

ENRIQUE T. GARCIA, PETITIONER, VS. J.G. SUMMIT PETROCHEMICAL CORPORATION, RESPONDENT.

G.R. NO. 127925. February 23, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Enrique T. Garcia comes to this Court a third time on a matter involving the establishment of a petrochemical plant in the country.

On the first occasion,[1] in G.R. No. 88637, *Garcia v. Board of Investments*, he was sustained by this Court that the amended application for registration of the Bataan Petrochemical Corporation (BPC) must be published so that those opposing it might be given an opportunity to be heard, and that access to the amended application and its supporting papers be allowed by the Board of Investments (BOI or the Board), subject to limitations, in line with the constitutionally guaranteed right to information on matters of national concern.

In the subsequent case, G.R. No. 92024, similarly entitled *Garcia v. Board of Investments*,[2] this Court affirmed that the BOI's approval of the amended certificate of registration of the Luzon Petrochemical Corporation (LPC, formerly the BPC) should be nullified, by virtue of which the original certificate of registration with Bataan as the plant site, and with naphtha as the feedstock, was ordered maintained.

Petitioner now asks this Court to declare whether Presidential Decree (P.D.) Nos. 949[3] and 1803,[4] the laws creating a petrochemical complex in Limay, Bataan, prohibit the establishment of a petrochemical facility outside of it.

Respondent J.G. Summit Petrochemical Corporation was registered by the BOI as a new domestic producer of polyethylene and polypropylene resins, for which it was issued on May 24, 1994 BOI Certificate of Registration No. DP-94-001. As a pre-registration condition, it was required to submit to the BOI the exact location of its plant within ninety (90) days from the date of the approval of its application.

By letter of May 11, 1994, respondent informed the BOI that its plant would be located in barangay Alangilanan, Manjuyod, Negros Oriental. On January 29, 1996, however, it advised the Board in writing that its plant site would be located in barangay Simlong, Batangas City, instead of Negros Oriental.

On February 4, 1996, the BOI caused the publication of respondent's amended application for registration in a newspaper of general publication to enable interested persons to file their sworn objections within one (1) week from said publication. In due time, petitioner and concerned residents of barangay Simlong, Batangas submitted separate letters of opposition.

Petitioner objected to the Batangas plant site, citing as basis the 1990 decision of this Court in G.R. No. 92024,[5] which annulled the Board's approval of the change of plant site from Bataan to Batangas, and of feedstock from naphtha only to naphtha and/or liquefied petroleum gas (LPG). He argued that by the said decision, this Court declared the Bataan petrochemical zone as the only possible site for petrochemical plants as provided for under

P.D. Nos. 949 and 1803.

As agreed upon during the pre-hearing conference on respondent's amended application for registration conducted on March 14, 1996, the parties, except for the residents of barangay Simlong, submitted their respective position papers, replies and rejoinders, after which the matter was submitted for resolution.

On May 24, 1996, the BOI dismissed petitioner's opposition, reconfirmed respondent's registration, and approved the amendment of the latter's certificate, with Batangas as the plant site. It ruled, among other things, that this Court's Resolution of October 24, 1989 in the first Garcia[6] case clarified that the establishment of a petrochemical plant in Batangas does not violate P.D. Nos. 949 and 1803; that in evaluating herein respondent's choice of Batangas as plant site, the Board considered other important factors such as project viability and costs as well as the government's effort towards industrialization and development in the various regions; and that locating a petrochemical project in Batangas would be to the national interest as shown by a 1995 report of the Stanford Research Institute (SRI), which was commissioned by the BOI to undertake a study of the petrochemical industry in the country.

With regard to the BOI's purported choice of Bataan as a petrochemical plant site, the Board held that the preference of said site which was previously expressed by former BOI vice-chairperson and managing head Tomas I. Alcantara about 10 years ago should not be considered as its present stand especially in light of new developments and conditions.

For failure to file a timely report of its intended change of plant site, which delay was considered a violation of the Rules and Regulations to Implement Executive Order No. 226[7] or the Omnibus Investments Code, the BOI fined respondent.

Without moving for a reconsideration of the May 24, 1996 BOI decision, petitioner filed a petition for review before the Court of Appeals (CA or the appellate court), assailing the Board's alleged reliance on the report of the SRI that "the country can actually accommodate at least four (4) naphtha cracker plants" while failing to mention the report's qualification that the second naphtha plant would be viable only in the year 2005. And he decried the failure to make known to the parties the SRI report before or during the hearings, he adding that during the 15-day reglementary period for the filing of a motion for reconsideration, he had tried to secure a copy of the report but to no avail.

In its Comment[8] to the petition, respondent challenged petitioner's standing to file the case, absent any constitutional question therein. At any rate, it contended that the decision in the second Garcia[9] case did not rule that petrochemical plants must be established in Bataan exclusively.

On its part, the BOI debunked petitioner's claim that he was not aware of the SRI report, having himself actively participated in one of the meetings convened under the auspices of the ad hoc committee on petrochemicals in which the report was discussed.[10] It likewise stated that petitioner could have easily obtained an abstract of the pertinent portions of the SRI report before the lapse of the time to file a motion for reconsideration of its decision had he or his counsel been minded to secure the same from the BOI Records Division, the Legal Department, or the Basic Industries Department.

By Decision of January 21, 1997, the CA dismissed the petition for lack of merit, thereby affirming the BOI decision.

In affirming the BOI decision, the appellate court held it was "replete with details on why respondent should be allowed to build its naphtha cracker facility in Batangas City." [11]

As regards petitioner's contention that no petrochemical plant should be allowed outside of the Bataan petrochemical complex, the appellate court noted that even this Court, acting on petitioner's motion for reconsideration in G.R. No. 88637, "then ruled against the exclusivity of Limay, Bataan, as the site of the only petrochemical plant in the country." [12]

A copy of the SRI Report having already been sent and received by petitioner on July 5, 1996, the CA no longer passed upon his claim that he was not furnished any such copy.

Hence, this Petition.

As a preliminary matter, this Court notes that the instant Petition is brought not only as an appeal of the January 21, 1997 CA Decision, but also as a certiorari petition against the May 24, 1996 Decision of the BOI which, under the Rules, must be filed not later than sixty (60) days from notice (on May 29, 1996 [13]) of the Board's judgment [14] or until July 29, 1996. Having been filed out of time on February 27, 1997, the certiorari petition against the BOI must be dismissed.

Respecting petitioner's opposition to its amended application for the establishment of its petrochemical plant in Batangas, respondent maintains that petitioner does not stand to suffer any injury from the approval of the application, hence, he is not a real party in interest; [15] and neither does petitioner have standing to question its amended application because he is not challenging the same on the ground that it violates the Constitution. [16]

Petitioner submits, on the other hand, that he has a legal interest in determining the legality of locating respondent's plant site in Batangas in light of P.D. Nos. 949 and 1803. He adds that this Court has recognized his standing in the two previous Garcia cases, which are similar in nature to the present petition. Alternatively, he claims that respondent is itself raising a constitutional issue, i.e., that it would be deprived of its right to use its property in Batangas should it be compelled to locate its plant in Bataan.

Petitioner's legal interest to oppose the amended application for registration of the LPC was recognized in G.R. No. 88637 amidst the circumstances surrounding that case. Thus this Court declared:

There is no merit in the public respondents' [referring to the BOI and Department of Trade and Industry] contention that the petitioner has 'no legal interest' in the matter of the transfer of the BPC petrochemical plant from the province of Bataan to the province of Batangas. The provision in the Investments Code requiring publication of the investor's application for registration in the BOI is implicit recognition that the proposed investment or new industry is a matter of public concern on which the public has a right to be heard. And, when the BOI approved BPC's application to establish its petrochemical plant in Limay, Bataan, the inhabitants of that province, particularly the affected community in Limay, and the petitioner herein as the duly elected represent[tative] of the Second District of Bataan acquired an interest in the project which they have a right to protect. Their interest in the establishment of the petrochemical plant in their midst is actual, real, and vital because it will affect not only their economic life but even the air they will breathe. [17] (Emphasis supplied)

It can not be gainsaid that the provision in the Omnibus Investment Code of 1987 requiring publication of the investor's application for registration remains to be a source of petitioner's legal interest to oppose herein respondent's amended application.

In G.R. No. 88637, this Court ruled that an amended application was "in effect a new application" which must be published "so that whoever may have any objection to the transfer may be heard." [18]

Article 7, subparagraph 3 of the Omnibus Investments Code, as amended, provides that among the powers and duties of the BOI is to "[p]rocess and approve applications for registration with the Board, imposing such terms

and conditions as it may deem necessary to promote the objectives of this Code, including . . . payment of application, registration, publication and other necessary fees . . ." Consonant with this provision, Section 4 of Rule III of the Rules Implementing the Code provides:

SECTION 4. Publication of Application - Upon the official acceptance of the application, notice thereof shall be published once in a newspaper of general circulation or in any manner that the Board may require, at applicant's expense, in a format indicating the name of the applicant, the area of investment, the capacity applied for and the plant site, if any.

At the time respondent's amended application was filed, petitioner, as representative of Bataan, had as much interest as in the previous cases to ensure the viability of the petrochemical complex in Bataan. Certainly, the successful operation of the Bataan petrochemical complex would mean tremendous economic gains and employment opportunities for the province. Conversely, its non-viability and failure would spell economic hardships for the people there. For this reason, petitioner's pleadings have invariably stressed that any petrochemical plant outside of Bataan would make the Philippine National Oil Corporation (PNOC) project less viable, because the market could not absorb the output of more than one petrochemical complex.

That the petrochemical industry has been declared a preferred area of investment and conferred a pioneer status in the country's 1994-1996 Investments Priorities Plan (IPP)[19] underscores its importance to the economy. As this Court aptly observed in G.R. No. 92024, "[a] petrochemical industry is not an ordinary investment opportunity" and is "essential to the national interest . . ."[20]

This Court has brushed aside technicalities of procedure and relaxed the rules of standing in cases of transcendental significance, especially where the issue or issues involved have important ramifications to the nation.[21] Thus, granting that petitioner has no right to oppose respondent's amended application, the transcendental importance of the case and the significance of the issues raised herein are considered sufficient to clothe him with legal interest.

The alleged constitutional question raised by respondent, meanwhile, need not detain this Court any longer considering that it is not central to the resolution of the main issue. Courts will not touch the issue of constitutionality unless it is truly unavoidable to settle the controversy.[22]

And on to the crux of the present controversy, which is the legality of the establishment of respondent's petrochemical plant in barangay Simlong, Batangas City.

In the main, petitioner posits that the CA erred in sustaining the BOI Decision, because the laws creating the 576-hectare Bataan petrochemical zone in Limay, Bataan prohibit the establishment of respondent's petrochemical plant outside of the zone.[23] He specifically assails the CA decision for affirming the BOI's rulings that (1) the country can accommodate four naphtha cracker facilities by 1996, (2) the Board's refusal to grant him access to the SRI report did not violate the constitutional guarantee of due process and access to information on matters of public concern, and (3) the national interest would be served by allowing respondent to locate its plant in Batangas, instead of Bataan.[24]

The question of whether P.D. Nos. 949 and 1803 had intended the petrochemical complex in Limay, Bataan to be the exclusive site of any and all petrochemical plants has previously been placed squarely before this Court in G.R. No. 88637. The question was distinctly set forth by petitioner in his certiorari petition[25] when he argued that the BOI and the Department of Trade and Industry gravely abused their discretion in approving the BPC's amended certificate of registration transferring the plant site from Bataan to Batangas and changing the feedstock from naphtha only to naphtha and/or LPG. And he reiterated his argument in his motion for partial reconsideration of this Court's September 7, 1989 Decision amid the alleged omission to rule on it in the first instance. By

Resolution of October 24, 1989, this Court declared:

The petitioner's motion for partial reconsideration asks this Court to rule on his contention that the transfer of the Bataan (now Luzon) Petrochemical plant site from Bataan to Batangas violates PD Nos. 949 and 1803 reserving a 576-hectare site in Limay, Bataan as a "petrochemical industrial zone" and placing it under the administration, management and ownership of the Philippine National Oil Company (PNOC). The Court treated that issue *sub silencio* because these presidential decrees do not provide that the Limay site shall be the only petrochemical zone in the country, nor prohibit the establishment of a petrochemical plant elsewhere in the country. Therefore, the establishment of a petrochemical plant in Batangas does not violate P.D. 949 and P.D. 1803. (Emphasis and underscoring supplied)

The above quoted pronouncement notwithstanding, petitioner contends that the Resolution contained merely an "observation" on the import of P.D. Nos. 949 and 1803. The observation, he adds, could not apply to the present petition, because it was not the ground cited for the denial of his motion for partial reconsideration, but his alleged loss of interest in the case. Neither, he continues, was it part of this Court's ruling in the subsequent case as it was mentioned therein only to complete the recital of antecedent events.[26]

Petitioner's contentions are bereft of merit.

It behooves this Court to clarify that its Resolution of October 24, 1989 issued a ruling, not just an observation, on the issue of whether the change of plant site from Bataan to Batangas violated P.D. Nos. 949 and 1803. Since the issue had been pressed as essential to the resolution of petitioner's petition for certiorari and motion for reconsideration in G.R. No. 88637, this Court ruled "that the establishment of a petrochemical plant in Batangas does not violate P.D. 949 and P.D. 1803." [27]

By the immediately cited ruling, this Court laid down a jurisprudential precedent that must be applied in the present case in accordance with the doctrine of *stare decisis et non quieta movere*. Follow past precedents and do not disturb what has been settled. A point of law, once established by the court, will generally be followed by the same court and by all courts of lower rank in subsequent cases in which the same legal issue is raised. *Stare decisis* proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike.[28]

Petitioner himself appeared to have conceded to this Court's ruling as he did not assail it in his motion for reconsideration of the October 24, 1989 Resolution. As narrated by this Court in G.R. No. 92024, his motion for reconsideration of its October 24, 1989 Resolution merely asked that "we resolve the basic issue of whether or not the foreign investor has the right of final choice of plant site; that the non-attendance of the petitioner at the hearing was because the decision was not yet final and executory; and that the petitioner had not therefore waived the right to a hearing before the BOI." [29]

Parenthetically, the October 24, 1989 Resolution of this Court in G.R. No. 88637 also held that "[t]here is no merit in the petitioner's other contention that [this Court] erred in ruling that the BOI's decision on the matter of transferring the LPC petrochemical complex to Batangas is appealable only to the President whose decision shall be final, as provided in Article 36 of the 1987 Omnibus Investments Code" [30] (Emphasis and underscoring supplied). By refusing to attend the hearing at the BOI which he passionately sought, petitioner was deemed to have lost interest and to have waived the fruit of this Court's judgment. Thereafter, the motion for reconsideration was disposed of, as follows:

WHEREFORE, the petitioner's motion for partial reconsideration of the decision in this case is denied for lack of merit. (Underscoring supplied)

It was, therefore, not solely on the ground of his alleged loss of interest that petitioner's motion for reconsideration

was denied, but also the lack of merit in his contentions regarding the exclusivity of the Bataan petrochemical site and the proper forum for appealing the BOI Decision.

As to the argument that the "observation" made in the Resolution of October 24, 1989 was neither adopted nor reaffirmed in G.R. No. 92024 but merely mentioned therein to complete the narration of facts, the same is too specious to consider. There was no occasion or reason in G.R. No. 92024 for this Court to reiterate its ruling against the exclusivity of the Bataan petrochemical complex because the question then presented for resolution was whether "the BOI committed a grave abuse of discretion in approving the transfer of the petrochemical plant from Bataan to Batangas and authorizing the change of feedstock from naphtha to naphtha and/or LPG for the main reason that the final say is in the investor all other circumstances to the contrary notwithstanding." [31] (Emphasis supplied)

Petitioner's submission that G.R. No. 92024 has ruled that the petrochemical industry must be located in the Bataan petrochemical zone is bereft of merit too. What this Court declared in that case was that the plant site of the LPC should be in Bataan, given the peculiar factual circumstances and issues related to the proposed transfer, among them the original choice of Bataan as plant site; the intended partnership of LPC, a foreign investor, with the PNOC; the fact that the Bataan Refining Corporation can supply naphtha for the petrochemical plant; and the importance of an independent national economy. Clearly then, the decision was applicable only to LPC, more so, since this Court had declared earlier in G.R. No. 88637 that P.D. Nos. 949 and 1830 do not prohibit the establishment of a petrochemical plant outside of the Bataan petrochemical industrial zone.

If only to lay the matter finally to rest, this Court now reiterates that P.D. Nos. 949 and 1830 do not prohibit the establishment of a petrochemical plant outside of Limay, Bataan. A meticulous perusal of the two decrees reveals that nowhere in their provisions is it stated or can it be inferred that all petrochemical plants must be established in Limay, Bataan or, stated differently, that Bataan is intended to be the only site for all petrochemical plants.

By Proclamation No. 361 dated March 6, 1968, [32] then President Marcos reserved 418 hectares of the public domain located at Lamao, Limay, Bataan for industrial estate purposes under the administration of the National Power Corporation. The proclamation was amended on November 29, 1969 by Proclamation No. 630, [33] by virtue of which the area reserved was enlarged and its administration transferred to the National Development Company.

P.D. No. 949 dated June 17, 1976 later transferred the "administration, management, and ownership" of the area to the PNOC [34] for it to manage, operate and develop the area as a petrochemical industrial zone. [35] In line therewith, Section 2 provided:

SECTION 2. The Philippine National Oil Company shall manage, operate and develop the said parcel of land as a petrochemical industrial zone and will establish, develop and operate or cause the establishment, development and operation thereof of petrochemical and related industries by itself or its subsidiaries or by any other entity or person it may deem competent alone or in joint venture; Provided, that, where any petrochemical industry is operated by private entities or persons, whether or not in joint venture with the Philippine National Oil Company or its subsidiaries, the Philippine National Oil Company may lease, sell and/or convey such portions of the petrochemical industrial zone to such private entities or persons. (Emphasis supplied)

What is clear then is that the law reserved an area for a petrochemical industrial zone in Bataan and that PNOC was to operate, manage and develop it. There is, however, nothing further in the law to indicate that the choice of Limay, Bataan as a petrochemical zone was exclusive. On the contrary, the use of the word "may" in the proviso of Section 2 runs counter to the exclusivity of the Bataan site because it makes it merely directory, rather than mandatory, for the PNOC to lease, sell and/or convey portions of the petrochemical industrial zone to private

entities or persons locating their plants therein.

Even the following preambular clauses of P.D. No. 949 do not express any intent to make the Bataan site exclusive:

WHEREAS, the establishment, development and operation of a petrochemical complex and related industries in a petrochemical site is vital to economic and industrial development;

WHEREAS, the efficient implementation of this objective in that site at Lamao, Limay, Bataan, more specifically described in Proclamation No. 361 dated March 6, 1968 as amended by Proclamation No. 630 dated November 29, 1969 can best be achieved thru an entity equipped and competent to pursue in earnest such an undertaking.

P.D. No. 1803 dated January 16, 1981 was briefer and more straightforward. It sought simply to amend P.D. No. 949 by enlarging by 188 hectares the area reserved for the petrochemical industrial zone under the administration, management and ownership of the PNOC, bringing it to a total of 576 hectares. Thus its preambular and resolutive clauses provided:

WHEREAS, Presidential Decree No. 949, amending Proclamation No. 361 dated March 6, 1968 and Proclamation No. 630 dated November 29, 1969, declared that site at Lamao, Limay, Bataan described in the aforementioned Proclamations as petrochemical industrial zone.

WHEREAS, it is necessary to include as part of the petrochemical industrial zone several parcels of land located in the Municipality of Mariveles, Province of Bataan.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby amend Presidential Decree No. 949 dated June 17, 1976, by enlarging the area reserved for the Petrochemical Industrial Zone under the administration, management and ownership of the Philippine National Oil Company, by including, as part thereof, certain parcels of land of the private domain situated in the Municipality of Mariveles, Province of Bataan, subject to private rights if any there be...

Ubi lex non distinguit nec nos distinguere debemus. When the law makes no distinction, the Court should not distinguish.[36]

The questions regarding the capacity of the country to accommodate four naphtha cracker facilities by 1996 and the alleged violation of petitioner's right to due process and access to information on matters of national concern, having arisen from the SRI report, shall be discussed jointly.

Contrary to petitioner's contention, the BOI Decision in fact mentioned that based on the SRI studies, the number of new and additional petrochemical facilities, including the four naphtha cracker plants, could be sustained by the country from the years 1996 to 2012.[37] This matter must have been taken into consideration by the Board when it ruled that locating a petrochemical project in Batangas was warranted and in the national interest.

The BOI has been specifically tasked by law to "[p]repare or contract for the preparation of feasibility and other pre-investment studies for pioneer areas . . . ,"[38] to "[p]repare or contract for the preparation of industry and sectoral development programs and gather and compile statistical, technical, marketing, financial and other data, including recommendations on investment policies,"[39] to "[c]ollate, analyze and compile pertinent information and studies concerning areas that have been or may be declared preferred areas of investments"[40] and to prepare and submit the IPP.[41] As has been this Court's consistent holding, administrative and quasi-judicial agencies, which have acquired special knowledge and expertise on matters falling under their jurisdiction, are in a better position to pass judgment thereon.[42] As a general rule, their findings of fact are generally accorded great respect

by the courts.[43]

As for petitioner's claim that he was denied due process and access to information of national concern because of the Board's omission to make the SRI report known before and during the hearings of respondent's amended application, it is bereft of merit. Petitioner has not denied having actively participated in the August 23, 1995 meeting of the ad hoc committee on the petrochemical industry in which the report was discussed. But even granting that the report was not mentioned during the hearings, petitioner could have easily moved for a reconsideration of the BOI Decision, reserving his right to refute the SRI findings upon actual receipt of a copy thereof.

Finally, it is not for this Court to rule on whether the national interest would be served by allowing respondent to locate its plant in Batangas, instead of Bataan. As the first Garcia case held, "[t]his Court is not concerned with the economic, social, and political aspects of this case for it does not possess the necessary technology and scientific expertise to determine whether the transfer of the proposed BPC petrochemical complex from Bataan to Batangas and the change of fuel from naphtha only to 'naphtha and/or LPG will be best for the project and for our country. This Court is not about to delve into the economics and politics of this case"[44]

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga and Velasco, Jr., JJ., concur.

* The Board of Investments (BOI), which was originally impleaded in the Petition, was ordered dropped as respondent in this Court's Resolution of July 7, 1997, on motion of the Office of the Solicitor General, following paragraph 6 of this Court's Administrative Circular No. 1-95 (presently, Section 6 of Rule 43 of the Rules of Court), rollo, p. 300. Public respondent Court of Appeals, which was also originally impleaded by petitioner, is likewise omitted herein as respondent in line with the above quoted Circular.

[1] September 7, 1989, 177 SCRA 374.

[2]G.R. No. 92024, November 9, 1990, 191 SCRA 288.

[3] "VESTING THE ADMINISTRATION AND OWNERSHIP IN FAVOR OF THE PHILIPPINE NATIONAL OIL COMPANY OF THAT PARCEL OF LAND OF THE PUBLIC DOMAIN LOCATED AT LAMAO, LIMAY, BATAAN WHICH WAS RESERVED FOR INDUSTRIAL ESTATE PURPOSES PURSUANT TO PROCLAMATION NO. 361 DATED MARCH 6, 1968 AS AMENDED BY PROCLAMATION NO. 630 DATED NOVEMBER 29, 1969 AND FOR OTHER PURPOSES."

[4]"AMENDING PRESIDENTIAL DECREE NO. 949 DATED JUNE 17, 1976 BY RESERVING CERTAIN PARCELS OF LAND OF THE PRIVATE DOMAIN SITUATED IN THE MUNICIPALITY OF MARIVELES, PROVINCE OF BATAAN AS PART OF THE PETROCHEMICAL INDUSTRIAL ZONE."

[5] Supra note 2.

[6] Supra note 1.

[7] Rule XI (f) of the Implementing Rules and Regulations requires every registered enterprise to submit reports and/or documents within ten (10) calendar days after change of address or principal place of business.

[8] Rollo, pp. 194-214.

[9] Supra note 2.

[10]Id. at 215-221, BOI's Comment to the Petition.

[11]Penned by Justice Romeo A. Brawner, with the concurrence of Justices Conrado M. Vasquez and Celia Lipana-Reyes; id. at 259.

[12] Vide note 10.

[13] Rollo, p. 14; Petition, p. 7.

[14] Section 4 of Rule 65 of the Rules of Court provides:

SEC. 4. Where petition filed. - The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. (Emphasis and underscoring supplied)

[15] Rollo, pp. 356-358, 362-363.

[16] Id. at 359.

[17] Supra note 1 at 383.

[18] Ibid.

[19]Rollo, p. 187; BOI Decision, p. 9.

[20] Supra note 2 at 296.

[21] Constantino, Jr. v. Cuisia, Jr., G.R. No. 106064, October 13, 2005, 472 SCRA 505, 519; Jumamil v. Café, G.R. No. 144570, September 21, 2005, 470 SCRA 475, 489-490; Lim v. Executive Secretary, 430 Phil. 555, 570-571 (2002); Defensor Santiago v. Commission on Elections, 336 Phil. 848, 880 (1997).

[22] Philippine Veterans Bank v. Court of Appeals, G.R. No. 132561, June 30, 2005, 462 SCRA 336, 349; Francisco, Jr. v. House of Representatives, 460 Phil. 830, 914 (2003); Sps. Hontiveros v. RTC, Br. 25, Iloilo City, 368 Phil. 653, 668 (1999); Ty v. Trampe, 321 Phil. 81, 103 (1995), citing Macasiano v. National Housing Authority, G.R. No. 107921, 224 SCRA 236, 242, July 1, 1993.

[23]Rollo, p. 9, Petition, p. 2; Rollo, p. 407, Petitioner's Memorandum, p. 4.

[24]Id. at 11; id. at 18 (Petition).

[25]Petition for certiorari and prohibition under Rule 65 of the Rules of Court.

[26] Rollo, p. 18; Petition, p. 11.

[27] Supra.

[28] CDCP Mining Corporation v. Commissioner of Internal Revenue, G.R. No. 122213, July 28, 2005, 464 SCRA 270, 278; Pinlac v. Court of Appeals, 457 Phil. 527, 540 (2003); Ayala Corp. v. Rosa-Diana Realty and Dev. Corp., 400 Phil. 511, 521 (2000).

[29] Garcia v. BOI, supra note 2 at 290-291.

[30] Resolution of October 24, 1989, p. 2. The Court further stated:

Decisions of the BOI under Title I of the Investments Code regarding the determination of preferred areas of investments, formulating an investments priority plan, and approving or disapproving the application for registration of an enterprise, are not reviewable by this Court for they are political and economic decisions which in our system of government are functions of the executive branch over which this court has no power of review except when the chief executive acts without jurisdiction or with grave abuse of discretion or in violation of private rights.

Article 82, which the petitioner erroneously invokes, provides for an appeal to this court from orders or decisions of the Board of Investments in cases involving the interpretation and application of the provisions of the Investments Code. This Court's jurisdiction over such cases derives from its role as the final interpreter of the Constitution and the laws of the land. As this case does not involve a question of legality, but of wisdom, of the BOI's action, Article 82 of the Code does not apply.

[31] Garcia v. BOI, supra note 2 at 297.

[32] 64 O.G. 3985-3986.

[33] 65 O.G. 13553-13554-A.

[34] Presidential Decree No. 949 (1976), Sec. 1.

[35] Id., sec. 2.

[36] BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora, 396 Phil. 623, 653 (2000); Pilar v. Commission on Elections, 315 Phil. 851, 856-857 (1995); Commissioner of Internal Revenue v. Commission on Audit, G.R. No. 101976, January 29, 1993, 218 SCRA 203, 214-215.

[37] BOI Decision, p. 10; Rollo, p. 188.

[38] Executive Order No. 226 (1987), Art. 7 (10).

[39] Id., Art. 7 (16).

[40] Id., Art. 7 (19).

[41] Id., Art. 27.

[42] Villaflor v. Court of Appeals, 345 Phil. 524, 559 (1997); Alcasid v. Court of Appeals, G.R. No. 94927, January 22, 1993, 217 SCRA 437, 441-442; Heirs of Filomeno Tuyac v. Consolacion, G.R. No. 60161, March 21, 1990, 183 SCRA 396, 401.

[43] Supra.

[44] Supra note 1 at 382.

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