

C & M TIMBER CORPORATION (CMTC), PETITIONER, VS. HON. ANGEL C. ALCALA, SECRETARY OF THE DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES, HON. ANTONIO T. CARPIO, CHIEF PRESIDENTIAL...

G.R. No. 111088. June 13, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari by which C & M Timber Corporation seeks the nullification of the order dated February 26, 1993 and the resolution dated June 7, 1993 of the Office of the President, declaring as of no force and effect Timber License Agreement (TLA) No. 106 issued to petitioner on June 30, 1972. TLA No. 106, with the expiry date June 30, 1997, covers 67,680 hectares of forest land in the municipalities of Dipaculao and Dinalongan in the Province of Aurora and the Municipality of Maddela in Quirino province.[1]

It appears that in a letter dated July 20, 1984[2] to President Marcos, Filipinas Loggers Development Corporation (FLDC), through its president and general manager, requested a timber concession over the same area covered by petitioner's TLA No. 106, alleging that the same had been cancelled pursuant to a presidential directive banning all forms of logging in the area. The request was granted in a note dated August 14, 1984 by President Marcos who wrote, as was his wont, on the margin of the letter of FLDC: "Approved." [3]

Accordingly, on September 21, 1984, the Ministry of Natural Resources, as it was then called, issued TLA No. 360, with the expiry date September 30, 1994, to FLDC, covering the area subject of TLA No. 106. In 1985, FLDC began logging operations.

On June 26, 1986, then Minister of Natural Resources Ernesto M. Maceda suspended TLA No. 360 for FLDC's "gross violation of the terms and conditions thereof, especially the reforestation and selective logging activities and in consonance with the national policy on forest conservation." [4] On July 26, 1986, Minister Maceda issued another order cancelling the license of FLDC on the ground that "in spite of the suspension order dated June 26, 1986, said concessionaire has continued logging operations in violation of forestry rules and regulations." [5]

Learning of the cancellation of FLDC's TLA, petitioner, through its officer-in-charge, wrote Minister Maceda a letter dated October 10, 1986, requesting "revalidation" of its TLA No. 106. [6] As FLDC sought a reconsideration of the order cancelling its TLA, petitioner wrote another letter dated February 13, 1987, [7] alleging that because of the log ban imposed by the previous administration it had to stop its logging operations, but that when the ban was lifted on September 21, 1984, its concession area was awarded to FLDC "as a result of [FLDC's] covetous maneuvers and unlawful machinations." (Petitioner was later to say that those behind FLDC, among them being the former President's sister, Mrs. Fortuna Barba, were "very influential because of their very strong connections with the previous Marcos regime.") [8] Petitioner prayed that it be allowed to resume logging operations.

In his order dated May 2, 1988,[9] Secretary Fulgencio Factoran, Jr., of the DENR, declared petitioner's TLA No. 106 as of no more force and effect and consequently denied the petition for its restoration, even as he denied FLDC's motion for reconsideration of the cancellation of TLA No. 360. Secretary Factoran, Jr. ruled that petitioner's petition was barred by reason of laches, because petitioner did not file its opposition to the issuance of a TLA to FLDC until February 13, 1987, after FLDC had been logging under its license for almost two years. On the other hand, FLDC's motion for reconsideration was denied, "since the findings on which the cancellation order had been based, notably gross violation of the terms and conditions of its license, such as reforestation and selective logging activities appear to be firmly grounded."

Both petitioner CMTC and FLDC appealed to the Office of the President. Petitioner denied that it was guilty of laches. It alleged that it had sent a letter to the then Minister of Natural Resources Rodolfo del Rosario dated September 24, 1984 protesting the grant of a TLA to FLDC over the area covered by its (petitioner's) TLA and, for this reason, requesting nullification of FLDC's TLA.

In a decision dated March 21, 1991,[10] the Office of the President, through then Executive Secretary Oscar Orbos, affirmed the DENR's order of May 2, 1988. Like the DENR it found petitioner guilty of laches, the alleged filing by petitioner of a protest on September 24, 1984 not having been duly proven. The decision of the Office of the President stated:[11]

As disclosed by the records, this Office, in a letter of June 1, 1989, had requested the DENR to issue a certification as to the authenticity/veracity of CMTC's aforesaid Annex "A" to enable it to resolve this case judiciously and expeditiously. Said letter-request pertinently reads:

"x x x C & M Timber Corporation has attached to its "Supplemental Petition For Review," dated June 1, 1988, a xerox copy of (Annex "A") of its letter to the Minister of Natural Resources Rodolfo del Rosario, dated September 24, 1984, prepared by its counsel, Atty. Norberto J. Quisumbing, protesting against the award of the contested area to Filipinas Loggers Development Corporation and requesting that it be annulled and voided.

"Considering that the aforementioned Annex "A" constitutes a vital defense to C & M Timber Corporation and could be a pivotal factor in the resolution by this Office of the instant appeal, may we request your good office for a certification as to the authenticity/veracity of said document (Annex 'A') to enable us to resolve the case judiciously and expeditiously."

In reply thereto, the DENR, thru Assistant Secretary for Legal Affairs Romulo D. San Juan, in a letter of July 7, 1989, informed this Office, thus:

"x x x

"Despite diligent efforts exerted to locate the alleged aforementioned Annex 'A', no such document could be found or is on file in this Office.

"This Office, therefore, regrets that it can not issue the desired certification as to the authenticity/veracity of the document."

On September 10, 1990, this Office requested an updated comment of the DENR on (a) the duplicate original copy of Annex "A"; (b) a xerox copy of Page 164, entry No. 2233, of the MNR's logbook tending to show that the original copy of Annex "A" was received by the MNR; and (c) a xerox copy of Page 201 of the logbook of the BFD indicating that the original copy of Annex "A" was received by BFD from the MNR.

On October 26, 1990, DENR Assistant Secretary San Juan endorsed to this Office the updated comment of Director of Forest Management Bureau (FMB) in a 2nd endorsement of October 25, 1990, which pertinently reads as follows:

“Please be informed that this Office is not the addressee and repository of the letter dated September 24, 1984 of Atty. Norberto Quisumbing. This Office was just directed by then Minister Rodolfo del Rosario to act on the purported letter of Atty. Quisumbing and as directed, we prepared a memorandum to the President which was duly complied with as shown by the entries in the logbook. Annex ‘A’, which is the main document of the letter-appeal of C & M Timber Corporation is presumed appended to the records when it was acted upon by the BFD (now FMB) and forwarded to the Secretary (then Minister). Therefore this Office is not in a position to certify as to the authenticity of Annex ‘A’.

Clearly therefore, CMTC’s reliance on its Annex “A” is misplaced, the authenticity thereof not having been duly proven or established. Significantly, we note that in all the pleadings filed by CMTC in the office a quo, and during the hearing conducted, nothing is mentioned therein about its letter of September 24, 1984 (Annex “A”). Jurisprudence teaches that issues neither averred in the pleadings nor raised during the trial below cannot be raised for the first time on appeal (*City of Manila vs. Ebay*, 1 SCRA 1086, 1089); that issues of fact not adequately brought to the attention of the trial court need not be considered by a reviewing court, as they cannot be raised for the first time on appeal (*Santos v. Intermediate Appellate Court*, 145 SCRA 592, 595); and that parties, may not, on appeal, adopt a position inconsistent with what they sustained below (*People v. Archilla*, 1 SCRA 698, 700-701)

The Office of the President also declined to set aside the DENR’s order of July 31, 1986, cancelling FLDC’s TLA No. 360, after finding the same to be fully substantiated.

Petitioner and FLDC moved for reconsideration. In its order dated January 25, 1993,[12] the Office of the President, through Chief Presidential Legal Counsel Antonio T. Carpio, denied petitioner’s motion for reconsideration. It held that “even assuming that CMTC did file regularly its letter-protest of September 24, 1984 with MNR on September 25, 1984, CMTC failed to protect its rights for more than two (2) years until it opposed reinstatement of FLDC’s TLA on February 13, 1987. Within that two (2) year period, FLDC logged the area without any opposition from CMTC.” In the same order, the Office of the President, however, directed the reinstatement of FLDC’s TLA No. 360, in view of the favorable report of the Bureau of Forest Development dated March 23, 1987. Later, the President’s office reconsidered its action after the Secretary of Environment and Natural Resources Angel C. Alcala, on February 15, 1993, expressed concern that reinstatement of FLDC’s TLA No. 360 “might negate efforts to enhance the conservation and protection of our forest resources.” In a new order dated February 26, 1993,[13] the Office of the President reinstated its March 21, 1991 decision.

Petitioner again moved for a reconsideration of the decision dated March 21, 1991 and for its license to be “revived/restored.” Petitioner’s motion was, however, denied by the Office of the President on June 7, 1993[14] in a resolution signed by Assistant Executive Secretary for Legal Affairs Renato C. Corona. The President’s office ruled:

The above Order of February 26, 1993 was predicated, as stated therein, on a new policy consideration on forest conservation and protection, unmistakably implied from the President’s handwritten instruction. Accordingly, this Order shall be taken not only as an affirmation of the March 21, 1991 decision, but also as a FINAL disposition of the case and ALL matters incident thereto, like CMTC’s motion for reconsideration, dated April 16, 1991.

Hence, this petition. Petitioner contends that laches cannot be imputed to it because it did not incur delay in asserting its rights and even if there was delay, the delay did not work to the prejudice of other parties, particularly FLDC, because the cancellation of the FLDC’s TLA was attributable only to its own actions. Petitioner also denies that its license had been suspended by reason of mediocre performance in reforestation by order of then Minister of Natural Resources Teodoro O. Peña. It says that it did not receive any order to this effect. Finally, petitioner claims that the denial of its petition, because of “a new policy consideration on forest conservation and

protection, unmistakably implied from the President's handwritten instruction," as stated in the resolution of June 7, 1993 of the Office of the President, would deny it the due process of law. Petitioner points out that there is no total log ban in the country; that Congress has yet to make a pronouncement on the issue; that any notice to this effect "must be stated in good form, not implied"; and that in any case, any new policy consideration should be prospective in application and cannot affect petitioner's vested rights in its TLA No. 106.

We find the petition to be without merit.

First. As already stated, the DENR order of May 2, 1988, declaring petitioner's TLA No. 106 as no longer of any force and effect, was based on its finding that although TLA No. 106's date of expiry was June 30, 1997 it had been suspended on June 3, 1983 because of CMTC's "mediocre performance in reforestation" and petitioner's laches in failing to protest the subsequent award of the same area to FLDC. There is considerable dispute whether there was really an order dated June 3, 1983 suspending petitioner's TLA because of "mediocre performance" in reforestation, just as there is a dispute whether there indeed was a letter written on September 24, 1984 on behalf of petitioner protesting the award of the concession covered by its TLA No. 106 to FLDC, so as to show that petitioner did not sleep on its rights.

The alleged order of June 3, 1983 cannot be produced. The Office of the Solicitor General was given until May 14, 1997 to secure a copy of the order but on May 7, 1997 the OSG manifested that the order in question could not be found in the records of this case in which the order might be.[15] Earlier, petitioner requested a copy of the order but the DENR, through Regional Executive Director Antonio G. Principe, said that "based from our records there is no file copy of said alleged order." [16]

On the other hand, the alleged letter of September 24, 1984 written by Atty. Norberto J. Quisumbing, protesting the award of the concession in question to FLDC cannot be found in the records of the DENR either. The Assistant Secretary for Legal Affairs of the DENR certified that "Despite diligent efforts exerted to locate the alleged [letter], no such document could be found or is on file in this Office." [17] In a later certification, however, Ofelia Castro Biron of the DENR, claimed that she was a receiving clerk at the Records and Documents Section of the Ministry of Natural Resources and that on September 25, 1984 she received the letter of Atty. Quisumbing and placed on all copies thereof the stamp of the MNR. She stated that the copy in the possession of petitioner was a "faithful copy of the letter" in question.[18]

The difficulty of ascertaining the existence of the two documents is indeed a reflection on the sorry state of record keeping in an important office of the executive department. Yet these two documents are vital to the presentation of the evidence of both parties in this case. Fortunately, there are extant certain records from which it is possible to determine whether these documents even existed.

With respect to the alleged order of June 3, 1983 suspending petitioner's TLA No. 106 for "mediocre performance" in reforestation, the Court will presume that there is such an order in accordance with the presumption of regularity in the performance of official functions inasmuch as such order is cited both in the order dated May 2, 1988 of the DENR, declaring as of no force and effect TLA No. 106, and in the decision dated March 21, 1991 of the Office of the President affirming the order of the DENR. It is improbable that so responsible officials as the Secretary of the DENR and the Executive Secretary would cite an order that did not exist.

On the other hand, with respect to the letter dated September 24, 1984, there are circumstances indicating that it existed. In addition to the aforesaid certification of Ofelia Castro Biron that she was the person who received the letter for the DENR, the logbook of the Ministry of Natural Resources contains entries indicating that the letter was received by the Bureau of Forest Development from the MNR.[19] DENR Assistant Secretary Romulo San

Juan likewise informed the Office of the President that the Bureau of Forest Management prepared a memorandum on the aforesaid letter of September 24, 1984,[20] thereby implying that there was such a letter.

On the premise that there was an order dated June 3, 1983, we find that after suspending petitioner's TLA for "mediocre performance" in reforestation under this order, the DENR cancelled the TLA, this time because of a Presidential directive imposing a log ban. The records of G.R. No. 76538, entitled "Felipe Ysmael, Jr. & Co. v. Deputy Executive Secretary," the decision in which is reported in 190 SCRA 673 (1990), contain a copy of the memorandum of then Director Edmundo V. Cortes of the Bureau of Forest Development to the Regional Director of Region 2, in Tuguegarao, Cagayan, informing the latter that pursuant to the instruction of the President and the memorandum dated August 18, 1983 of then Minister Teodoro Q. Peña, the log ban previously declared included the concessions of the companies enumerated in Cortes' memorandum, in consequence of which the concessions in question were deemed cancelled. The memorandum of Director Cortes stated:

MEMORANDUM ORDER

TO : The Regional Director

Region 2, Tuguegarao, Cagayan

FROM : The Director

DATE : 24 August 1983

SUBJECT : Stopping of all logging operations

in Nueva Vizcaya and Quirino

REMARKS :

Following Presidential Instructions and Memorandum Order of Minister Teodoro Q. Peña dated 18 August 1983, and in connection with my previous radio message, please be informed that the coverage of the logging ban in Quirino and Nueva Vizcaya provinces include the following concessions which are deemed cancelled as of the date of the previous notice:

- Felipe Ysmael Co., Inc.
- Industries Dev. Corp.
- Luzon Loggers, Inc.
- C & M Timber Corporation
- Buzon Industrial Dev. Corporation
- Dominion Forest Resources Corp.
- FCA Timber Development Corp.
- Kasibu Logging Corp.
- RCC Timber Company
- Benjamin Cuaresma

You are hereby reminded to insure full compliance with this order to stop logging operations by all licensees above mentioned and submit a report on the pullout of equipment and inventory of logs within five days upon receipt hereof.

ACTION

DESIRED : For your immediate implementation.

EDMUNDO V. CORTES

(Emphasis added)

It thus appears that petitioner's license had been cancelled way back in 1983, a year before its concession was awarded to FLDC. It is noteworthy that petitioner admits that at the time of the award to FLDC in 1984 petitioner was no longer operating its concession because of a log ban although it claims that the suspension of operations was only temporary. As a result of the log ban, the TLA of petitioner, along with those of other loggers in the region, were cancelled and petitioner and others were ordered to stop operations. Petitioner also admits that it received a telegram sent on August 24, 1983 by Director Cortes of the BFD, directing it to "stop all logging operations to conserve our remaining forests." [21] It is then not true, as Atty. Quisumbing stated in protesting the award of the concession to FLDC, that "the logging ban did not cancel [petitioner's] timber license agreement."

Now petitioner did not protest the cancellation of its TLA. Consequently, even if consideration is given to the fact that a year later, on September 24, 1984, its counsel protested the grant of the concession to another party (FLDC), this failure of petitioner to contest first the suspension of its license on June 3, 1983 and later its cancellation on August 24, 1983 must be deemed fatal to its present action.

Second. Except for the letter of its counsel to the Minister of Natural Resources, which it reiterated in its letter to the President of the Philippines, petitioner took no legal steps to protect its interest. After receiving no favorable response to its two letters, petitioner could have brought the necessary action in court for the restoration of its license. It did not. Instead it waited until FLDC's concession was cancelled in 1986 by asking for the "revalidation" of its (petitioner's) on TLA No. 106.

Petitioner's excuse before the DENR is that it did not pursue its protest because its president, Ricardo C. Silverio, had been told by President Marcos that the area in question had been awarded to the President's sister, Mrs. Fortuna Barba, and petitioner was afraid to go against the wishes of the former President. [22] This is a poor excuse for petitioner's inaction. In *Felipe Ysmal, Jr. & Co., Inc. v. Deputy Executive Secretary*, [23] a similar excuse was given that Ysmal & Co's license had been cancelled and its concession awarded to entities controlled or owned by relatives or cronies of then President Marcos. For this reason, after the EDSA Revolution, Ysmal & Co. sought in 1986 the reinstatement of its timber license agreement and the revocation of those issued to the alleged presidential cronies. As its request was denied by the Office of the President, Ysmal & Co. filed a petition for certiorari with this Court. On the basis of the facts stated, this Court denied the petition: (1) because the August 25, 1983 order of the Bureau of Forest Development, cancelling petitioner's timber license agreement had become final and executory. Although petitioner sent a letter dated September 19, 1983 to President Marcos seeking reconsideration of the 1983 order of cancellation of the BFD, the grounds stated there were different from those later relied upon by petitioner for seeking its reinstatement; (2) because "the fact that petitioner failed to seasonably take judicial recourse to have the earlier administrative actions [cancelling its license and granting another one covering the same concession to respondent] reviewed by the court through a petition for certiorari is prejudicial to its cause." Such special civil action of certiorari should have been filed within a "reasonable time." And since none was filed within such period, petitioner's action was barred by laches; and (3) because executive evaluation of timber licenses and their consequent cancellation in the process of formulating policies with regard to the utilization of timber lands is a prerogative of the executive department and in the absence of evidence showing grave abuse of discretion courts will not interfere with the exercise of that discretion.

This case is governed by the decision in *Felipe Ysmal, Jr. & Co., Inc. v. Deputy Executive Secretary*.

Third. It is finally contended that any “policy consideration on forest conservation and protection” justifying the decision of the executive department not to reinstate petitioner’s license must be formally enunciated and cannot merely be implied from the President’s instruction to his subordinates and that, at all events, the new policy cannot be applied to existing licenses such as petitioner’s.

The President’s order reconsidering the resolution of the Presidential Legal Adviser (insofar as it reinstated the license of FLDC) was prompted by concerns expressed by the then Secretary of Environment and Natural Resources that “said reinstatement [of FLDC’s license] may negate our efforts to enhance conservation and protection of our forest resources.” There was really no new policy but, as noted in *Felipe Ysmal, Jr. & Co., Inc.*, a mere reiteration of a policy of conservation and protection. The policy is contained in Art. II, §16 of the Constitution which commands the State “to protect and promote the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.” There is therefore no merit in petitioner’s contention that no new policy can be applied to existing licenses.

As to petitioner’s contention that the cancellation of its license constitutes an impairment of the obligation of its contract, suffice it for us to quote what we held in *Felipe Ysmal, Jr. & Co. Inc. v. Deputy Executive Secretary*:^[24]

A cursory reading of the assailed orders issued by public respondent Minister Maceda of the MNR, which were affirmed by the Office of the President, will disclose public policy considerations which effectively forestall judicial interference in the case at bar.

Public respondents herein, upon whose shoulders rests the task of implementing the policy to develop and conserve the country’s natural resources, have indicated an ongoing department evaluation of all timber license agreements entered into, and permits or licenses issued, under the previous dispensation. . . .

The ongoing administrative reassessment is apparently in response to the renewed and growing global concern over the despoliation of forest lands and the utter disregard of their crucial role in sustaining a balanced ecological system. The legitimacy of such concern can hardly be disputed, most especially in this country. . . .

Thus, while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of these resources, the judiciary will stand clear. . . . More so where, as in the present case, the interests of a private logging company are pitted against that of the public at large on the pressing public policy issue of forest conservation. . . . Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause [See Sections 3(33) and 20 of Pres. Decree No. 705, as amended. Also, *Tan v. Director of Forestry*, G.R. No. L-24548, October 27, 1983, 125 SCRA 302].

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.

[1] Petition, Annex A; Rollo, pp. 45-64.

[2] *Id.*, Annex B; *Id.*, pp. 65-66.

- [3] Ibid.
- [4] Petition, Annex F; Rollo, p. 72.
- [5] Id., Annex G; Id., p. 73.
- [6] Id., Annex F; Id., p. 71.
- [7] Id., Annex H; Id., pp. 74-75.
- [8] Id., Annexes H and J; Id., pp. 74, 78.
- [9] Id., Annex V; Id., pp. 226-253.
- [10] Id., Annex HH; Id., pp. 297-306.
- [11] Id., pp. 300-302.
- [12] Petition, Annex JJ; Id., pp. 316-329.
- [13] Id., Annex LL; Id., pp. 331-332.
- [14] Id., Annex NN; Id., pp. 338-339.
- [15] Manifestation and Motion dated May 2, 1997, Temporary Rollo.
- [16] Petitioner's Memorandum, Annex A; Rollo, p. 460.
- [17] Petition, Annex AA; Id., p. 274.
- [18] Id., Annex II-1; Id., p. 315.
- [19] Id., pp. 280-284.
- [20] Id., p. 274.
- [21] Petitioner's Compliance and Manifestation dated March 24, 1997, Annex H; Id., p. 579.
- [22] Id., p. 257.

[23] 190 SCRA 673 (1990).

- [24] Id., at 682-684.

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