, the 'technical specification[s]' which is one of the contract documents, particularly to par. (a), sub-part 3.01, part 3, Sec. 2b, which expressly requires that major site work activities like stripping, removal and stockpiling of top soil shall be done 'prior to the start of regular excavation or backfilling work', the principal issue in arbitration being non-compliance with the contract documents;"

(5)

"The public respondent committed serious error in law, if not grave abuse of discretion, when it found, in the May 13, 1993 Order, the petitioner 'guilty of estoppel' although it is claimed that the legal doctrine of estoppel does not apply with respect to the required written formalities in the issuance of a change order x x x;"

(6)

"The exceptional circumstances in *Remalante vs. Tibe*, 158 SCRA 138, where the Honorable Supreme Court may review findings of facts, are present in the instant case, namely; (a) when the inference made is manifestly absurd, mistaken or impossible (*Luna vs. Linatoc*, 74 Phil. 15); (2) when there is grave abuse of discretion in the appreciation of facts (*Buyco v. People*, 95 Phil. 253); (3) when the judgment is premised on a misapprehension of facts (*De la Cruz v. Sosing*, 94 Phil. 26, and *Castillo vs. CA*, 124 SCRA 808); (4) when the findings of fact are conflicting (*Casica v. Villaseca*, 101 Phil. 1205); (5) when the findings are contrary to the admissions of the parties (*Evangelista v. Alto Surety*, 103 Phil. 401), and therefore, the findings of facts of the public respondent in the instant case may be reviewed by the Honorable Supreme Court." [20] (Underscoring partly supplied and partly in the original)

From the foregoing, petitioner Hi-Precision may be seen to be making two (2) basic arguments:

(a) Petitioner asks this Court to correct legal errors committed by the Arbitral Tribunal, which at the same time constitute grave abuse of discretion amounting to lack of jurisdiction on the part of the Arbitral Tribunal; and

(b) Should the supposed errors petitioner asks us to correct be characterized as errors of fact, such factual errors should nonetheless be reviewed because there was "grave abuse of discretion" in the appreciation of facts and because there was misapprehension of facts on the part of the Arbitral Tribunal.

Executive Order No. 1008, as amended, provides, in its Section 19, as follows:

"Sec. 19. Finality of Awards. -- The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court."

Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court -- -which is not a trier of facts -- in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and inappealable.

Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.[21]

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction.[22] Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators.[23] Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.

Examination of the Petition at bar reveals that it is essentially an attempt to re-assert and re-litigate before this Court the detailed or itemized factual claims made before the Arbitral Tribunal under a general averment that the Arbitral Tribunal had "misapprehended the facts" submitted to it. In the present Petition, too, Hi-Precision claims that the Arbitral Tribunal had committed grave abuse of discretion amounting to lack of jurisdiction in reaching its factual and legal conclusions.

The first "legal issue" submitted by the Petition is the claimed misapplication by the Arbitral Tribunal of the first and second paragraphs of Article 1191 of the Civil Code.[24] Article 1191 reads:

"Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law."

Hi-Precision contends energetically that it is the injured party and that Steel Builders was the obligor who did not comply with what was incumbent upon it, such that Steel Builders was the party in default and the entity guilty of negligence and delay. As the injured party, Hi-Precision maintains that it may choose between the fulfillment or rescission of the obligation in accordance with Article 1191, and is entitled to damages in either case. Thus, Hi-Precision continues, when the contractor Steel Builders defaulted on the 153rd day of the original contract period, Hi-Precision opted for specific performance and gave Steel Builders a 30-day extension period with which to complete the project.

What petitioner Hi-Precision, in its above argument, disregards is that the determination of whether Hi-Precision or Steel Builders was the "injured party" is not to be resolved by an application of Article 1191. That determination is eminently a question of fact, for it requires ascertainment and identification of which of the two (2) contending parties had first failed to comply with what was incumbent upon it. In other words, the supposed misapplication of Article 1191, while ostensibly a "legal issue," is ultimately a question of fact, i.e., the determination of the existence or non-existence of a fact or set of facts in respect of which Article 1191 may be properly applied. Thus, to ask this Court to correct a claimed misapplication or non-application of Article 1191 is to compel this Court to determine which of the two (2) contending parties was the "injured party" or the "first infractor." As noted earlier, the Arbitral Tribunal after the prolonged arbitration proceeding, was unable to make that factual determination and instead concluded that both parties had committed breaches of their respective obligations. We will not review, and much less reverse, that basic factual finding of the Arbitral Tribunal.

A second "legal issue" sought to be raised by petitioner Hi-Precision relates to the supposed failure of the Arbitral Tribunal to apply the doctrines of estoppel and waiver as against Steel Builders.[25] The Arbitral Tribunal, after declaring that the parties were mutually at fault, proceeded to enumerate the faults of each of the parties. One of the faults attributed to petitioner Hi-Precision is that it had failed to give the contractor Steel Builders the required 15-day notice for termination of the contract.[26] This was clearly a finding of fact on the part of the Tribunal, supported by the circumstance that per the record, petitioner had offered no proof that it had complied with such 15-day notice required under Article 28.01 of the General Conditions of Contract forming part of the Contract Documents. Petitioner Hi-Precision's argument is that a written Agreement dated 16 November 1990 with Steel Builders concerning the take over of the project by Hi-Precision, constituted waiver on the part of the latter of its right to a 15-day notice of contract termination. Whether or not that Agreement dated 16 November 1990 (a document not submitted to this Court) is properly characterized as constituting waiver on the part of Steel Builders, may be conceded to be *prima facie* a question of law; but, if it is, and assuming *arguendo* that the Arbitral Tribunal had erred in resolving it, that error clearly did not constitute a grave abuse of discretion resulting in lack or loss of jurisdiction on the part of the Tribunal.

A third "legal issue" posed by Hi-Precision relates to the supposed failure on the part of the Arbitral Tribunal "to uphold the supremacy of 'the law between the parties' and enforce it against private respondent [Steel Builders]."[27] The "law between that parties" here involved is the "Technical Specifications" forming part of the Contract Documents. Hi-Precision asserts that the Arbitral Tribunal did not uphold the "law between the parties," but instead substituted the same with "its [own] absurd inference and 'opinion' on mud." Here again, petitioner is merely disguising a factual question as a "legal issue," since petitioner is in reality asking this Court to review the physical operations relating, e.g., to site preparation carried out by the contractor Steel Builders and to determine whether such operations were in accordance with the Technical Specifications of the project. The Arbitral

Tribunal resolved Hi-Precision's claim by finding that Steel Builders had complied substantially with the Technical Specifications. This Court will not pretend that it has the technical and engineering capability to review the resolution of that factual issue by the Arbitral Tribunal.

Finally, the Petition asks this Court to "review serious errors in the findings of fact of the [Arbitral Tribunal]."[28] In this section of its Petition, Hi-Precision asks us to examine each item of its own claims which the Arbitral Tribunal had rejected in its Award, and each claim of the contractor Steel Builders which the Tribunal had granted. In respect of each item of the owner's claims and each item of the contractor's claims, Hi-Precision sets out its arguments, to all appearances the same arguments it had raised before the Tribunal. As summarized in the Arbitral Award, Contractor's Claims were as follows:

“12.1.

Unpaid Progress

Billing

1,812,706.95

12.2.

Change Order

1

0.00

12.3.

- do -

2

10,014.00

12.4.

- do -

3

320,000.00

12.5.

- do -

4

112,300.70

12.6.

- do -

5

398,398.00

12.7.

- do -

6

353,050.38

12.8.

- do -

7

503,836.53

12.9.

- do -

8

216,138.75

12.10.

- do -

9

101,621.40

12.11.

- do -

10

7,200.00

12.12.

- do -

11

0.00

12.13.

- do -

12

7,800.00

12.14.

- do -

13

49,250.00

12.15.

- do -

14

167,952.00

12.16.

- do -

15

445,600.00

12.17.

- do -

16

92,457.30

12.18.

- do -

17

1,500.00

12.19.

20,240.00

12.20.

63,518.00

12.21.

0.00

12.22.

0.00

12.23.

0.00

12.24.

0.00

12.25.

0.00

12.26.

730,201.57

12.27.

1,130,722.70

12.28.

0.00

12.29.

273,991.00

12.30.

0.00

12.31.

7,318,499.28

-----"[29]

Upon the other hand, the petitioner's claims we are asked to review and grant are summarized as follows:

"1. Actual Damages

Advance Downpayment [at] signing of Contract which is subject to 40% deduction every progress billing
(40% of Contract Price)

P8,406,000.00

Progress Billings

5,582,585.55

Advances made to Lim Kim

a) prior to

take-over

392,781.45

b) after the

take-over

Civil Works

1,158,513.88

Materials

4,213,318.72

Labor

2,155,774.79

Equipment Rental

1,448,208.90

P 8,974,816.45

Total Amount Paid for Construction

23,650,183.00

Less: Contract Price

(21,000,000.00)

IA Excess of amount paid over contract price

2,650,163.29

IB Other items due from Lim Kim Steel Builders

a. Amount not yet deducted from Downpayment due to non-completion of Project (P24.1326%)

2,027,138.40

b. Due to Huey Commercial used for HSCI Project

51,110.40

IC Additional construction expenses

a. Increase in prices since Oct.

5,272,096.81

b. Cost of money of (a)

873,535.49

ID Installation of machinery

a. Foreign exchange loss

11,565,048.37

b. Cost of money (a)

2,871,987.01

I [E] Raw materials

a. Foreign exchange loss

4,155,982.18

b. Cost of money of (a)

821,242.72

c. Additional import levy of 5%

886,513.33

d. Cost of money (c)

170,284.44

e. Cost of money on marginal deposit on Letter of Credit

561,195.25

IF Cost of money on holding to CRC INTY.

3,319,609.63

Total Actual Damages

35,295,927.32

2. Liquidated Damages

2,436,000.00

3. Attorney's Fees

500,000.00

P38,231,927.32

^ ^ ^ ^ ^ ^ ^ ^ "[30]

We consider that in asking this Court to go over each individual claim submitted by it and each individual countering claim submitted by Steel Builders to the Arbitral Tribunal, petitioner Hi-Precision is asking this Court to pass upon claims which are either clearly and directly factual in nature or require previous determination of factual issues. This upon the one hand. Upon the other hand, the Court considers that petitioner Hi-Precision has failed to show any serious errors of law amounting to grave abuse of discretion resulting in lack of jurisdiction on the part of the Arbitral Tribunal, in either the methods employed or the results reached by the Arbitral Tribunal, in disposing of the detailed claims of the respective parties.

WHEREFORE, for all the foregoing, the Petition is hereby DISMISSED for lack of merit. Costs against petitioner.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

- [1] Rollo, pp. 2-9.
- [2] Id., pp. 137-181.
- [3] Id., pp. 11-23.
- [4] Id., pp. 24-26.
- [5] Id., p. 23-a.
- [6] Id., pp. 29-32.
- [7] Id., pp. 42-136.
- [8] Id., p. 181-a
- [9] Id., p. 89; Rollo, p. 131.
- [10] Urgent Motions for the Issuance of a Temporary Restraining Order dated 5 August 1993; 25 August 1993; 20 September 1993; 21 October 1993.
- [11] Rollo, pp. 180-181.
- [12] Id., p. 23.
- [13] Claims concerning Contractor's Claim No. 1; Owner's Claim No. 1; Unpaid Progressive Billing; Change Order No. 6; Change Order No. 8.
- [14] Claims concerning Change Order No. 1.
- [15] Claims concerning Change Order No. 2; Change Order No. 3; Change Order No. 4; Change Order No. 5; Change Order No. 11; Change Order No. 16.
- [16] Claims concerning Change Order No. 9; Change Order No. 10; Change Order No. 17.
- [17] Claims concerning Change Order No. 7; Change Order No. 12; Change Order No. 13; Change Order No. 14.
- [18] Claims concerning Contractor's Claim No. 19; Contractor's Claim No. 20; Contractor's Claim No. 21; Contractor's Claim No. 22; Contractor's Claim No. 23; Contractor's Claim No. 24; Contractor's Claim No. 25; Contractor's Claim No. 27; Contractor's Claim No. 28; Contractor's Claim No. 29; Contractor's Claim No. 30; Owner's Claim No. 3.
- [19] The Petition said, inter alia: "[t]he prevalence of grave abuse of discretion in the May 13, 1993 Order on appeal in this Petition under Rule 45 is made more manifest in the November 13, 1992 Arbitral Award, the principal resolution subject of the motion for reconsideration denied by the May 13, 1993 Order, and thus, it becomes procedurally Appropriate and necessary, in the interest of truth and justice, to respectfully pray the Honorable Court to likewise review on certiorari under Rule 65, the November 13, 1992 award." (Underscoring supplied)
- [20] Rollo, pp. 74-76.
- [21] See first three (3) Whereas clauses and Section 2 of Executive Order No. 1008, as amended.
- [22] See: Asian Construction and Development Corporation v. Construction Industry Arbitration Commission, et al, 218 SCRA 529 (1993); Chung Fu v. Court of Appeals, 206 SCRA 545 (1992); Primary Structures Corp. v. Victor P. Lazatin, etc., et al., G.R. No. 101258, July 13, 1992 (unsigned resolution); A.C. Enterprises, Inc. v.

Construction Industry Arbitration Commission, et al., G.R. No. 101444, February 10, 1992 (unsigned resolution); and Sime Darby Pilipinas, Inc. v. Magsalin, 180 SCRA 177 (1989).

[23] It is noteworthy that Section 24 of R.A. No. 876 known as "An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes" (approved on 29 June 1953) sets out the following grounds for vacating an arbitral award:

"Sec. 24. Grounds for vacating award. -- In any one of the following cases, the court must make an order vacating award upon the petition of any party to the controversy when such party proved affirmatively that in the arbitration proceedings;

(a) The award was procured by corruption, fraud or other undue means; or

(b) That there was evident partiality or corruption in the arbitrators or any of them; or

(c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or

(d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

x x x x x x x x"

[24] Petition, Rollo, pp. 93-97.

[25] Id., Rollo, pp. 77-80.

[26] Arbitral Award, Rollo, p. 153.

[27] Petition, Rollo, pp. 80-90.

[28] Id., Rollo, p. 97 et seq.

[29] Rollo, pp. 111-112.

[30] Id., pp. 131-133.

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