NATIONAL IRRIGATION ADMINISTRATION (NIA), PETITIONER, VS. HONORABLE COURT OF APPEALS (4TH DIVISION), CONSTRUCTION INDUSTRY ARBITRATION COMMISSION, AND HYDRO RESOURCES CONTRACTOR...

G.R. No. 129169. November 17, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

In this special civil action for certiorari under Rule 65 of the Rules of Court, the National Irrigation Administration (hereafter NIA), seeks to annul and set aside the Resolutions[1] of the Court of Appeals in CA-GR. SP No. 37180 dated 28 June 1996 and 24 February 1997, which dismissed respectively NIA's petition for certiorari and prohibition against the Construction Industry Arbitration Commission (hereafter CIAC), and the motion for reconsideration thereafter filed.

Records show that in a competitive bidding held by NIA in August 1978, Hydro Resources Contractors Corporation (hereafter HYDRO) was awarded Contract MPI-C-2 for the construction of the main civil works of the Magat River Multi-Purpose Project. The contract provided that HYDRO would be paid partly in Philippine pesos and partly in U.S. dollars. HYDRO substantially completed the works under the contract in 1982 and final acceptance by NIA was made in 1984. HYDRO thereafter determined that it still had an account receivable from NIA representing the dollar rate differential of the price escalation for the contract.[2]

After unsuccessfully pursuing its case with NIA, HYDRO, on 7 December 1994, filed with the CIAC a Request for Adjudication of the aforesaid claim. HYDRO nominated six arbitrators for the arbitration panel, from among whom CIAC appointed Engr. Lauro M. Cruz. On 6 January 1995, NIA filed its Answer wherein it questioned the jurisdiction of the CIAC alleging lack of cause of action, laches and estoppel in view of HYDRO's alleged failure to avail of its right to submit the dispute to arbitration within the prescribed period as provided in the contract. On the same date, NIA filed a Compliance wherein it nominated six arbitrators, from among whom CIAC appointed Atty. Custodio O. Parlade, and made a counterclaim for P1,000,000 as moral damages; at least P100,000 as exemplary damages; P100,000 as attorney's fees; and the costs of the arbitration.[3]

The two designated arbitrators appointed Certified Public Accountant Joven B. Joaquin as Chairman of the Arbitration Panel. The parties were required to submit copies of the evidence they intended to present during the proceedings and were provided the draft Terms of Reference.[4]

At the preliminary conference, NIA through its counsel Atty. Joy C. Legaspi of the Office of the Government Corporate Counsel, manifested that it could not admit the genuineness of HYDRO's evidence since NIA's records had already been destroyed. NIA requested an opportunity to examine the originals of the documents which HYDRO agreed to provide.[5]

After reaching an accord on the issues to be considered by the arbitration panel, the parties scheduled the dates of

hearings and of submission of simultaneous memoranda.[6]

On 13 March 1995, NIA filed a Motion to Dismiss[7]alleging lack of jurisdiction over the disputes. NIA contended that there was no agreement with HYDRO to submit the dispute to CIAC for arbitration considering that the construction contract was executed in 1978 and the project completed in 1982, whereas the Construction Industry Arbitration Law creating CIAC was signed only in 1985; and that while they have agreed to arbitration as a mode of settlement of disputes, they could not have contemplated submission of their disputes to CIAC. NIA further argued that records show that it had not voluntarily submitted itself to arbitration by CIAC citing TESCO Services, Inc. v. Hon. Abraham Vera, et al.,[8] wherein it was ruled:

> CIAC did not acquire jurisdiction over the dispute arising from the sub-contract agreement between petitioner TESCO and private respondent LAROSA. The records do not show that the parties agreed to submit the disputes to arbitration by the CIAC xxxx. While both parties in the sub-contract had agreed to submit the matter to arbitration, this was only between themselves, no request having been made by both with the CIAC. Hence, as already stated, the CIAC, has no jurisdiction over the dispute. xxxx. Nowhere in the said article (sub-contract) does it mention the CIAC, much less, vest jurisdiction with the CIAC.

On 11 April 1995, the arbitral body issued an order[9] which deferred the determination of the motion to dismiss and resolved to proceed with the hearing of the case on the merits as the grounds cited by NIA did not seem to be "indubitable." NIA filed a motion for reconsideration of the aforesaid Order. CIAC in denying the motion for reconsideration ruled that it has jurisdiction over the HYDRO's claim over NIA pursuant to E.O 1008 and that the hearing should proceed as scheduled.[10]

On 26 May 1996, NIA filed with the Court of Appeals an original action of certiorari and prohibition with prayer for restraining order and/or injunction, seeking to annul the Orders of the CIAC for having been issued without or in excess of jurisdiction. In support of its petition NIA alleged that:

> A
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> RESPONDENT CIAC HAS NO AUTHORITY OR JURIDICTION TO HEAR AND TRY THIS DISPUTE BETWEEN THE HEREIN PARTIES AS E.O. NO. 1008 HAD NO RETROACTIVE EFFECT.
>
> B
>
> THE DISPUTE BETWEEN THE PARTIES SHOULD BE SETTLED IN ACCORDANCE WITH GC NO. 25, ART. 2046 OF THE CIVIL CODE AND R.A. NO. 876 THE GOVERNING LAWS AT THE TIME CONTRACT WAS EXECUTED AND TERMINATED.
>
> C
>
> E.O. NO. 1008 IS A SUBSTANTIVE LAW, NOT MERELY PROCEDURAL AS RULED BY THE CIAC.
>
> D
>
> AN INDORSEMENT OF THE AUDITOR GENERAL DECIDING A CONTROVERSY IS A DECISION BECAUSE ALL THE ELEMENTS FOR JUDGMENT ARE THERE; THE CONTROVERSY, THE AUTHORITY TO DECIDE AND THE DECISION. IF IT IS NOT APPEALED SEASONABLY, THE SAME BECOMES FINAL.
>
> E
>
> NIA HAS TIMELY RAISED THE ISSUE OF JURISDICTION. IT DID NOT WAIVE NOR IS IT ESTOPPED FROM ASSAILING THE SAME.

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THE LEGAL DOCTRINE THAT JURISDICTION IS DETERMINED BY THE STATUTE IN FORCE AT THE TIME OF THE COMMENCEMENT OF THE ACTION DOES NOT ONLY APPLY TO THE INSTANT CASE.[11]

The Court of Appeals, after finding that there was no grave abuse of discretion on the part of the CIAC in issuing the aforesaid Orders, dismissed the petition in its Resolution dated 28 June 1996. NIA's motion for reconsideration of the said decision was likewise denied by the Court of Appeals on 26 February 1997.

On 2 June 1997, NIA filed before us an original action for certiorari and prohibition with urgent prayer for temporary restraining order and writ of preliminary injunction, praying for the annulment of the Resolutions of the Court of Appeals dated 28 June 1996 and 24 February 1997. In the said special civil action, NIA merely reiterates the issues it raised before the Court of Appeals. [12]

We take judicial notice that on 10 June 1997, CIAC rendered a decision in the main case in favor of HYDRO.[13] NIA assailed the said decision with the Court of Appeals. In view of the pendency of the present petitions before us the appellate court issued a resolution dated 26 March 1998 holding in abeyance the resolution of the same until after the instant petitions have been finally decided.[14]

At the outset, we note that the petition suffers from a procedural defect that warrants its outright dismissal. The questioned resolutions of the Court of Appeals have already become final and executory by reason of the failure of NIA to appeal therefrom. Instead of filing this petition for certiorari under Rule 65 of the Rules of Court, NIA should have filed a timely petition for review under Rule 45.

There is no doubt that the Court of Appeals has jurisdiction over the special civil action for certiorari under Rule 65 filed before it by NIA. The original jurisdiction of the Court of Appeals over special civil actions for certiorari is vested upon it under Section 9(1) of B.P. 129. This jurisdiction is concurrent with the Supreme Court[15] and with the Regional Trial Court.[16]

Thus, since the Court of Appeals had jurisdiction over the petition under Rule 65, any alleged errors committed by it in the exercise of its jurisdiction would be errors of judgment which are reviewable by timely appeal and not by a special civil action of certiorari.[17] If the aggrieved party fails to do so within the reglementary period, and the decision accordingly becomes final and executory, he cannot avail himself of the writ of certiorari, his predicament being the effect of his deliberate inaction.[18]

The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court, now Rule 45 and Rule 65, respectively, of the 1997 Rules of Civil Procedure.[19] Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[20] Under Rule 45 the reglementary period to appeal is fifteen (15) days from notice of judgment or denial of motion for reconsideration.[21]

In the instant case the Resolution of the Court of Appeals dated 24 February 1997 denying the motion for reconsideration of its Resolution dated 28 June 1997 was received by NIA on 4 March1997. Thus, it had until 19 March 1997 within which to perfect its appeal. NIA did not appeal. What it did was to file an original action for certiorari before this Court, reiterating the issues and arguments it raised before the Court of Appeals.

For the writ of certiorari under Rule 65 of the Rules of Court to issue, a petitioner must show that he has no plain, speedy and adequate remedy in the ordinary course of law against its perceived grievance.[22] A remedy is

considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.[23] In this case, appeal was not only available but also a speedy and adequate remedy.

Obviously, NIA interposed the present special civil action of certiorari not because it is the speedy and adequate remedy but to make up for the loss, through omission or oversight, of the right of ordinary appeal. It is elementary that the special civil action of certiorari is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case. A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file a petition for review on certiorari under Rule 45 of the Rules of Court.[24] Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45,[25] especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.[26]

For obvious reasons the rules forbid recourse to a special civil action for certiorari if appeal is available, as the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[27] Although there are exceptions to the rules, none is present in the case at bar. NIA failed to show circumstances that will justify a deviation from the general rule as to make available a petition for certiorari in lieu of taking an appropriate appeal.

Based on the foregoing, the instant petition should be dismissed.

In any case, even if the issue of technicality is disregarded and recourse under Rule 65 is allowed, the same result would be reached since a review of the questioned resolutions of the CIAC shows that it committed no grave abuse of discretion.

Contrary to the claim of NIA, the CIAC has jurisdiction over the controversy. Executive Order No.1008, otherwise known as the "Construction Industry Arbitration Law" which was promulgated on 4 February 1985, vests upon CIAC original and exclusive jurisdiction over disputes arising from, or connected with contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. The disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.[28]

The complaint of HYDRO against NIA on the basis of the contract executed between them was filed on 7 December 1994, during the effectivity of E.O. No. 1008. Hence, it is well within the jurisdiction of CIAC. The jurisdiction of a court is determined by the law in force at the time of the commencement of the action.[29]

NIA's argument that CIAC had no jurisdiction to arbitrate on contract which preceded its existence is untenable. E.O. 1008 is clear that the CIAC has jurisdiction over all disputes arising from or connected with construction contract whether the dispute arises before or after the completion of the contract. Thus, the date the parties entered into a contract and the date of completion of the same, even if these occurred before the constitution of the CIAC, did not automatically divest the CIAC of jurisdiction as long as the dispute submitted for arbitration arose after the constitution of the CIAC. Stated differently, the jurisdiction of CIAC is over the dispute, not the contract; and the instant dispute having arisen when CIAC was already constituted, the arbitral board was actually exercising current, not retroactive, jurisdiction. As such, there is no need to pass upon the issue of whether E.O. No. 1008 is a substantive or procedural statute.

NIA also contended that the CIAC did not acquire jurisdiction over the dispute since it was only HYDRO that requested for arbitration. It asserts that to acquire jurisdiction over a case, as provided under E.O. 1008, the request for arbitration filed with CIAC should be made by both parties, and hence the request by one party is not

enough.

It is undisputed that the contracts between HYDRO and NIA contained an arbitration clause wherein they agreed to submit to arbitration any dispute between them that may arise before or after the termination of the agreement. Consequently, the claim of HYDRO having arisen from the contract is arbitrable. NIA's reliance with the ruling on the case of Tesco Services Incorporated v. Vera,[30] is misplaced.

The 1988 CIAC Rules of Procedure which were applied by this Court in Tesco case had been duly amended by CIAC Resolutions No. 2-91 and 3-93, Section 1 of Article III of which read as follows:

> Submission to CIAC Jurisdiction - An arbitration clause in a construction contract or a submission to arbitration of a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of CIAC.

Under the present Rules of Procedure, for a particular construction contract to fall within the jurisdiction of CIAC, it is merely required that the parties agree to submit the same to voluntary arbitration. Unlike in the original version of Section 1, as applied in the Tesco case, the law as it now stands does not provide that the parties should agree to submit disputes arising from their agreement specifically to the CIAC for the latter to acquire jurisdiction over the same. Rather, it is plain and clear that as long as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested upon each party by law, i.e., E.O. No. 1008.[31]

Moreover, it is undeniable that NIA agreed to submit the dispute for arbitration to the CIAC. NIA through its counsel actively participated in the arbitration proceedings by filing an answer with counterclaim, as well as its compliance wherein it nominated arbitrators to the proposed panel, participating in the deliberations on, and the formulation of, the Terms of Reference of the arbitration proceeding, and examining the documents submitted by HYDRO after NIA asked for the originals of the said documents.[32]

As to the defenses of laches and prescription, they are evidentiary in nature which could not be established by mere allegations in the pleadings and must not be resolved in a motion to dismiss. Those issues must be resolved at the trial of the case on the merits wherein both parties will be given ample opportunity to prove their respective claims and defenses.[33] Under the rule[34] the deferment of the resolution of the said issues was, thus, in order. An allegation of prescription can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed.[35] In the instant case, the issue of prescription and laches cannot be resolved on the basis solely of the complaint. It must, however, be pointed that under the new rules,[36] deferment of the resolution is no longer permitted. The court may either grant the motion to dismiss, deny it, or order the amendment of the pleading.

WHEREFORE, the instant petition is DISMISSED for lack of merit. The Court of Appeals is hereby DIRECTED to proceed with reasonable dispatch in the disposition of C.A. G.R. No. 44527 and include in the resolution thereof the issue of laches and prescription.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, 37-50. Per Salas, B., J., with Paras, G. and Austria-Martinez, A., JJ., concurring.

[2] Rollo, 151-152.

[3] Id., 73, 112, 152-153.

[4] Id., 73.

[5] Rollo, 74.

[6] Id., 113.

[7] See Annex "A," C.A. Rollo, 163-164.

[8] 209 SCRA 440 [1992].

[9] Annex "I," Rollo, 73-78.

[10] Annex "K," C.A. Rollo, 84-87.

[11] Petition, Id., 19.

[12] Rollo, 17.

[13] Id., 111-129. Per Joaquin, J; Parlade, C., and Cruz, L.

[14] Id., 338.

[15] Section 5(1), Article VIII, Constitution; Section 17, Judiciary Act of 1948, as amended.

[16] Section 21(1) of B.P. Blg. 129; See also Morales v. Court of Appeals, et al., 283 SCRA 211 [1997]; PAA v. Court of Appeals, 282 SCRA 448 [1997].

[17] B.F. Corporation v. Court of Appeals, 288 SCRA 267 [1998].

[18] Giron, et al. v. Caluag, et al., 8 SCRA 285 [1963].

[19] Director of Lands v. Court of Appeals, 276 SCRA 276 [1997].

[20] Heirs of Marcelino Pagobo v. Court of Appeals, 280 SCRA 870, 883 [1997].

[21] Section 1, Rule 45 of the Rules of Court; National Investment and Development Corp. v. Court of Appeals, 270 SCRA 497 [1997].

[22] Sunshine Transportation v. NLRC, 254 SCRA 51, 55 [1996].

[23] See Silvestre v. Torres, 57 Phil. 885 [1933] citing 11 C.J. 113.

[24] De Espina v. Abaya, 16 SCRA 312 [1991]; Escudero v. Dulay, 158 SCRA 69 [1998].

[25] Heirs of Marcelino Pagobo v. Court of Appeals, 280 SCRA 870, 883 [1997].

[26] Sempio, et al. v. Court of Appeals, et al., 263 SCRA 617,624, citing Fajardo v. Bautista, 232 SCRA 291 [1994]; Aqualyn Corp. v. CA, 214 SCRA 312 [1992]; Sy v. Romero, 214 SCRA 193 [1992].

[27] Federation of Free Workers v. Inciong, 208 SCRA 157 [1992].

[28] See Section 4.

[29] People v. Magallanes, et al., 249 SCRA 212 [1995].

[30] 209 SCRA 440 [1992].

[31] China Chang Jiang Energy Corporation v. Rosal Infrastructure Builders, et al., Third Division Resolution dated 30 September 1996.

[32] Rollo, 84.

[33] See Espano, Sr. v. Court of Appeals, 268 SCRA 211 [1997].

[34] Section 3, Rule 16, Rules of Court.

[35] Francisco , et al. v. Robles, et al., 94 Phil. 1035 [1954].

[36] Section 3, Rule 16, 1997 Rules of Civil Procedure.

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